

State Of Karnataka Vs. Pampapathy

State Of Karnataka Vs. Pampapathy

SooperKanoon Citation : sooperkanoon.com/1231929

Court : Karnataka Dharwad

Decided On : Dec-22-2020

Judge : B.a.Patil and M.I.Arun

Appeal No. : CRL.A 100128/2017

Appellant : State Of Karnataka

Respondent : Pampapathy

Judgement :

1 - - R IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH DATED THIS THE22D DAY OF DECEMBER, 2020 PRESENT THE HONBLE MR.JUSTICE B.A.PATIL AND THE HONBLE MR.JUSTICE M.I.ARUN CRIMINAL APPEAL No.100276/2016 C/W CRIMINAL APPEAL No.100345/2016 CRIMINAL APPEAL No.100253/2016 CRIMINAL APPEAL No.100193/2018 CRIMINAL APPEAL No.100128/2017 IN CRIMINAL APPEAL No.100276/2016: BETWEEN:

1. Durgappa S/o Dooda Sunkanna Aged about 56 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari 2. Kallappa S/o Hotte Durgappa Aged about 38 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari. 2 - - 3. Chandra S/o Doddas Basappa Aged about 36 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.

4. Doddabasappa S/o Gurukalingappa Aged about 53 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.

5. Nandihalli Mallaiah @ Mallappa S/o Honnurappa Aged about 58 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.
6. Kadappa S/o Hanumappa Aged about 60 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.
7. Eranna S/o Kadappa Aged about 28 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari. 3 - - 8. Gadilingappa S/o Parasappa Aged about 40 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village, Tq: Dist: Ballari.
9. Mallaiah S/o Hanumappa Aged about 46 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village, Tq: Dist: Ballari.
10. Ramu S/o Member Dugappa Aged about 27 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village, Tq: Dist: Ballari.
11. Gadilingappa S/o Dodda Sunkanna Aged about 46 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village, Tq: Dist: Ballari.
12. Gadilingappa S/o Gurukalingappa Aged about 44 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village, Tq: Dist: Ballari.
13. Dhananjaya S/o late Sunkanna Aged about 27 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village, Tq: Dist: Ballari. 4 - - 14. Sunkanna S/o Gadilingappa Aged about 27 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.
15. Linganna S/o Amali Thimmappa Aged about 27 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.
16. Somalinga S/o Mokapampanna Aged about 30 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.
17. Durgappa S/o Kallappa Aged about 60 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.

18. Ganesha S/o Kadappa Aged about 26 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.

19. Thayappa S/o Hanumappa Aged about 74 years 5 - - Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.

20. Kaggal Venkatesh S/o Eranna Aged about 33 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village Tq: Dist: Ballari.

21. Maranna S/o Karisunkanna Aged about 43 years Occ: Agriculture R/o Moka Hobali, K.K.Hal Village, Tq: Dist: Ballari. Appellants (By Sri C.V.Nagesh, Senior Counsel for Sri Vinay S. Koujalagi, Advocate for A1 to A7, A9 to A16 and A18 to A21; Sri Srinand A. Pachhapure, Advocate for A8) AND: State of Karnataka through Moka Police Station Represented by Special Public Prosecutor Dharwad Bench at Dharwad. Respondent (By Sri L.S.Sullad, Special Public Prosecutor) This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to set aside the entire judgment of conviction and order of sentence passed against the appellants in S.C.No.55/2008 for the offences punishable under Sections 143, 147, 148, 120B, 114, 452, 324, 326, 307 and 302 r/w Section 149 of Indian Penal Code. 6 - - IN CRIMINAL APPEAL No.100345/2016: BETWEEN: Sri Pampapathy S/o Dodda Basappa Aged about 45 years Occ: Agriculture R/o: Moka Hobali, K.K.Hal Village Ballari Taluk & District. Appellant (By Sri C.V.Nagesh, Senior Counsel, for Sri Srinand A. Pachhapure, Advocate) AND: The State of Karnataka through Deputy Superintendent of Police H & B Squad, C.O.D., Bengaluru, Represented by Special Public Prosecutor High Court of Karnataka Dharwad, Bench at Dharwad. Respondent (By Sri L.S.Sullad, Special Public Prosecutor) This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to set aside the judgment of conviction dated 12.07.2016 and order of sentence dated 13.07.2016 passed by 1st Additional District and Sessions Judge, Ballari, in S.C.No.55/2008, for the offences punishable under Sections 143, 147, 148, 120B, 114, 452, 324, 325, 326, 307 and 302 r/w Section 149 of Indian Penal Code. 7 - - IN CRIMINAL APPEAL No.100253/2016: BETWEEN: Sadakali S., S/o Lingappa Aged about 28 years Occ: Agriculture R/o. Kallukutiganahal (K.K.Hal) Ballari Taluk & District. Appellant (By Sri C.V.Nagesh, Senior Counsel for Sri Yadrami,

Advocate) AND: The State of Karnataka by C.O.D., Police, H & B Squad, Bengaluru Represented by Special Public Prosecutor High Court of Karnataka, Dharwad Bench. Respondent (By Sri L.S.Sullad, Special Public Prosecutor) This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to set aside the judgment and order of conviction dated 12.07.2016/13.07.2016 passed by the 1st Additional District and Sessions Judge, Ballari, in S.C.No.55/2008 for the offences punishable under Sections 143, 147, 148, 120B, 114, 452, 324, 307, 302 r/w Section 149 of Indian Penal Code. 8 - - IN CRIMINAL APPEAL No.100193/2018: BETWEEN: Ramanjini S/o Lingappa Aged about 32 years Occ: Agriculture R/o. Kallukutiganahal (K.K.Hal) Ballari Taluk & District. Appellant (By Sri C.V.Nagesh, Senior Counsel for Sri Yadrami, Advocate) AND: The State of Karnataka by C.O.D., Police, H & B Squad, Bengaluru Represented by Special Public Prosecutor High Court of Karnataka, Dharwad Bench. Respondent (By Sri L.S.Sullad, Special Public Prosecutor) This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to set aside the judgment and order of conviction dated 12.07.2016 passed by the 1st Additional District and Sessions Judge, Ballari, in S.C.No.55/2008 for the offences punishable under Sections 143, 147, 148, 324, 326, 452, 114, 120B, 307 and 302 r/w Section 149 of Indian Penal Code. 9 - - IN CRIMINAL APPEAL No.100128/2017: BETWEEN: State of Karnataka by the Deputy Superintendent of Police H & B. Squad, C.O.D., Bengaluru, Represented by Special Public Prosecutor High Court of Karnataka Dharwad Bench. Appellant (By Sri L.S.Sullad, Special Public Prosecutor) AND:

1. Pampapathy S/o Dodda Basappa Aged about 38 years 2. Durgappa S/o Dodda Sunkanna Aged about 49 years 3. Kallappa S/o Hotte Durgappa Aged about 31 years 4. Chandra S/o Dodda Basappa Aged about 26 years 5. Doddabasappa S/o Gurulingappa Aged about 49 years 6. Nandihalli Mallaiah @ Mallappa S/o Honnurappa Aged about 51 years 10 - - 7. Kadappa S/o Hanumappa Aged about 51 years 8. Eranna S/o Kadappa Aged about 21 years 9. Sadakali S/o Lingappa Aged about 23 years 10. Gadilingappa S/o Parasappa Aged about 33 years 11. Mallaiah S/o Hanumappa Aged about 39 years 12. Ramu S/o Member Dugappa Aged about 20 years 13. Gadilingappa S/o Dodda Sunkanna Aged about 39 years 14. Gadilingappa S/o Gurukalingappa Aged about 37 years 15. Dhananjaya S/o late Sunkanna Aged about 20 years 16. Sunkanna S/o Gadilingappa Aged about

20 years 11 - - 17. Linganna S/o Amali Thimmappa Aged 20 years 18. Somalinga S/o Mokapampanna Aged about 23 years 19. Durgappa S/o Kallappa Aged about 53 years 20. Ramanjini S/o Lingappa Aged about 23 years 21. Ganesh S/o Kadappa Aged about 19 years 22. Thayappa S/o Hanumappa Aged about 66 years 23. Kaggal Venkatesha S/o Eranna Aged about 26 years 24. Maranna S/o Karisunkanna Aged about 36 years All are Agriculturists R/o Moka Hobali K.K. Haal Village Ballari Taluk. Respondents (By Sri C.V.Nagesh, Senior Counsel for Sri Srinand A. Pachhapure, Advocate) 12 - - This Criminal Appeal is filed under Section 374(2) of Cr.P.C praying to sentence the respondents/accused in S.C.No.55/2008 with death sentence as provided under Section 302 of Indian Penal Code. These Criminal Appeals having been heard and reserved on 09.10.2020 coming on for pronouncement of Judgment, this day, B.A.PATIL. J., delivered the following:-

JUDGMENT

Criminal Appeal No.100276/2016 has been preferred by accused Nos.2 to 5, 7 to 9, 11 to 20 and 23 to 26, Criminal Appeal No.100345/2016 has been preferred by appellant-accused No.1, Criminal Appeal No.100253/2016 has been preferred by accused No.10, Criminal Appeal No.100193/2018 has been preferred by accused No.21, challenging the judgment of conviction and order of sentence and Criminal Appeal No.100128/2017 has been preferred by the State challenging the sentence passed by I Additional District and Sessions Judge, Bellary in S.C.No.55/2008. 13 - - 2. We have heard the learned Senior Counsel Sri.C.V.Nagesh on behalf of all the appellants and appellants counsel and the learned Special Public Prosecutor Sri.L.S.Sullad for the respondent-State. It is reported that appellant-accused No.17 in Criminal Appeal No.100276/2016 has expired. The case as against him is abated.

3. The genesis of the case of the prosecution in brief is that on 1.9.2006 a dispute arose between two communities i.e. on the one side Lingayath community and on the another side Nayak community. The main cause for the dispute was in respect of taking of the canal water and on that day a galata took place. In the said galata one Sanna Sunkanna of Nayak community was murdered. In that light, a case was

registered in Crime No.63/2006 as against Lingayat community people and a counter complaint was also filed by the Lingayath community people in Crime No.64/2006 as against Nayak community people. In those cases, after 14 - - investigation the charge sheet was filed. In the case filed as against the Lingayath community people, the accused persons were released on bail, due to which the people of Nayak community were not happy and were dissatisfied. In that light, all the accused persons belonging to Nayak Community conspired in the house of accused No.5 with an intention to take away the life of the Lingayath community people. In pursuance of said conspiracy, on 9.11.2007 at about 7.45 p.m. by constituting unlawful assembly by holding lethal weapons they came in front of the house of Ramana Gouda, from among them accused Nos.1 to 17, 19 and 26 trespassed into the house of Ramana Gouda and assaulted him with lethal weapons. At that time, the wife of Ramana Gouda- Smt.Susheelamma screamed for help. The accused Nos.16 and 25 closed her mouth and caught her tightly by pressing her to the wall. It is further alleged that accused No.3 Kallappa assaulted Ramana Gouda with a chopper, accused No.4 Chandra 15 - - assaulted Ramana Gouda with a chopper, accused No.12 Mallaiah assaulted Ramana Gouda with chopper, accused No.13 Ramu @ Ramanna assaulted Ramana Gouda with a stick. As a result of the assault, Ramana Gouda suffered grievous injuries and fell down in a pool of blood. Accused No.3 Kallappa picked up a pounder (Onake) from the hand of accused No.9 Eranna and gave a blow on the head of Ramana Gouda. Though the complainant Smt.Susheelamma tried to rescue the deceased, accused No.4 Chandra assaulted her with a chopper on her left hand. Accused No.7 Nandihalli Mallaiah and accused No.17 Sunkanna along with accused No.3 Kallappa trespassed into the house of Smt.Rathnamma and assaulted her husband, Sanna Mallana Gouda and brought him by dragging to the house of complainant Susheelamma by telling that if they are alive, they will not get canal water. Accused No.3 assaulted Sanna Mallana Gouda with a chopper, accused No.13, 16 and 17 assaulted him with sticks, 16 - - accused No.19 assaulted with a chopper on the head of Sanna Mallana Gouda and also on his face and other parts of the body. Due to the assault, he fell down in a pool of blood. When Rathnamma tried to rescue the deceased, accused No.4 assaulted her with chopper, accused Nos.7 and 25 also assaulted her with a chopper, as a result,

she suffered with grievous injuries. By seeing the same, one Palaksha Gouda came on hearing the galata. The accused persons with an intention to kill him, accused No.12 assaulted him with a chopper, accused Nos.1 and 2 assaulted Palaksha Gouda with sticks, accused No.19 Somalinga assaulted Palaksha Gouda with a chopper on his head and caused grievous injuries. In the meanwhile Hampamma came to rescue. She has also been assaulted by accused No.14 with a chopper. It is further alleged that accused Nos.18, 20, 21, 22, 23, 24 and 26 being armed with deadly weapons, threatened them by abusing with filthy language. Thereafter, the accused persons told 17 - - that they had finished Sanna Mallana Gouda and Ramana Gouda. There was hue and cry at that place, thereafter the accused persons left the place. Immediately, the injured were shifted to VIMS Hospital, Bellary. Therein, the doctor declared Ramana Gouda and Sanna Mallana Gouda as dead and the statement of injured complainant Smt.Susheelamma was recorded and on the basis of the said statement, a case has been registered in Crime No.107/2007. Thereafter, the investigation was conducted and a charge sheet has been filed as against the appellants-accused. The learned Magistrate took the cognizance and after following the procedure laid down under Sections 207 and 209 of Cr.P.C. the case was committed to the Sessions Court. The learned Sessions Judge took the cognizance and secured the presence of the accused. After hearing the learned Public Prosecutor and the learned counsel for the accused, charge was prepared, read over and explained to the accused. Accused 18 - - pleaded not guilty, they claim to be tried and as such the trial was fixed.

4. To prove the case of the prosecution, prosecution got examined 53 witnesses and got marked 96 documents and 39 material objects. After closure of the case of the prosecution, the statement of the accused persons were recorded under Section 313 of Cr.P.C. by putting incriminating material as against them. They denied the same and have not led any evidence, nor produced any documents on behalf of the defence. After hearing the learned counsels appearing for the parties, the trial Court convicted accused Nos.1 to 5, 7 to 21 and 23 to 26 for the offence punishable under Sections 143, 147, 148, 120-B, 114, 452, 324, 307, 302 r/w Section 149 of IPC. Since during trial accused No.6 and 22 died, case as against accused Nos.6 and 22 was abated. Challenging the legality and correctness of the

judgment of conviction and order of sentence, the appellants-accused are before this Court. 19 - - State also come up in appeal challenging the sentence imposed by the trial Court.

5. The main grounds urged by the learned Senior Counsel Sri.C.V.Nagesh are that; (i) The judgment of conviction and order of sentence passed by the learned Sessions Judge is contrary to law, facts, materials placed on record and probabilities. It is his submission that the motive for the alleged incident was that, on 01.09.2006 dispute started between Lingayath Community and Nayak community and one Sanna Sunkanna of Nayak Community, who is none other than the father of accused No.16 was done to death. But, when the case has been tried, in the said case none of the witnesses have supported the case and as such the accused were acquitted. In that light, the motive on which the prosecution is intending to rely upon is very thin without there being any strength. It is his further submission that, the motive is a double edged weapon 20 - - that can be used as a shield or as sword. It is his further submission that entire case rests on the evidence of recovery, evidence of the eyewitnesses, supporting evidence of the Doctor, official and the circumstantial evidence. (ii) It is his further submission that, all the witnesses have not supported the case of the prosecution on the aspect of recovery and the recovery which is intended to be relied upon by the prosecution is not at the instance of the accused. In order to prove recovery u/s 27 of the Evidence Act, the said recovery must be at the instance of the accused. He has further submitted that on perusal of Exs.P.28 and 25 it is clear that the Police went to the place of incident and the accused were also present. In that light, it is not considered to be a recovery at the instance of accused. (iii) It is his further submission that mere recovery is not sufficient without there being any Serologist Report indicating the blood found on the 21 - - weapon belongs to whom. If the connecting link of blood found on the weapon cannot be established, in the absence of any such material it cannot be held that the accused has committed the alleged offences with the said weapon. It is his further submission that the evidence of PW44, Head Constable - Sri. Nagaraj Rao has deposed that, on 06.12.2007 as per the instructions of the Deputy Superintendent of Police, he took 34 sealed articles to give it to FSL, Bengaluru, subsequently he further deposed that the said articles have been given along with the report. He further deposed

that, on 17.12.2007 the Deputy Superintendent of Police again called him to bring back the said articles which were given to the FSL. He went to the office of FSL and brought the said articles and produced the same before the Deputy Superintendent of Police. If the evidence of this witness is considered with the evidence of PW54-Assistant Director of FSL - Sri. S.M. Gaonkar he has taken charge in the month of 22 - - November 2010 and a report has been given as per Ex.P.83. It is his contention that he has given the said report on 29.11.2010 and when already the articles have been brought back from the FSL on 17.12.2007 itself, then there is no question of PW54 examining the said articles and giving of the report as per Ex.P.83. In this behalf there is no link and the recovery evidence is not going to be established by the prosecution. (iv) It is his further submission that when the materials are not available in the Forensic Science Laboratory, then how those articles were examined and a report has been prepared as per Ex.P.83 itself creates a doubt. In that light, even grouping of blood given is also not acceptable. It is his further submission that as per the deposition of PW18, he is a recovery mahazar witness for Ex.P.25 whereunder a Machhu (weapon), a full sleeves banyan and a towel have been seized. In the absence of proper serology report credence cannot be 23 - - given to such evidence and material placed by the prosecution. (v) It is his further submission that the testimony of the eyewitnesses is not trustworthy and reliable. As per the case of the prosecution, it was a Deepavali Amavasya Day and it was pitch dark. Under such circumstances, she seeing the accused persons and giving the details in the complaint itself is doubtful. It is his further submission that, the names of the other accused persons do not find place in the complaint but subsequently they have been inculcated only with animosity. He further submitted that the material witnesses, Basamma, Akkamma, Kamakshi and Palaksha Gouda have not been examined by the prosecution before the Court for the reasons best known to the prosecution. Non examination of the material witnesses is fatal to the case of the prosecution. 24 - - It is his further contention that the prosecution has introduced Smt.Hampamma as eyewitnesses. She has deposed that she has sustained injuries in the alleged incident, but she has not been treated in any of the hospital and if that is the case, who actually has sustained injuries, creates a serious doubt. It is his further submission that the complainant has suffered injuries and she was under a great

shock but how she gives details including the names of 16 accused persons along with holding of the specific weapons in their hands. The conduct of PW1 is not natural, probable and acceptable in law. He has further submitted that the inquest mahazar as per Ex.P.24 has been drawn and there the presence of Basamma has been specifically stated and further stated that Pushpavati was also there but the said witnesses have not been examined before the Court. He further submitted that as per the evidence of PW51-Ashok Kumar, during the course of cross-examination, he has 25 - - admitted that Ex.P.75 has been written wherein name of the wife of the deceased and his son Suresh, has been mentioned. They have also not been examined before the Court. Further, Ramana Gouda died in the house itself and thereafter he has been shifted to some other place by taking him to the another house. All these facts creates a doubt in the case. (vi) He further submitted that, before the COD Police it has been stated that Sanna Mallana Gouda was assaulted in his house and the COD Police have recorded that he was dragged to the house of Ramana Gouda and was assaulted. The said aspect has also been substantiated by Ex.P.38 and a mahazar has also been drawn and the blood has been collected from the said house. All these materials, if looked into, the case of the prosecution creates a serious doubt. (vii) It is his further submission that, no independent witnesses have been examined but only blood relatives and interested witnesses have been 26 - - planted only to make out a case for the complainant and the prosecution. Though the prosecution got examined independent witnesses but they have not supported the case of the prosecution and they have been treated as hostile. Further, the recovery evidence is also not admissible since recovery mahazar witnesses have not supported the case of the prosecution. Except the statement of the Police no other material is there to connect the accused persons to the said recovery. When all the material witnesses have not supported and the only evidence which is available is that of PW12 that too his evidence will also not substantiate the case of the prosecution and his presence at the place of incident itself is doubtful, on the contrary, his evidence is only hearsay evidence. If really he was an eyewitness to the alleged incident, definitely he could have made efforts to rescue the deceased by preventing the accused persons. Except PW1 no other third person was present there and the 27 - - other witnesses have been planted by the prosecution, who

come to the place of incident only after the incident is completed. PW3 has not stated anything about the assault said to have been committed. It is only to benefit the case of the prosecution they have been introduced. Under such circumstances the evidence of those witnesses is not trustworthy and reliable. If the material witnesses have not been examined by the Police during the course of investigation nor even before the Court and in the absence of satisfactory explanation for their non-examination, it is fatal to the case of the prosecution. In order to substantiate the said contention he has relied upon the decision of the Honble Supreme Court in the case of State of Maharashtra V. Dinesh reported in (2018) 15 SCC161

6. When there is discrepancy in the evidence of prosecution with regard to the identity and the place of occurrence, then under such circumstances, the identity of the accused in such pitch darkness, is doubtful. In this regard, he relied upon the decision of the Honble Supreme Court in the case of State of Madhya Pradesh V. Makhan Alias Madan and Others reported in (2008) 10 SCC615

7. He further contended that, mere marking of the Serology report without examining the connected material witnesses, is not going to help the case of the prosecution. In that light, he relied upon the decision in the case of LIC of India & Anr. V. Ram Pal Singh Bisen reported in 2010

(2) Supreme 444.

8. If no link is established between the blood found on the seized articles and the blood of the deceased, under such circumstances the benefit of doubt must go to the accused. In that light, he relied upon the decision of the Honble Supreme Court in the case of Sunil Kundu and another V. State of Jharkhand reported in (2013) 4 SCC422 29 - - 9. He has also submitted that, if the material witnesses who have been examined their evidence, is not trustworthy and no satisfactory explanation has been given to the omissions and improvements made in the FIR and the complaint, then under such circumstances such evidence cannot be trusted and relied upon. No witnesses have specifically stated that there was availability of light at the time of occurrence of incident and in the said light they have witnessed the accused assaulting. When they have not stated, it is considered to be a material contradiction and in that light, the deposition of such

witnesses about noticing the accused dragging and assaulting cannot be relied upon. In that light, he relied upon the decision of the Honble Supreme Court in the case of Bhaskar Rao and Others V. State of Maharashtra reported in AIR 2018 SC2222 10. It is his further submission that the alleged incident has taken place on No Moon Day. The Court 30 - - can take judicial note of it that it would have been pitch dark and nobody is in a position to identify who was holding which weapon. In that light, there is a lacuna in the case of the prosecution. He further submitted that the prosecution has not held the test identification parade. Non holding of the test identification parade also is fatal to the case of the prosecution. On these grounds he prayed to allow the appeals and to acquit the accused by setting aside the judgment of conviction and order of sentence.

11. Per contra, the learned Special Public Prosecutor Sri.L.S.Sullad vehemently argued and submitted that there is a strong motive for the alleged incident there was dispute with regard to taking canal water to feed the lands of accused. Prior to the present incident, on 1.9.2006, both the community people have fought with each other and the father of accused No.16 was murdered. Brother of accused No.5 and accused are relatives and belonging to Nayak community. It is 31 - - his further submission that there are injured eyewitnesses and independent eyewitnesses who have seen the accused persons assaulting both the deceased with deadly weapons. It is his further submission that on 8.11.2007 they conspired in the house of accused No.5, CW.20 and CW.36 have clearly stated about the conspiracy, since they are dead, they have not been examined before the Court. It is his further submission that accused Nos.1 to 17, 19 and 20 have entered into the house of the deceased and have mercilessly assaulted the deceased person with lethal weapons. PW1 is none-other than the wife of the deceased Ramana Gouda. She has witnessed the alleged incident and she has narrated all the facts in the complaint and in her evidence she has also identified the accused persons, the name of the accused persons is also found in the complaint. It is his further submission that the blood stained clothes of the accused were recovered at the instance of the accused. They have not explained 32 - - how the clothes of the accused were stained with human blood. It is his further submission that the alleged incident has taken place on Deepavali Amavasya day. Because of Deepavali festival, there was sufficient light to identify the accused persons. It is

his further submission that the prosecution got produced the documents to show that there was uninterrupted electricity supply at the time of the alleged incident and in that light PW1 complainant has seen the accused persons who have assaulted the deceased with lethal weapons. It is his further submission that it was not pitch dark as contended by the learned Senior Counsel for the appellants-accused. It is his further submission that though the complainant has not given the names of all the accused persons, she has given the names and overt acts, as she has suffered with injuries. Due to shock and suffering, some omission may be there in giving the names of the remaining accused persons. 33 - - Mistake in filing the complaint is not a ground to discard the entire complaint. In order to substantiate his said argument, he has relied upon the decision in the case of Mallappa Siddappa Alakanur and Others Vs. State of Karnataka reported in 2009 (3) Crimes 230 (SC). It is his further submission that the complaint is not an encyclopedia and omission of facts in the complaint and the FIR is not fatal to the case of the prosecution. In that light, he relied upon the decision in the case of Harijan Jivrajbhai Badhabhai Vs. State of Gujarat reported in 2017 (1) Crimes 214 (SC) and in the case of Manjit Singh Vs. State of Rajasthan reported in 2012(3) Crimes 192 (SC). It is his further submission that about 19 persons have entered into the house and remaining accused persons were outside and were instigating and abating the persons who were inside the house and as such they are also equally liable to be punished for the crime committed by the other accused persons. It is his 34 - - further submission that they have got a common object knowing that they have come there to finish of two deceased persons. It is his further submission that the complainant has also given the description of the persons assaulted to herself and deceased with the weapons. He further submitted that her presence at the place of incident is not disputed by the accused persons during the course of cross-examination. In that light, her evidence gives greater weight. It is his further submission that the complainant has given the explanation as to why she has not given the name of other accused persons in Ex.P1. It is his further submission that in case of a house murder the evidence of injured witness has to be given weightage and even the evidence of PWs.2, 3 has been corroborated with the evidence of PW1. It is his further submission that the credibility of the witnesses has to be looked into while appreciating the evidence.

Immediately the case has been taken over by COD, 35 - - PW1 gave her statement and the overt acts of each of the accused persons, the evidence of PW1 is credible and trustworthy to rely upon. In that light, he relied upon the decision in the case of Anil Ankush Gadekar Vs. State of Maharashtra reported in AIR 2018 SC659 It is his further submission that non mentioning of the names of all the accused persons in the complaint is not necessary. In that light, he relied upon the decision in the case of Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Another reported in (2013) 12 SCC796 It is his further submission that the standard to be adopted in a criminal case is that of an ordinary prudent man. Only if by adopting the standard, if a doubt arises and if that doubt is a reasonable doubt, then the accused is entitled to be given the benefit. It is his further submission that such benefit of doubt should go to the root of the case of the prosecution. It is his further submission that non-examination of some of 36 - - the witnesses by the prosecution is not fatal. The prosecution has got discretion to examine the material witnesses to prove its case. Defence will not be having any right to point out that those witnesses have not been examined. The appellants-accused are involved in a gruesome murder case. No concession can be given to the appellants-accused. Minor discrepancies in the case of the prosecution have to be ignored. In that light, he relied upon the decision in the case of Subal Ghorai and Others Vs. State of West Bengal reported in (2013)4 SCC607 It is his further submission that accused Nos.1, 2 13 and 14 have taken up the defence of plea of alibi. When the accused took the defence of alibi, then burden is on them and the accused persons have to prove the case and no burden is there on the prosecution. The evidence of PW2 also corroborates with the evidence of PW1. It is his further submission that when Sanna Mallana Gouda was murdered, his 37 - - wife PW2 is an eyewitness and as per the case of the prosecution they were watching the TV and there was sufficient light to identify the appellants-accused. It is his further submission that when there are injured eyewitnesses, there evidence cannot be discarded. In that light, he has relied upon the decision in the case of Jarnail Singh and Others Vs. State of Punjab reported in 2009 (4) Crimes 30 (SC). It is his further submission that due weightage has to be given to the injured witnesses. In that light, he relied upon the decision in the case of Ranjit Singh and Others Vs. State of Madhya Pradesh reported in 2010 (4) Crimes 280 (SC). It is his further submission that some of the

witnesses are neighbouring witnesses who have seen the accused persons assaulting the deceased, their presence at the place of incident cannot be doubted. It is his further submission that PW15 is an independent witness who has seen accused persons coming on the 38 - - road by constituting unlawful assembly. It is his further submission that Ex.P72, RFSL report clearly goes to show that all the articles sent for chemical examination were stained with blood and it was O Group. It is his further submission that if there is any incriminating material as against the appellants- accused and if no explanation has been given in 313 statement, then it will be fatal to the case of the appellants-accused. It is his further submission that the Investigating Officer has also clearly deposed with regard to the investigation conducted and his evidence corroborates with evidence of eyewitnesses. It is his further submission that the witnesses who have not supported the case of the prosecution are not the eyewitnesses. They are not going to throw any light and it will not be fatal to the case of the prosecution. In that light, he relied upon the decision in the case of Jodhan Vs. State of Madhya Pradesh reported in 2015 (4) Crimes 246 (SC). It is his further submission that 39 - - under Section 149 of IPC, all the accused persons are equally and vicariously liable to the offence committed by some of them with common object and are vicariously liable, though they have not assaulted the deceased or the injured. On these ground he prayed to dismiss the appeals filed by the appellants-accused. It is his further submission that the accused persons by constituting unlawful assembly have committed a gruesome incident, whereunder two lives have been taken away by the accused persons by causing multiple chop wounds. The trial Court without considering the fact that the said case comes within the purview of rarest of rare cases and it ought to have imposed a maximum punishment including the death sentence. In that light, the judgment of the trial Court requires to be interfered with. On these grounds he prayed to allow the appeal filed by the State.

12. I have heard the learned counsels appearing for the parties and perused the records. 40 - - 13. The prosecution has to establish that the death of deceased Ramana Gouda and Sanna Mallana Gouda is a homicidal death. In order to substantiate the said fact the prosecution got examined PW37-the doctor who conducted the autopsy of the body of two deceased persons. In his evidence he

has deposed that he received a requisition from the police on 10.11.2007 to conduct the post mortem of the body of Ramana Gouda and he has conducted post mortem from 10.40 to 11.40 a.m. He has found (i) chop wound over the left eyebrow (ii) chop wound over the forehead (iii) chop wound over the right parieto-occipital region (iv) chop wound over the right side of occipital region (v) chop wound extending from right frontal region to left side of occipital region, (vi) chop wound of central part of upper lip, (vii) fracture of right side of mandible, (viii) puncture wound below the mandible on the right side, (ix) contusion over the right shoulder, (x) abrasion on the middle of chest, (xi) abrasion on the left side of chest below the left nipple, (xii) chop wound on the left thigh above the left knee, (xiii) chop wound on the middle side of the left thigh and skull broken into four pieces. The largest fracture measuring 22 cms. in length extends anteriorly from the mid point of forehead to the occipital region. He has further deposed that death is due to shock and hemorrhages as a result of multiple injuries and has issued the post mortem report as per Ex.P63. He has further deposed that on the same day he has also received a requisition to conduct the post mortem of Sanna Mallana Gouda and has conducted the post mortem from 11.30 to 12.30. He has further deposed that he found (i) chop wound extending from the left angle of the mouth running above and backwards passing through the right side of the nose, right eye, right temporo-parietal region, (ii) abrasion behind the right shoulder, (iii) cut lacerated wound horizontally placed over the chin, (iv) cut lacerated wound below the chin, (v) fracture of central part of mandible. He has opined that death is due to shock and hemorrhage as a result of multiple chop injuries sustained and has also issued the post mortem report as per Ex.P64.

14. The prosecution has also got examined the inquest mahazar pancha PW16 and inquest mahazar has been got marked as per Ex.P24 in respect of Sanna Mallana Gouda. Taking into consideration the evidence of PW37, Exs.P63 and 64 and Exs.P24 and 75 along with the inquest mahazars of Sanna Mallana Gouda and Ramana Gouda, it clearly goes to show that both persons have died a homicidal death and not a natural death.

15. The learned Senior counsel even during the course of argument, much stress has not been made with regard to death of Ramana Gouda and Sanna Mallana

Gouda as a homicidal death. Taking into 43 - - consideration the above facts and circumstances, it can be safely held that both the deceased persons have died unnatural or a homicidal death.

16. The first and foremost contention taken up by the learned Senior Counsel for the appellants-accused is that dispute started between Lingayath community and Nayak community on 1.9.2006 and one Sanna Sunkanna of Nayak community was murdered who is none other than the father of accused No.16. That is the motive for the present alleged incident. It is submitted that in that case none of the independent witnesses have supported the case, accused was acquitted and the motive which is intended to be relied upon by the prosecution is very thin.

17. I have carefully and cautiously gone through the evidence of the witnesses. Though independent witnesses examined by the prosecution have not supported the case of the prosecution but on perusal of 44 - - the evidence of PW1, in her evidence at paragraph No.7 she has deposed that one year back from the date of incident in respect of taking water from the lands of persons belonging to Lingayath community there was a dispute between the Nayak community and Lingayath community. The lands of the accused persons are lying in the lower level and lands of the deceased belonging to Lingayath community are lying on the upper side, water used to flow from south to north. She has further deposed that if a bund is put up, only the lands in higher level would get the water. She has further deposed that in that connection for the removal of the bund, quarrel took place and in the said quarrel, one Sanna Sunkanna belonging to Nayak community has been murdered and a complaint has been lodged against Lingayath community. She has further deposed that her father-in law Rudragowda, brother in law Dodda Mallanna Gouda, her husband deceased Ramana Gouda, deceased Sanna Mallana Gouda and 45 - - her brother-in-laws, Virupaksha Gouda, Palaksha Gouda, Siddaramana Gouda were the accused and they have been sent to jail. She has further deposed that some days thereafter they have been released on bail. Because of the said reason, accused started nurturing ill-will against the people belonging to Lingayath community including her husband and family members. Because of previous ill-will accused persons entered into their house in a group and have assaulted and murdered Sanna Mallana Gouda

and her husband Ramana Gouda.

18. During the course of cross-examination of this witness, though she has admitted that the lands of accused Nos.1, 2, 13 and 14 are not near the lands of PW1 and there was no animosity between accused Nos.1, 2, 13 and 14, but it is not in dispute that earlier Sanna Sunkanna belonging to Nayak community has been murdered by the Lingayath community and Lingayath community people have been sent to jail and 46 - - subsequently they have been acquitted in the said case. But the fact remains that there was some dispute and ill-will between the two communities. PW2 at paragraph No.6, PW3 at paragraph No.4 and PW7 have also reiterated the evidence of PW1.

19. On perusal of the said evidence it indicates that there was some dispute with regard to taking of water and in that light subsequently the alleged incident has taken place. Though it is contended by the learned Senior counsel that the motive alleged is thin motive and in the criminal case the accused have been acquitted and none of the witnesses have supported in the said case. There is no such aspect as thin motive or otherwise. All these witnesses stated supra have clearly stated in their evidence about motive, i.e. quarrel with regard to taking of water and case and counter case have been registered and father of accused No.16 has been murdered. I am conscious of the fact that the motive is a double edged weapon. It can be used as a 47 - - shield or as a sword. But on perusal of the evidence of these witnesses nothing has been elicited so as to discard their evidence insofar as this aspect of the matter is concerned. Motive plays a vital role when there are no eyewitnesses to the alleged incident. If case rests on the evidence of eyewitnesses, motive will not be having much value.

20. Admittedly, in the instant case on hand there are eyewitnesses to the alleged incident. In the absence of motive it would not by itself make any material difference when case rests on the evidence of eyewitnesses. This proposition of law has been laid down by the Honble Apex Court in the case of Sheo Shankar Singh Vs. State of Jharkand reported in (2011) 3 SCC654 at paragraph Nos.15 to 24 it has been observed as under:

15. The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well 48 - - settled by a long line of decisions of this Court. These decisions have made a clear distinction between cases where the prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eyewitnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eyewitness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eyewitnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely, even if the prosecution succeeds in establishing a strong motive for the 49 - - commission of the offence, but the evidence of the eyewitnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eyewitness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eyewitnesses. See *Shivaji Genu Mohite v. State of Maharashtra* [(1973) 3 SCC219:

1973. SCC (Cri) 214]. , *Hari Shanker v. State of U.P.* [(1996) 9 SCC40:

1996. SCC (Cri) 913]. and *State of U.P. v. Kishanpal* [(2008) 16 SCC73: (2010) 4 SCC (Cri) 182]. .

16. The case at hand rests upon the deposition of the eyewitnesses to the occurrence. Absence of motive would not, therefore, by itself make 50 - - any material difference. But if a motive is indeed proved it would lend support to the prosecution version. The question is whether the prosecution has established any such motive to fortify its charge against the appellants.

17. Depositions of Apurba Ghosh (PW16, Aamlal Kisku (PW15 and Arup Chatterjee (PW19 are relevant on the question of motive and may be briefly

discussed at this stage.

18. Arup Chatterjee (PW19 happens to be the son of the deceased Gurudas Chatterjee. According to this witness the appellants and most of their family members constitute what is described by him as coal mafia of Dhanbad whom the deceased used to fight, with the help of the police and administration to prevent the theft of coal in the region. The witness further states that Aamlal Kisku had a petrol 51 - - pump situate at Belchadi, which petrol pump was given by Shri Kisku to the accused Sheo Shanker Singh for being run. Aamlal Kisku being an illiterate Adivasi was, according to the witness, being kept as a bonded (bandhua) labourer by the appellant on payment of Rs. 30 per day. The witness further states that Aamlal Kisku approached the deceased for help and the latter with the help of police and administration got the ownership of the petrol pump restored to Shri Kisku. Both these steps, namely, prevention of theft of coal in the region and restoration of the petrol pump to Aamlal Kisku annoyed the appellant Sheo Shanker Singh, for which reason the deceased was done to death after he had won his third consecutive election to the State Assembly.

19. In cross-examination the witness Arup Chatterjee has expressed his ignorance about the land where the petrol pump was 52 - - installed and about the source of income of Aamlal Kisku. The witness also expressed ignorance about the expenditure involved in the installation of the pump or the source from where Shri Kisku had arranged finances. The witness stated that criminal cases were pending before the court against Sheo Shanker Singh and Narmedeshwar Prasad Singh and his sons, but expressed ignorance about filing of the civil suit by Narmedeshwar Singh regarding the petrol pump in dispute. The witness claimed to have heard a conversation between Aamlal Kisku and the deceased regarding the dispute over the petrol pump.

20. Aamlal Kisku (PW15 has, in his deposition, stated that he owns a petrol pump in Belchadi which was allotted to him out of the Adivasi quota. Since he was not familiar with the business in the sale of oil and lubricants, he had taken help from 53 - - Narmedeshwar Prasad Singh and Sheo Shanker Singh. Subsequently, Sheo Shanker Singh, the appellant started treating him like a labourer and did not

render any accounts regarding the petrol pump. He, therefore, made complaints to the company and approached late Gurudas Chatterjee, MLA, and it was after long efforts that the petrol pump was restored to the witness. Sheo Shankar Singh and Narmedeshwar Prasad Singh had extended threats to him regarding which he had informed the police.

21. In cross-examination the witness Aamlal Kisku stated that the business of petrol pump was carried on by him in partnership with Sheo Shanker Singh for 4-5 months in the year 1997. No partnership deed was, however, written. He did not know whether any joint account with the appellants had been opened in Poddardih Branch of Allahabad Bank. He also did not know whether 54 - - sales tax registration was in joint names and whether the land belonged to Sheo Shankar Singh. The witness admits that he had lodged a criminal case against Sheo Shankar Singh, Rama Shanker Singh and Rajesh Singh and that another case was filed against Narmedeshwar Prasad Singh also. The witness denied that the petrol pump had been installed with the help of the money provided by Sheo Shanker Singh and Narmedeshwar Prasad Singh and that the cases referred to by him had been lodged against the said two persons on the incitement of others.

22. Apurba Ghosh (PW16 apart from being an eyewitness to the incident also mentions about a petrol pump situated on GT Road at Nirsa owned by a person belonging to Scheduled Tribe community but was being run by Narmedeshwar Prasad Singh illegally. The deceased fought against them with the help of police and local administration because of 55 - - which the ownership of the petrol pump was got restored to the owner concerned. The witness also refers to a statement made by the deceased regarding coal theft 5 or 6 days before the incident in question as a result whereof Narmedeshwar Prasad Singh and Nooren Master were both sent to jail.

23. There is thus evidence to prove that a petrol pump situated at GT Road at Nirsa stood in the name of Aamlal Kisku which had been allotted in his name in the Scheduled Tribes quota. It is also evident that to establish and run the said petrol pump Aamlal Kisku had taken the help from Shri Narmedeshwar Prasad Singh and Sheo Shankar Singh. Disputes between the original allottee and the

appellant Sheo Shankar Singh and his father Narmedeshwar Prasad Singh had, however, arisen and manifested in the form of civil and criminal cases between them. Aamlal Kisku had in that connection 56 - - taken the help of the deceased who had with the help of the police and local administration secured the restoration of the petrol pump to Shri Kisku which annoyed the appellant Sheo Shankar Singh and his father Narmedeshwar Prasad Singh.

24. There is also evidence to the effect that the deceased had acted against what has been described as coal mafia of Dhanbad with the help of police and administration to prevent the coal theft in the region and the steps taken by the deceased had resulted in the arrest of Narmedeshwar Prasad Singh and Nooren Master in connection with the said cases. Both these circumstances appear to have contributed to the incident that led to the killing of the deceased who was perceived by the appellants as a hurdle in their activities. 57 - - 21. It is further observed by the Honble Apex Court that in the absence of motive, it is of no consequence and it is insignificant when direct evidence is there to establish the crime. In that light, I want to rely upon the decision in the case of Yogesh Singh Vs. Mahabeer Singh and Others reported in (2017) 11 SCC195 At paragraph No.46 it has been observed as under:

46. It has next been contended by the learned counsel for the respondents that there was no immediate motive with the respondents to commit the murder of the deceased. However, the trial court found that there was sufficient motive with the accused persons to commit the murder of the deceased since the deceased had defeated accused Harcharan in the Pradhan elections, thus putting an end to his position as Pradhan for the last 28-30 years. The long nursed feeling of hatred and the simmering enmity between the family of the deceased 58 - - and the accused persons most likely manifested itself in the outburst of anger resulting in the murder of the deceased. We are not required to express any opinion on this point in the light of the evidence adduced by the direct witnesses to the incident. It is a settled legal proposition that even if the absence of motive, as alleged, is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of the witnesses as to commission of an offence, motive loses its significance. Therefore,

if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance. (Hari Shanker v. State of U.P. [Hari Shanker v. State of U.P., (1996) 9 SCC40:

1996. SCC (Cri) 913]. , Bikau Pandey v. State of Bihar [Bikau Pandey 59 - - v. State of Bihar, (2003) 12 SCC616:

2004. SCC (Cri) Supp 535]. , State of U.P. v. Kishanpal [State of U.P. v. Kishanpal, (2008) 16 SCC73: (2010) 4 SCC (Cri) 182]. , Abu Thakir v. State of T.N. [Abu Thakir v. State of T.N., (2010) 5 SCC91: (2010) 2 SCC (Cri) 1258]. and Bipin Kumar Mondal v. State of W.B. [Bipin Kumar Mondal v. State of W.B., (2010) 12 SCC91: (2011) 2 SCC (Cri) 150].) 22. Keeping in view the ratio laid down in the above decisions, on perusal of the material on record it indicates that there was motive for the commission of the alleged crime. That is not the only circumstance which has to be seen. The other relevant evidence has to be looked into before coming to any conclusion.

23. In order to prove the case of the prosecution, prosecution has relied upon the evidence of PWs.1, 2, 3, 8 to 11 who are said to be the eyewitnesses to the alleged incident. 60 - - 24. PW.1 is the complainant and wife of the deceased Ramana Gouda and co-sister-in-law of PW2 whereas PW3 is the mother-in-law and she has also spoken with regard to the relationship of other witnesses. She has deposed that on 9.11.2007 at about 7.45 p.m. on Amavasya Deepavali festival her husband deceased Ramana Gouda, her sons Suresh and Harish were inside the house and were watching the T.V. and she was preparing the food. She has further deposed that all of a sudden people belonging to Nayak community entered into their house. Accused No.1 Pampapathi, accused No.2 Durugappa, accused No.5 Dodda Basappa, accused No.3 Kallappa, accused No.4 Chandrappa, accused No.6 Eranna s/o Thayappa, accused No.9 Eranna s/o Kadappa, accused No.12 Mallaiah, accused No.7 Nandihalli Mallaiah, accused No.14 Gadilinga s/o Dodda Sunkanna, accused No.11 - Gadilinga S/o Parasappa, accused No.13 Rama, accused No.8 Kadappa, accused No.16 Dhananjaya, 61 - - accused No.17 Sunkanna, accused No.10 Sadakali, accused No.19 Somalinga,

accused No.25 Kaggal Venkatesh, in all 19 persons entered their house, who are present before the Court and have been identified as accused. She has further deposed that they were holding chopper, pounder (Onake), wooden sticks and were uttering that they will not leave, the Lingayath community people and assaulted her husband Ramana Gouda. Some of the accused persons were also stating that they will drag Sanna Mallana Gouda who is residing abutting to the house of Ramana Gouda.

25. She has further deposed that accused No.16 Dhananjaya and accused No.25 Kaggal Venkatesh used their hands to close her mouth and pressed her against the wall. Accused No.3 Kallappa assaulted with a machhu on the forehead of her husband Ramana Gouda two-three blows were given. Accused No.4 Chandra assaulted deceased Ramana Gouda with a machhu and gave two-three blows on his head. 62 - - Accused No.6 Eranna S/o Thayappa assaulted her husband with an axe on the head of her husband, accused No.12 Mallaiah assaulted with a machhu on the head of her husband on left thigh, accused No.7 Nandihalli Mallaiah assaulted with machhu on the head of her husband, accused No.9 Eranna S/o Kadappa assaulted on the body and the hands of her husband, accused No.13 Rama assaulted on the face of her husband with a wooden stick. She has further deposed that she started crying loudly and requesting them not to assault her husband and came near to her husband. She has further deposed that accused No.4 Chandra came forward to assault her with a machhu. To avoid the blow she raised her left hand, at that time she received the blow to her left palm in between her little finger and ring finger. She has further deposed that thereafter by saying that Ramana Gouda is already dead and they have finished him, accused went out of the house. She has further deposed that at that time 63 - - both of her sons were standing in the kitchen room, due to fear they were watching the situation.

26. During the course of cross-examination she has admitted that at the time of filing of the complaint she has only stated 16 persons have entered the house and other suggestions have been denied. During the course of cross-examination she has admitted that in Kallinatheshwara Temple there is a waranda and nearby villagers also come to attend the Pooja. She has further admitted that on

amavasya day since morning 9.00 O'clock there will be pooja and there are shops they will also perform the Laxmi Pooja in the evening at about 9.30 p.m. She has further admitted that by standing in front of her house the said temple will not be seen and in front of the temple there is a bus stop and all the people will travel from the said bus stop.

27. She has further admitted that in the year 2005 accused Nos.10, 11, 21, 22 the relatives of this 64 - - witnesses one Pampapathi has contested for the Gram Panchayath election, but she has denied the suggestion that the deceased Sanna Sunkappa stood for election against the said Pampapathi and has lost the election. Other suggestions have been denied.

28. PW.2 Rathnamma is also an eyewitness to the alleged incident, assault to deceased Sanna Mallana Gouda. In her evidence she has deposed that about five years back incident took place at about 7.45 p.m., it was Amavasya Deepavali festival. In their house herself, her husband Mallana Gouda, daughter Shakunthalamma were there. She has further deposed that at that time she was standing in front of her house. She heard galata on the road and came out from the house and went near the compound and all the accused persons came there, accused No.3 Kallappa, accused No.4 Chandra, accused No.5 Dodda Basappa, accused No.8 Kadappa, accused No.24 Thayappa, accused No.17 Sunkanna, accused No.12 Mallaiah, 65 - - accused No.7 Nandihalli Mallaiah, accused No.22 Parsappa and other accused persons came holding machhu, pounder (onake), axe, wooden sticks in their hands and entered into the house of Ramana Gouda by stating that not to leave Lingayath community people. Due to fear she went inside her house and locked the door and informed the fact to her husband. She has further deposed that she heard hue and cry from the house of Ramana Gouda and they peeped through the window of their house and she saw accused No.1 Pampapathi, accused No.5 Dodda Basappa, accused No.8 Kadappa, accused No.11 Gadi Lingappa, accused No.10 Sadakali holding axe and machhu in their hands came near their house with an intention to break the door. She has further deposed that they did not open the door. Thereafter, after some time commotion was reduced, again they heard galata in the house of Ramana Gouda. She has further deposed that accused were not found in front of their house. Wife of

Ramana 66 - - Gouda PW1 was shouting with loud voice. On hearing the same, she opened the door to come out and went inside the house of Ramana Gouda, where she saw Ramana Gouda had sustained bleeding injuries and herself, sons of Ramana Gouda gave water. At that time, all the accused persons again came inside the house and her husband Sanna Mallana Gouda was inside their house. Accused No.7 Nandi Halli Mallaiah, accused No.3 Kallappa, accused No.17 Sunkanna dragged her husband from their house and brought him to the house of Ramana Gouda.

29. She has further deposed that accused No.3 Kallappa assaulted with machhu on the right eye of her husband. At that time, PW1 Shusheelamma was giving water to her husband Ramana Gouda, accused No.3 Kallappa snatched the Tali from her neck and accused No.3 Kallappa snatched the pounder (onake) from the hands of accused No.6 Eranna and assaulted on the head of Ramana Gouda which resulted to breaking of 67 - - his head. Accused No.17 Sunkanna assaulted on the body of her husband Sanna Mallana Gouda with wooden stick, accused No.13 Rama assaulted on the head of her husband with wooden stick. Accused No.16 Dhananjaya assaulted on the face of her husband with a wooden stick, accused No.19 Somalinga gave a blow with a machhu on the head of her husband and it slipped and he received injuries to his back. She has further deposed that when she went to rescue her husband, at that time, accused No.4 Chandra had already inflicted two-three blows with a machhu on her husband. When she went to rescue, accused No.4 Chandra assaulted her with a machhu on her left hand and as a result of the same she received fracture injuries. She has further deposed that accused No.7 Nandihalli Mallaiah assaulted her husband with two-three blows on his head with machhu. When she went to rescue her husband, accused No.7 assaulted her with machchu on the right shoulder. She received 68 - - bleeding injures. She has further deposed that accused No.25 Kaggal Venkatesh by reversing the matchhu assaulted on her hands and body. She has further deposed that they received bleeding injuries. All the accused by stating that they finished Sanna Mallana Gouda and Ramana Gouda with joy, went away from the house. At that time, her mother-in-law, PW3 Hampamma and brother-in-law Palakshi Gouda came. Seeing them, all the accused who were going out from the Ramana Goudas house assaulted them. She has further deposed that thereafter,

police also came and they have been sent to VIMS hospital, Bellary in an autorickshaw.

30. During the course of cross-examination she has admitted that in respect of murder of Sanna Sunkappa, a case has been registered as against her husband and they have been acquitted in the said case. She has further admitted that since all the witnesses have turned hostile, they have been acquitted and there 69 - - was also a counter case and in that counter case also the accused persons have been acquitted.

31. During the course of cross-examination it has been elicited that all the accused persons belong to her village and as such she is capable of identifying. She has deposed that she does not know how many persons were there in the house of Ramana Gouda. She has admitted that in between the house of Ramana Gouda and Doddamallana Gouda there were no walls or windows. She has further deposed that after hearing the galata, when she came out from the house of Doddamallana Gouda and Ramana Gouda, nobody was there and she did not ask anybody about the galata and she came to know for what purpose the people have come near to her compound. She has further deposed that when she went inside, she came to know about the reason for the galata. She has further deposed that due to fear the members of Doddamallana Goudas family and Ramana Goudas family did not 70 - - come out. She has further admitted that after 15 minutes of galata she went to the house of Ramana Gouda and in the house of Ramana Gouda or in the compound no persons were there and she does not know where exactly they have gone. She has further deposed that after 15 minutes the people who had gone had come back. She has further deposed that when police came to the spot she did not tell anything and how many police came to the hospital is also not known to her. She has further deposed about the case and galata and stated the same before the electronic media. She has further denied the suggestion that only as against seven persons they have stated before the electronic media. She has admitted that in front of her house 60 volt bulb is there and on that day it was a Deepavali Amavasya and other suggestions have been denied.

32. PW3 is also an injured eyewitness. In her evidence she has deposed that about five years back 71 - - incident took place at about 7.45 p.m. She was offering pooja in her house, at that time somebody informed that there is galata going on in her sons house. Immediately, she and Palakshi Gouda rushed near the house of Ramana Gouda and there she saw accused Ningappa, Mariyanna, Sunkanna, Tayappa, Ganesha and Dhananjaya were holding axe, rods, machhu and sticks in their hands. They were seven in number. She has further deposed that thereafter they went to the house of Ramana Gouda, there she saw accused No.1 Pampapathi, accused No.5 Doddabasayya, accused No.4 Chandra, accused No.3 Kallappa, accused No.6 Eranna, accused No.7 Mallaiah and another Mallaiah accused No.12, accused No.21 Ramanjini, accused No.14 Gadilinga, accused No.8 Kadappa, accused No.6 Eranna and Gadiyanna, accused No.13 Rama and other accused persons who are before the Court come out and caught hold of Palakshi Gouda. Pampa assaulted Palakshi Gouda, they also held her. Accused 72 - - No.14 Gadilinga s/o Dodda Sunkanna assaulted her with a chopper on her right palm. All other accused persons assaulted Palakshi Gouda and went away. She has further deposed that she sat down for a while and thereafter she went inside the house of Ramana Gouda, there she saw the head of Ramana Gouda was broken and he received injury to his body. Rathnamma was there and she was treating Sanna Mallana Gouda who had received injuries and Susheelamma was loudly crying. Harish and Suresh were also crying.

33. During the course of cross-examination she has deposed that when she came out of the house she came to know about the galata taking place in front of the house of Dodda Mallana Gouda, Sanna Mallana Gouda and Ramana Gouda. No body has informed her. Palaksha Gouda was there at the place and he did not ran away. Except that nothing has been elicited from the mouth of this witness. 73 - -

34. PW4 is also an eyewitness to the alleged incident. In his evidence he has deposed that on 9.11.2007 at about 7.45 p.m. the incident took place in their house. At that time, himself, his brother Suresh, his mother Susheelamma and his father Ramana Gouda were in the house and were watching the T.V. She has further deposed that it was Amavasya day of Deepavali festival. They went inside to take their dinner. All of a sudden people belonging to the Nayak community entered into their house and started assaulting his father Ramana Gouda with

chopper, axe and wooden sticks. He has further deposed that two of them in that group tightly held and pushed his mother Shusheelamma to a wall and his mother raised a cry and tried to rescue their father. At that time, one accused assaulted her with a machhu and accused went away. He has further deposed that thereafter Rathnamma came inside the house. They were giving water to their father Ramana Gouda. He has further 74 - - deposed that some of the accused persons dragged elder brother of Ramana Gouda from his house to their house. Accused assaulted Sanna Mallana Gouda with machhu, axe and sticks. One accused by stating that they are trying to save the life of their husband, snatched the Tali from her neck and assaulted on the head of Ramana Gouda with poulder (Onake), head of his father was broken. Accused went away.

35. He has further deposed that his relative Parvathamma came and tied panche to the head of his father. Thereafter, police came and sent them to the hospital. He has further deposed that his father and Sanna Mallana Gouda died in the hospital. He can identify the Nayak community people who have assaulted Ramana Gouda and Sanna Mallana Gouda.

36. During the course of cross-examination he has admitted that from his house neighbouring two houses will not be seen and in between the house of Dodda Mallana Gouda and his house, the house of 75 - - Sanna Mallana Gouda has been situated. He has further admitted that if a person is there in the kitchen, he cannot see what is happening in the road or in the compound of the said house and if a person is there in the kitchen, he cannot see the front portion of Sanna Mallana Goudas and Dodda Mallana Goudas house. He has further deposed that at the time of the alleged incident he was not there in the kitchen and he cannot say which weapon has been held by whom and with which weapon they have assaulted. He has further deposed that he cannot give the name of the person who dragged Sanna Mallana Gouda.

37. PWs.8, 9, 10 and 11 are the neighbourers and they are also independent eyewitnesses. They have not supported the case of the prosecution and they have been treated as hostile.

38. It is the submission of the learned Senior counsel for the appellants-accused that the testimony 76 - - of the eyewitnesses is not trustworthy and reliable, since independent witnesses have not been examined and examined witnesses have not supported the case of the prosecution and they have been treated as hostile. There is a lot of difference between interested witness and related witness. Witness may be called interested only when he or she has derived some benefit from the result of a litigation in a decree in a civil case on seeing the accused person punished and related witness is, one who is the close relative of the deceased. Merely because the witness is interested witness or closely related with victim, it does not detract from the value to be attached to the evidence of such witnesses and whenever a relative has been murdered by the accused persons, naturally they are interested in saying that the real murderer or culprits of the relative is convicted of the offence and they cannot be expected to adopt a course by which some innocent persons would be substituted for the person really guilty of the murder 77 - - and that too when no enmity as such has been proved to have existed between the witness and the accused. This proposition of law has been laid down by the Honble Apex Court in the case of Bhupendra Singh Vs. State of Punjab reported in AIR 1968 SC1438 At paragraph No.6 it has been observed as under:

6. In view of these principles indicated by us above, and in view of the fact that, in this case, the High Court did not properly examine the defence evidence on the ground that the counsel for the appellant in that court admitted that there was no substance in it, we permitted learned counsel for the appellant in this appeal to take us through the entire evidence on the record given by the prosecution and the defence so as to enable us to form our own judgment about the correctness of the conviction and sentence of the appellant. We, however, find that, after examining the entire evidence, we are unable to hold that any 78 - - grounds are made out for interference with the conviction.

39. When independent witnesses have not supported the case of the prosecution it cannot be held that no such incident has taken place. In the instant case on hand the murder has taken place inside the house of PW1 and the independent witnesses might have thought that if they support the family of the deceased, they

may create animosity with the accused persons or if they come and depose before the Court the accused will develop animosity and in that light they want to stay neutral without affecting the interest of both the parties. It is well settled proposition of law that merely because the witness is related to or interested in the parties to either side and if the presence of such witness at the time of occurrence is proved, then it is considered to be natural and probable and the evidence tendered by such witness is found in the light of surrounding circumstances and 79 - - probabilities of the case to be true. It can provide a good and sound basis for the purpose of conviction of the accused. This proposition of law has also been laid down by the Honble Apex Court in the case of State of Uttar Pradesh Vs. Kishanpal and Others reported in (2008) 16 SCC73 At paragraph Nos.18 and 19 it has been observed as under:

18. The plea of defence that it would not be safe to accept the evidence of the eyewitnesses who are the close relatives of the deceased, has not been accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it 80 - - can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the court has a duty to scrutinise their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded.

19. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that 81 - - the witness is an

interested witness. Caution is to be applied by the court while scrutinising the evidence of the interested witness.

40. It is also well settled proposition of law that testimony of witnesses should not be rejected merely because they are related to the deceased, but however, their testimonies have to be carefully analysed because of their relationship and if the same is cogent and if there is no discrepancy, then the same can be accepted. This proposition of law has been laid down by the Honble Apex Court in the case of State of Rajasthan Vs. Arjun Singh and Others reported in (2011) 9 SCC115 At paragraph Nos.22 and 27 it has been observed as under:

22. Now, let us consider the oral evidence led in by the prosecution. We have already pointed out that though the prosecution has examined as many as 30 witnesses, they heavily relied only on 6 witnesses and out of these, Raj Singh 82 - - (PW2, Dhiraj Raj Singh (PW3 and Brij Raj Singh (PW4 are brothers, Roop Singh (PW6 is their father and Durga Shankar (PW5 and Satya Narain (PW9 were working as labourers in the house of Roop Singh at the time of occurrence. It is true that the names of PWs 3, 4 and 6 were not mentioned either in parchabayan (Ext. P-32) or in the statements, Exts. P-22 to P-23, recorded by the Judicial Magistrate (PW18 on the day of the occurrence.

23. xxxx xxxx xxxx 24. xxxx xxxx xxxx 25. xxxx xxxx xxxx 26. xxxx xxxx xxxx 27. In the light of the above conclusion, the only witness available to support the case of the prosecution is Raj Singh (PW2. Let us consider his evidentiary value and how far he supported the case of the prosecution. 83 - - 41. It is also well settled proposition of law that relatives are to be treated as untruthful witness. On the contrary reason has to be shown when a plea of partiality is raised to show that witness had reasoned to sealed actual culprits and falsely implicate the accused. If evidence of eyewitness though a close relative of victim inspires confidence, it must be relied upon without seeking corroboration with minute particular materials. But however, the Court must be cautious while considering the evidence of such witnesses. This proposition of law has been laid down by the Honble Apex Court in the case of Khurshid Ahmed Vs. State of Jammu and Kashmir reported in (2018) 7 SCC429 wherein at paragraph Nos.29 to 33.

29. The learned Senior Counsel submits that in the present case, according to the prosecution, Sajad Ahmed, father of the deceased (PW9 was the only person who was present at the scene of offence at the time of occurrence. The entire case, therefore, depends on the veracity of his evidence. PW9 84 - - being father of the deceased, the appellant- accused had naturally made the allegation that he is an interested witness and therefore his evidence is not reliable. We are not able to appreciate such contentions. This Court considered the aspect of truthfulness of an interested witness in several cases. In Dalip Singh v. State of Punjab [Dalip Singh v. State of Punjab, 1954 SCR145: AIR 1953 SC364:

1953. Cri LJ1465 it is observed: (AIR p. 366, para

26) 26. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

30. In Masalti v. State of U.P. [Masalti v. State of U.P., (1964) 8 SCR133: AIR 1965 SC202: (1965) 1 Cri LJ226 this Court observed: (AIR p. 209, para

14) 85 - - 14. There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.

31. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to 86 - - show that the witnesses had reason to shield actual culprit and falsely implicate the accused [See Harbans Kaur v. State of Haryana [Harbans Kaur v. State of Haryana, (2005) 9 SCC195:

2005. SCC (Cri) 1213 :

2005. Cri LJ2199]..

32. If the evidence of an eyewitness, though a close relative of the victim, inspires confidence, it must be relied upon without seeking corroboration with minute material particulars. It is no doubt true that the courts must be cautious while considering the evidence of interested witnesses. In his evidence, the description of the incident by PW9 clearly portrays the way in which the accused attacked the deceased causing fatal head injury as propounded by the prosecution. The testimony of the father of the deceased (PW9 must be appreciated in the background of the entire case.

33. In our opinion, the testimony of PW9 inspires confidence, and the chain of events and the circumstantial evidence thereof completely supports his statements which in turn strengthens the prosecution case with no 87 - - manner of doubt. We have no hesitation to believe that PW9 is a natural witness to the incident. On a careful scrutiny, we find his evidence to be intrinsically reliable and wholly trustworthy.

42. It is also well settled proposition of law that the relationship of the witnesses to the deceased would not be a sufficient ground for discrediting their testimony. It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant. If the natural conduct of the witnesses related to the deceased, is credit worthy, then the same can be relied upon. This proposition of law has been laid down by the Honble Apex Court in the case of State of Uttar Pradesh Vs. Samman Dass reported in (1972) 3 SCC201 wherein at paragraph No.23 it has been observed as under:

23. The above evidence of Bhagwan Das is corroborated by the evidence of Choith Ram 88 - - (PW2, Ayal Das (PW6 and Shobhraj (PW7. The evidence of the abovementioned four witnesses was found by the learned Sessions Judge to be convincing and reliable. After having been taken through that evidence, we see no cogent ground to take a view different from that of the Sessions Judge. It is no doubt true that Bhagwan Das PW is the brother of Bangamal, maternal grandfather of Putlibai deceased and that sister of Choith Ram PW is married to Bangamal. It is also true that Ayal Das PW is a cousin of Gurmukh Das, father of Putlibai. The relationship of the abovementioned three witnesses to Putlibai deceased would, in our opinion, be not a sufficient ground for discrediting their testimony. It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant. Had Putlibai been killed by some other person, the natural conduct of the abovementioned three witnesses, who were related to Putlibai on her parents' side, would have been to offer sympathy to Samman Dass accused and help him in the apprehension of 89 - - the real culprit, rather than to falsely involve him in the murder of his wife. There is no cogent evidence on the record to show that any of the abovementioned three witnesses had any animus against the accused. The accused, no doubt, took the plea that the abovementioned witnesses were against his marriage with Putlibai, but that suggestion has been denied by these witnesses.

43. On perusal of the evidence of PW1 she is none other than the wife of deceased Ramana Gouda and PW4 is the son of the deceased. In her evidence she has clearly stated that accused No.3 Kallappa assaulted with machhu on the forehead of her husband Ramana Gouda, two to three blows were given. Accused No.4 Chandra has assaulted Ramana Gouda with machhu two to three blows on his head, accused No.6 Eranna S/o Tayappa assaulted her husband with axe on the head, accused No.12 Mallaiah assaulted with machhu on the head of her husband and left thigh, accused No.7 Nandihalli Mallaiah assaulted with machhu on the 90 - - head of her husband, accused No.9 Eranna S/o Kadappa assaulted on the body and on the hands of her husband, accused No.13 Rama assaulted her husband with wooden stick. She has also deposed that when she cried not to assault, accused No.4 came forward to assault her with machhu and to avoid the

blow she raised her left hand and received blow on her left palm between her little finger and ring finger. Though during the cross-examination of this witness it has been elicited that the lands of accused Nos.1, 2, 13 and 14 are not anywhere near the lands of the deceased, PW1 is an injured eyewitness. She has also suffered with injuries in the said galata.

44. On perusal of the evidence of PW38 the doctor, he has deposed that on 9.11.2007 at about 9.45 p.m. he examined Susheelamma PW1 who has come with the history of assault. He has further deposed that she has suffered with incised injury over left hand from the base of her index finger to the base of little finger on 91 - - left side and there was a fracture of proximal phalynx of ring finger and he has issued a wound certificate as per Ex.P67. That itself goes to show that the said witness was present at the time of alleged galata and she has also suffered with injuries.

45. PW2 has also deposed that about five years back an incident took place at about 7.45 p.m. and she was standing in front of her house and heard a galata on the road and she came out of the house and went near the compound and saw all the accused persons going by holding the lethal weapons and entered into the house of Ramana Gouda by stating not leave Lingayath community people on that day. She went inside the house and locked the door. She has further deposed that she heard hue and cry from the house of Ramana Gouda. They peeped through the window of their house and saw accused No.1 Pampapathi, accused No.5 Doddabasappa, accused No.8 Kallappa, accused No.10 Sadakali holding axe, machhu in their 92 - - hands came near to her house to break the door. They have not opened the door. Some time later the commotion came down. She has further deposed that she heard galata in the house of Ramana Gouda. PW1 was shouting with loud voice. By hearing her cry she opened the door, came out and went inside the house of Ramana Gouda and saw with injuries. She has further deposed that when they were giving water to Ramana Gouda, accused persons again came inside the house. She has further deposed that accused No.7 Nandihalli Mallaiah, accused No.3 Kallappa, accused No.17 Sunkanna dragged her husband from their house and brought to the house of Ramana Gouda. She has further deposed that accused No.3 assaulted with machhu on the right eye of her husband. She has

further deposed that PW1 Susheelamma was giving water to her husband. She has further deposed that accused No.3 Kallappa on seeing her still trying to save his life by telling that still 93 - - to save the life giving water, snatched the Tali from her neck. She has further deposed that accused No.3 Kallappa by snatching pounder (Onake) from the hands of accused No.9 Eranna assaulted on the head of Ramana Gouda, his head was broken. She has further deposed that accused No.17 Sunkanna assaulted on the body of her husband Sanna Mallana Gouda with wooden stick, accused No.13 assaulted on the head with wooden stick, accused No.16 Dhananjaya assaulted on the face of her husband with wooden stick, accused No.19 Somalinga gave a blow with machhu on the head, but it slipped and it hit his back. When she went to rescue her husband, by that time, accused No.4 Chandra also inflicted 2-3 blows with machhu on her husband, he also assaulted her with machhu on her left hand and she received fracture. She has further deposed that accused No.7 Nandihalli Mallaiah assaulted her husband 2-3 blows on the head of her husband with 94 - - machhu, he also assaulted her with machhu on right shoulder. She has further deposed that accused No.25 Kaggal Venkatesha assaulted on her head by reversing the macchu. She has further deposed that while going out, mother-in-law Hampamma and brother-in-law Palakshi Gouda came, they assaulted them.

46. During the course of cross-examination she has admitted that a case has been filed as against her husband and others in respect of murdering Sanna Sunkanna and accused were acquitted because of lack of evidence. She has further admitted that a counter case has also been registered. In that also, they were acquitted. She has further admitted that the accused in both cases are in good terms. She has further admitted that there are houses of other persons surrounding of her house. She has further admitted that in between her house, Ramana Goudas house and Dodda Mallana Goudas house, there is no wall and windows. She has further deposed that nobody came out from the house 95 - - of Dodda Mallaiah and Ramana Gouda. She went out after hearing the galata.

47. PW3 is the another injured eyewitness. In her evidence she has deposed that about 5 years back the incident took place at about 7.45 p.m. she was offering pooja in her house. Somebody informed about the galata going on in the house of

her son. Immediately, herself and Palakshi Gouda rushed near to the house of Ramana Gouda, there they saw accused Ningappa, Marennna, Sunkanna, Thayappa, Ganesha, Dhananjaya. Accused were holding axe, rods, machhu, sticks in their hands. They were seven in numbers. Thereafter, they went to the house of Ramana Gouda, there she saw accused No.1 Pampapathi, accused No.5 Doddabasaiah, accused No.4 Chandra, accused No.3 Kalappa, accused No.6 Eranna, accused No.7 Mallaiah, accused No.12 another Mallaiah, accused No.21 Ramanjini, accused No.14 Gadilinga, accused No.8, Kadappa, accused No.9 Eranna, accused No.15 another 96 - - Gadilinga, accused No.13 Rama, came out and held Palakshi Gouda. Pampa assaulted Palakshi Gouda and they also held her. Accused No.14 Gadilinga assaulted her with chopper on her right palm. All other accused persons assaulted Palakshi Gouda and went away. She has further deposed that she sat down a little while and she went inside the house of Ramana Gouda, there she saw head of the Ramana Gouda was broken and had received the injuries over his body and PW2 Rathnamma was there, on her lap she was treating Sanna Mallana Gouda who had received injuries and PW1 Susheelamma was loudly crying. Harisha and Suresha were also crying, by seeing the same she was annoyed and came out. During the course of cross-examination, when she came out, she came to know that some galata is going on near the house of Dodda Mallana Gouda, Sanna Mallana Gouda and Ramana Gouda, but nobody came and told. She has further deposed that before she 97 - - going to the place of galata, she was not knowing what was happening there. She has further deposed that she cannot say who assaulted her son Palakshi Gouda, but when she went there, accused assaulted her. Except that nothing has been elicited from the mouth of this witness.

48. PW4 is another eyewitness to the alleged incident. He is none other than the son of Ramana Gouda. He has deposed that at 9.11.2007 at about 7.45 p.m. incident took place in their house. He has further deposed that himself, his brother Suresh, his mother PW1 Susheelamma and the deceased father Ramana Gouda were in the house and were watching T.V. He has further deposed that it was the Amavasya day of Deepavali festival. Further he has deposed that they went inside to take dinner. All of a sudden people belonging to Nayak community entered into their house and started assaulting his father Ramana Gouda with chopper, axe,

wooden sticks. He has further deposed 98 - - that two of them in the group tightly pushed his mother PW1 Susheelamma to a wall closing in a group. He has further deposed that his mother raised a cry and she tried to rescue their father and at that time, one accused assaulted her with machhu and went away. He has further deposed that thereafter Rathnamma came inside the house and they were giving water to their father Ramana Gouda. Some of the accused dragged elder brother of Ramana Gouda from his house to their house, assaulted with machhu, axe and sticks. He has further deposed that one accused by saying that they are trying to save the life of their husband, snatched the Tali from the neck and assaulted on the head of Ramana Gouda with pounding stick and head of his father was broken, thereafter accused went away. He has further deposed that he can identify the Nayak community people who assaulted Ramana Gouda, Sanna Mallana Gouda, Sushellamma and Rathnamma on that day. 99 - - During the course of cross-examination he has admitted that from his house he cannot see both the houses. He has further admitted that in between the house of Doddamallana Gouda and their house, in the middle the house of Sanna Mallana Gouda is there. He has further deposed that himself and his brother Suresh to wash the hands to take the dinner went inside the kitchen and the same has been stated before the police. He has further deposed that the kitchen is adjacent to the middle room and hand wash is there in the middle room. He has further deposed that if a person is there in the kitchen, road and compound will not be visible, so also the members who are present in front of the house of Sanna Mallana Gouda and Doddamallana Gouda. He has further deposed he cannot say that at the time of alleged incident he was not there in the kitchen who is holding which weapon in the said group and who assaulted whom. So also he cannot give 100 - - the name of the person who dragged Sanna Mallana Gouda.

49. PWs.8 to 12 are also independent eyewitnesses to the alleged incident, but they have not supported the case of the prosecution, they have been treated as hostile.

50. It is the contention of the learned Senior counsel for the appellants-accused that it was pitch dark and it was a Deepavali Amavasya day and as such nothing was visible and giving of the details of the assault by the complainant and other

witnesses is doubtful. It is also doubtful about identity. In that light, he relied upon the decision in the case of State of Madhya Pradesh Vs. Makhan Alias Madan and Others reported in (2008) 10 SCC615 wherein at paragraph No.9 it has been observed as under: 9. Maniya Bai (PW5 stated in her examination-in-chief that she had seen the accused persons assaulting 101 - - the deceased with fists and slaps but in the cross-examination she had stated that when she reached the police station along with Somti Bai (PW1 they had disclosed that the deceased was lying in an injured condition and had not disclosed the names of the accused persons. In contrast Somti Bai (PW1, Lachhu (PW2 and Maniya Bai (PW5 stated that the name of the accused was in the first information report. In her cross- examination she clearly admitted that the police told them that they would make enquiry and if the report was found false they would be in trouble. Additionally, Maniya Bai (PW5 stated that they had reached the police station at about midnight. But the FIR was registered early morning next day. Lachhu (PW2 in his statement had stated that he could not identify any of the accused persons due to darkness. If that be so, the evidence of Somti Bai (PW1, Maniya Bai (PW5, that they had clearly identified the accused 102 - - persons cannot be believed. It is true that even in darkness known persons can be identified from the manner of speech, style of walking and several other peculiar features. But the evidence of PW2 was to the effect that because of darkness none of the accused persons could be identified. In the instant case not only there is discrepancy as regards the place of occurrence but also on several vital aspects like non-disclosures and non- possibility of identification.

51. It is his further submission that there was no specific evidence about availability of light at the time of offence and if no such evidence is there it is considered to be a material contradiction. In that light, he has relied upon the decision in the case of Bhaskar Rao and Others quoted supra.

52. But as could be seen from the evidence of PWs.1 and 2, they have categorically stated that at the 103 - - time of alleged incident, light was there and were watching the T.V.

53. Even as could be seen from the evidence of PW34- Assistant Executive Engineer, in his evidence he has clearly deposed that he has been given a

requisition to give details about the supply of electricity on 9.11.2007 in between 7.00 p.m. to 9.00 p.m. and he collected the information and has given a reply that there was electricity supply and has issued the certificate as per Ex.P59.

54. During the course of cross-examination he has admitted that there is schedule and unscheduled power cut and if there is any power cut there will be record. Except that nothing has been elicited from the mouth of this witness. When admittedly the incident has taken place in the house that too on Deepavali Amavasya day, no house will be kept dark without light. It is a day of 104 - - lighting festival. All the witnesses have consistently stated that they were watching T.V., that goes to show that there was light and the evidence of all these witnesses is corroborated with the evidence of PW34. Be that as it may. In the house nobody will sit without light. Even though there is no electricity, at-least they will put up a lamp. It is not the case of the accused that there was no electricity.

55. Keeping in view the above said aspects, I am of the considered opinion that the contention of the learned Senior Counsel that at the time of alleged incident it was pitch dark and nothing was visible, is not having any force.

56. The second arguments of learned Senior counsel is that the material witnesses i.e. one Basamma, Akkamma, Kamakshi and Palakshi Gouda have not been examined by the prosecution and non- examination of the said witness is fatal to the case of 105 - - the prosecution. To support his arguments he relied upon the decision in the case of State of Maharashtra Vs. Dinesh quoted supra, wherein at paragraph No.10 it has been observed as under: 10. After giving our thoughtful consideration to the evidence of PW7, we have also considered the circumstances of the entire case and also the evidence of other prosecution witnesses. We find from the record that husband of PW7, who was also stated to be an eyewitness to the incident, was neither examined by police at the time of investigation, nor even before the court and no satisfactory explanation for his non-examination is found on record. Apart from this, even, test identification parade was not conducted and no steps were taken to prove the blood group of the deceased with the bloodstains found on the alleged weapon used in the crime.

57. But when the material witnesses have been examined before the Court including the injured 106 - - eyewitnesses, then under such circumstances it is not necessary for the prosecution to examine all the witnesses who have been cited as witness by the prosecution. It is well settled proposition of law that the prosecution is having a discretion to examine the witnesses whom they intended to examine. It is also well settled proposition of law that it is the quality of evidence which has to be looked into, not the quantity of evidence. It is also well settled proposition of law that non-examination of some of the witnesses is not always fatal to the case of the prosecution. Admittedly, PW1 is none other than the wife of Ramana Gouda and she is also an injured eyewitness. PW2 is also wife of Sanna Mallana Gouda. She is also injured eyewitness. Evidence of the injured witness is entitled to a great weightage and very cogent and convincing grounds are required to discard the evidence of the injured witness. This proposition of law has been laid down by the Honble Apex Court in the case of Ramvilas Vs. State 107 - - of Madhya Pradesh reported in (2016) 16 SCC316 At paragraph No.6 it has been observed as under:

6. In the incident, Narmada Prasad (PW3 and Uma Bai (PW5, sister of the deceased sustained injuries and Ext. P-9 and Ext. P-10 are the MLC Reports of Narmada Prasad (PW3 and Uma Bai (PW5, respectively issued by Dr S.K. Dhoble (PW10. Narmada Prasad (PW3 and Uma Bai (PW5 being injured witnesses, their presence at the time and place of occurrence cannot be doubted. Evidence of the injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of the injured witnesses. We do not find any ground to disbelieve the evidence of injured witnesses Narmada Prasad (PW3 and Uma Bai (PW5.

58. In case of related witnesses the Court may not treat his or her testimony inherently tainted and 108 - - needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. When the offence is witnessed by a close relative of the victim whose presence on the scene of offence would be natural, the evidence of such a witness cannot automatically be discarded by labeling the witness as interested witness. A witness is normally considered to be independent unless he or she springs from sources which are likely to be tainted

and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. This proposition of law has been laid down by the Honble Apex Court in the case of Md. Rajoli Ali and Others Vs. State of Assam, Ministry of Home Affairs through the Secretary reported in 2019 SCC OnLine SC235 At paragraph Nos.12, 13 and 14 it has been observed as under:

109. - - 12. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in Dalip Singh v. State of Punjab, 1954 SCR145 wherein this Court observed: 26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person

13. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure 110 - - only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in Jayabalan v. Union Territory of Pondicherry, (2010) 1 SCC199 23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.

14. In the instant matter, as already discussed above, we find the testimony of the eye-witnesses to be consistent and reliable, and therefore reject the 111 - - contention of the appellants that the testimony of the eye-witnesses must be disbelieved because they are close relatives of the deceased and hence interested witnesses.

59. It is well settled proposition of law that interested evidence is not necessarily unreliable evidence. It is also well settled that the evidence of interested witnesses would require careful scrutiny and accepted with caution. On scrutiny of the interested witness evidence if it is found to be intrinsically reliable or inherently probable, it may by itself be sufficient in the circumstances of the particular case. In Hari Obula Reddy and Others Vs. State of Andhra Pradesh reported in (1981) 3 SCC675 The Honble Apex Court has laid down certain broad guidelines to be borne in mind while scrutinizing the evidence of eyewitnesses and subsequently the Honble Apex Court in the case of Mohd. Ishaque and Others Vs. State of West Bengal and Others reported in (2013) 14 SCC581 Relied 112 - - upon the said decision, at paragraph No.15 it has been observed as under:

15. In Hari Obula Reddy v. State of A.P. [(1981) 3 SCC675:

1981. SCC (Cri) 795]. , this Court laid down certain broad guidelines to be borne in mind, while scrutinising the evidence of the eyewitnesses; in para 13 of the judgment, this Court held as follows: (SCC pp. 683-84) 13. But it is well settled that interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or 113 - - inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard-and- fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is

useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions be in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any 114 - - other source. Since perfection in this imperfect world is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony. We may again emphasise that these are only broad guidelines which may often be useful in assessing interested testimony, and are not iron-cased rules uniformly applicable in all situations.

60. What has to be considered by the Court is credibility of the witness and whether their physical presence was at the place of occurrence was possible and probable. This proposition of law has been laid down by the Honble Apex Court in the case of Jaishree 115 - - Yadav Vs. State of U.P. reported in (2005) 9 SCC788 wherein at paragraph No.21 it has been observed as under:

21. PW3s evidence was challenged by the defence in the courts below as well as before this Court on the ground that he is a partisan and biased witness being the son of the deceased Abid Ali. This fact of course is not disputed by the witness because it is the case of the prosecution itself that the deceased Abid Ali was inimical to the accused persons for various reasons mentioned hereinabove. PW3s presence at the place and time of the incident was challenged by learned counsel for the accused before us primarily on the ground that if really he was present at the time of incident he would have tried to protect his father and there was no material to show that any such thing was done by this witness. It was also pointed out from his evidence that though his father was profusely bleeding the

clothes of this witness were not bloodstained which indicated that he never even touched the body of his father 116 - - which is an unnatural conduct on the part of a son present at the time of the murder of his father. This witness when cross-examined in this regard, admitted that since his father had died already he did not carry the body of his father nor did he touch the body of his father. In our opinion different people react differently to a given situation and from the fact that this witness did not choose to fall on the body of his father or carry his dead body from where it was lying, by itself cannot be a ground to reject his evidence. We have already accepted the fact that the complaint in question was lodged by this witness soon after the incident in question and PW8 in his evidence has spoken to the complaint being lodged by this witness and he being present throughout the investigation proceedings at the spot on that day. His presence at the place of incident also cannot be treated as a chance presence inasmuch as he is a resident of that village though his father stayed in Deoria. Learned counsel for the appellant submitted that it is an admitted fact that this witness has stated that he is an educated person and according to this 117 - - witness the complaint in question was not written down by him but by his brother-in-law which is also an unnatural conduct indicating that he might not have been present at the time of incident. We do not think that this could also be a ground to suspect the presence of this witness at the time and place of incident. This witness in his evidence has stated that since his brother-in-law was available who was also a literate, he dictated the complaint to him which was scribed by his brother-in-law and we do not find anything unnatural in this conduct either. Next ground of attack in regard to the evidence of this witness is that he has not stated all the motives stated in his evidence before the court in the complaint. In other words, the complaint did not contain details of the motives as spoken to by this witness in his evidence before the court. We do not think that this also could be a ground to reject the evidence of this witness. In the complaint this witness has specifically stated that A-3 and A-4 had enmity with his father in regard to the auction of tehbazari of Nawalpur Chowk. He 118 - - has further mentioned in the complaint that so far as accused Ram Pratap Yadav is concerned, his father had a litigation pertaining to a particular land and so far as Hafiz Khairul Bashr is concerned, his father had a dispute pertaining to the erection of an electric pole. He has also mentioned in the complaint about

an altercation PW6 had with A-3 and A-4 in regard to the payment of tehbazari in regard to which PW6 had made a complaint to his father on the fateful day. In this background we hardly find any force in the argument of learned counsel for the accused that this witness has made improvement in his evidence from what he had stated in his complaint. Of course during the course of his cross-examination he has elaborated the nature of enmity that his father had with these accused persons but then that could hardly be a reason to contend that what is stated in the complaint is either different from what is stated in the evidence in regard to the motive or the witness has made improvement in regard to the motive of the accused to commit the crime. Apart from the above challenge to the 119 - - evidence of this witness, learned counsel for the accused pointed out certain contradictions, omissions and improvements found in his cross-examination but then this again will have to be considered as considered by the courts below, in the background of the fact that the cross- examination of this witness was also spread over a period of nearly 6 months and he was subjected to nearly 480 questions. In this background for the reasons already stated above, as held by the two courts below, we do not think these contradictions, improvements and omissions would affect the credibility of this witness either.

61. Keeping in view the above said decisions and the ratio laid down, the weightage has to be given to the evidence of injured witnesses. When a motive has been established and mercilessly the assault has been committed on the head of the deceased persons and in the alleged incident the eyewitness have also suffered with injuries, then under such circumstances, it 120 - - establishes the presence at that place, credibility and reliability of an eyewitness for speaking the truth. There is nothing suspicious in their evidence when she describes the manner, nature and weapon of assault by the appellants. There may be some small lacunas here and there in the case of the prosecution, but they will not go to the root of the case and they cannot be considered to be fatal to the case of prosecution. The criminal jurisprudence attaches great weightage to evidence of a person injured in the same occurrence, as it presumes that he was speaking truth unless shown otherwise. This proposition of law has been laid down by the Honble Apex Court in the case of Chandrashekar and another Vs. State reported in (2017) 13 SCC585 At paragraph No.8 to 16 it has been observed as under: 8. We have

considered the submissions on behalf of the parties, and perused the evidence on record. The deceased was the brother of 121 - - appellants Balasubramaniam and Govindaraj. Appellant Chandrashekharan is the son of Govindaraj. PW2Lakshmi is the wife of the deceased and PW3Udaychandran is the son of her elder sister. PW1is the brother of PW2Lakshmi. Relations between the deceased and the appellants were far from cordial, whether it be their dissatisfaction with the sale of lands by the deceased to PW1Lalbahadur Sastri or the acquittal of the deceased the previous day, in a criminal prosecution under Sections 307, 324 IPC by appellant Govindaraj. The appellants came together armed at the place of occurrence in a car. Their utterances before a merciless assault primarily on the head, that acquittal by the Court would bring no succour to the deceased, reflects a state of preparedness and is an expression of the intention that they were determined to do away with the deceased. The 122 - - intention to cause death, along with motive, therefore, stands established.

9. PW1Lalbahadur Sastri deposed that upon return to the fields after delivering milk, he saw a white Maruti car standing. The witness therefore had ample opportunity to identify the vehicle including the registration number of the same. Additionally, the parties being related to each other, the witness being acquainted with the vehicle owned by the appellants shall be a natural presumption in accordance with human behaviour. The appellants then assaulted the deceased mercilessly and repeatedly on the head. Balasubramanian assaulted with a hammer, Chandrasekharan with an aruval, which is a type of a billhook and Govindaraj with an iron rod. The number of injuries on the head of the deceased is sufficient to conclude the nature of murderous assault made by all the appellants. No suggestion was 123 - - given to the witness that he was not present at the time of assault and that he was not injured in the same occurrence. It establishes his credibility and reliability as an eyewitness speaking the truth. Since he was an eyewitness to the assault which took place in broad daylight, and the number of injuries makes it evident that it continued for some time, there is nothing suspicious in his evidence when he describes the manner, nature and weapon of assault by each of the appellants.

10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to *Brahm Swaroop v. State of U.P.* [*Brahm Swaroop v. State of U.P.*, (2011) 6 SCC288: (2011) 2 124 - - SCC (Cri) 923]. observing as follows: (SCC p. 302, para

28) 28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.

11. The failure of the prosecution to place the injury report of the witness from Udumalpet Government Hospital, where he was first taken for treatment is a lacuna, but cannot be held to be fatal as to doubt the entire prosecution case or shake the credibility of the witness. It cannot lead to any conclusion of his injury report, Ext. P-6 from Ramakrishna Hospital being fabricated. No such suggestion was made by the defence to PW12125 - - Dr.Krishnaraj. The appellants are named in the FIR registered soon after the occurrence. The fact that the witness may have stated of assault by two known persons to PW12 without naming any of the appellants is inconsequential. The doctor was a prosecution witness for the limited purpose of the injury report and not a prosecution witness with regard to the occurrence. The observations in *Pattipati Venkaiah v. State of A.P.* [*Pattipati Venkaiah v. State of A.P.*, (1985) 4 SCC80:

1985. SCC (Cri) 464]. as follows are considered relevant: (SCC pp. 84-85, para

17) 17. Another argument advanced before us was that although PWs 1 and 2 were supposed to be eyewitnesses, they never cared to disclose the name of the assailant to the doctor when the body of the deceased was taken to the hospital. This argument is only stated to be rejected. A doctor is not at all concerned as to who committed the 126 - - offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medicolegal cases. In this state of

confusion, PWs 1 and 2 may not have chosen to give details of the murder to the doctor. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible.

12. The fact that the witness may be related to the deceased by marriage, cannot be sufficient reason to classify him as a related and interested witness to reject his testimony. It may only call for greater scrutiny and caution in consideration of the same. The animosity of the appellants was primarily with the deceased on account 127 - - of his acquittal the previous day, in the criminal prosecution. The transfer of lands by the deceased in favour of the witness, being a completed transaction, is considered too remote a circumstance for enmity between the appellants and the witness as a ground for false implication. In any event, because of the reliable ocular evidence available, motive loses much of its relevance in the facts of the case.

13. PW1Lalbahadur Sastri deposed that on the fateful morning he along with PW2Lakshmi and PW3Udayachandran and the deceased came together to the fields on two motorcycles. Evidently, he did not see either of the latter witnesses at that time as they may have been behind the car parked facing south. PW2Lakshmi also deposed that they all came to the fields together on two motorcycles along with the deceased. PW1Lalbahadur Sastri left to deliver milk and returned after doing so when the 128 - - attack took place. The two witnesses at that time were in the residential shed and came running on hearing cries of distress. The fact that PW2Lakshmi and PW3Udayachandran were also eyewitnesses to the occurrence therefore stands well established. PW2Lakshmi being the wife of the deceased, we find no reason why she would not be speaking the truth with regard to the real assailants instead of shielding them by false implication. The fact that she had the courage to name her own in-laws as the assailants is also a factor which speaks of the reliability of her evidence. The trial Judge has rightly believed them to be eyewitnesses. PW4Ramachandran, the astrologer, an independent witness, referred to by PW3Udayachandran as also having been present deposed of the appellants attacking the deceased. The fact that in his cross-examination he may

have stated that he was not aware how the appellant and PW1Lalbahadur Sastri 129 - - sustained injuries cannot classify him either as a hostile or completely unreliable witness.

14. The appellants came together armed with a hammer, sickle and iron rod respectively. They assaulted the deceased indiscriminately on the head repeatedly, a very sensitive part of the human body reflecting the individual intention of each one of them to ensure the death of the deceased. The number of injuries caused on the head speaks for itself regarding the intention of the appellants. There is no need for us to consider and examine issues of common intention, in the facts of the case.

15. In view of the clear ocular evidence available, issues with regard to the confession statement and recovery of the weapons of assault need not be considered for corroboration.

16. In the facts and circumstances of the case, we, therefore, find no 130 - - reason to interfere with the conviction of the appellants. Their bail bonds are cancelled and they are directed to surrender forthwith for serving out their remaining period of sentence. The appeals are dismissed.

62. When material witnesses have been examined before the Court, it substantiates the case of the prosecution.

63. The evidence of PWs.1 and 2 clearly mentions that they are present at the time of alleged incident and are natural witnesses and are not a chance witness. PW.1 is none other than the wife of Ramana Gouda, PW.2 Rathnamma is the wife of Sanna Mallana Gouda and have received the injuries. The alleged incident has taken place inside the house. The possibility of identifying the assailants cannot be doubted since PW34 has clearly stated that there was electricity supply as on the date and they are not having any cause to give a false evidence. Their evidence is 131 - - acceptable regarding the time, place and manner of the incident as well as the identity of the assailants. The trial Court has not committed any error in accepting the evidence of these two witnesses.

64. Be that as it may. PW1 is none other than the wife of the deceased Ramana Gouda and had also suffered with injuries. The evidence of the said witness does not suffer from any serious infirmities and her evidence is also corroborated with medical evidence and also the other circumstantial evidence. There are no good grounds made out so as to reject the evidence of PWs.1 and 2, though the evidence of PWs.3 and 4, the children of the deceased is not accepted. It is well settled proposition of law that on the basis of the evidence of sole eyewitness, conviction can be founded, if otherwise the evidence of the said witness is found to be reliable and acceptable. This proposition of law has been laid down by the Honble Apex Court in the case of case of Jai Prakash Vs. State (Delhi Administration) 132 - - reported in (1991) 2 SCC32 At paragraph No.6 it has been observed as under:

6. As hereinbefore mentioned, the learned counsel for the appellant submitted that the evidence of PW2 on which the case entirely rests, cannot be accepted. We have gone through his evidence carefully as well as that of PWs.1 and 5. The evidence of PW2 does not suffer from any serious infirmity. At any rate there is other corroborative evidence also. We see absolutely no reason to disagree with the findings of the courts below regarding their evidence.

65. Though it is contended by the learned Senior counsel for the appellants that the independent witnesses have not supported the case of the prosecution, under such circumstances, the evidence of related witnesses is not admissible, but it is well settled proposition of law that merely because the prosecution has not examined the neighbours or if they have been 133 - - examined and have not supported the case of the prosecution, it cannot be claimed that it is fatal to the case of the prosecution. When the evidence of eyewitnesses examined on the side of the prosecution is found to be acceptable and reliable, that too when their presence at the time of occurrence has not been disputed during the course of cross-examination and their presence is found to be proved by otherwise evidence produced before the Court, the same can be accepted.

66. The Honble Apex Court by relying upon the decision in the case of Kuldip Yadav Vs. State of Bihar reported in (2011) 5 SCC324 has reiterated the said ratio

subsequently in the case of State of Rajasthan Vs. Arun Singh and Others reported in (2011) 9 SCC115 At paragraph Nos.28 and 29 it has been observed as under:

28. Mr Bajwa, learned Senior Counsel for the accused, by pointing out 134 - - certain contradictions, submitted that it is not safe to convict the accused based on his evidence. It is also pointed out that Raj Singh (PW2) is a highly interested witness and closely related to the eyewitnesses. It was further pointed out that in the absence of any neighbour, conviction based on the testimony of PW2 alone is not sustainable. In the light of the above submissions, we have carefully scrutinised the evidence of PW2. First of all, merely because the witness is related to eyewitnesses or the family of the deceased is not a ground for rejection (vide *Kuldip Yadav v. State of Bihar* [(2011) 5 SCC324: (2011) 2 SCC (Cri) 632]). It was also held that merely because the prosecution has not examined neighbours, it cannot be claimed that it is fatal to their case, when the evidence of eyewitnesses examined on their side is found to be acceptable and reliable.

29. Raj Singh (PW2, in his evidence, in categorical terms has asserted that he saw five to seven 135 - - persons standing on the roof of the house of Karan Singh. He had specifically mentioned the names of those persons as Bahadur Singh, Shivraj Singh, Banney Singh, Smt Swaroop Bai, Smt Gyan Kanwar, Smt Bhagwan Kanwar, Gajendra Singh and Karan Singh. Inasmuch as in the parchabayan (Ext. P- 32), only the name of Arjun Singh and as per Ext. P-22 the names of Arjun Singh and Banney Singh were mentioned, who were present on the roof at the relevant time, as rightly observed by the High Court, the claim of Raj Singh (PW2) that all the accused persons were standing on the roof is not believable, however, his assertion that two persons, Arjun Singh and Banney Singh were on the roof cannot be denied. Even if we eschew a certain portion from the evidence of PW2 his assertion and the statement regarding the involvement of Arjun Singh, Shivraj Singh and Banney Singh cannot be disputed. In categorical terms, he explained the role played by these persons. It is clear from his evidence that 136 - - he received gunshot injuries which is also supported by the medical evidence. In view of the same, his presence at the time of occurrence cannot be disputed and is found to be proved. This is also strengthened from his statement in the

parchabayan (Ext. P-32) and Ext. P-22 statement given to the Judicial Magistrate (PW18).

67. Merely because the witness is interested witness, his evidence cannot be rejected on that ground alone. This proposition of law has been laid down by the Honble Apex Court in the case of Mallappa Siddappa Alakanur and Others Vs. State of Karnataka, reported in (2009) 3 Crimes 230 (SC), wherein at paragraph Nos.16 and 17 it has been observed as under; 16. We have, ourselves, seen the cross-examination and very strangely, the witness was asked the questions about the actual assaults in his cross-examination, thereby actually admitting his presence at the spot. He 137 - - explained in his cross-examination that A-3 and A-4 attacked the boy and threw him down on the ground and he identified the accused even at that time. His not shouting can also be explained that he was feeling extremely apprehensive on account of such dastardly attack on the deceased, who was his friend. Graphic description as to how the attack was made by A-1 and A-2 with the help of A-3 and A-4 has come in Para 7, in his cross-examination. The omissions brought out in Para 9 are also of miniscule nature. His story that A- 3 and A-4 whisked away the deceased and thereafter, overpowered him and A-1 and A-2 committed the dastardly attack on the helpless boy, however remained unshaken throughout the cross-examination.

17. The reasons given by the Sessions Judge to reject the evidence appear to be non-existent. In fact, the trial court started with an expression of doubt, holding that the evidence appears to be unnatural. There was nothing unnatural in the evidence. His presence at the spot was well explained. The story that he went along with the deceased to take bath 138 - - after the work at the jaggery plant, also remained unshaken and ultimately his story as to how the attack occurred has also remained unshaken in his cross-examination. Very strangely, the Sessions Judge calls him an interested witness.

68. PWs.1 and 2 have deposed before the Court that they have seen the accused persons assaulting the deceased Ramana Gouda and Sanna Mallana Gouda with lethal weapons including accused No.3 Kallappa assaulting with pounder (Onake). Merely because the alleged incident has taken place after the sunset, it cannot be

held that there was pitch darkness and none of the accused persons could not be identified. The evidence goes to show that they were watching the T.V. and there was a light. Even the persons can be identified during night hours from the speech, style of walking and other peculiar features, as admittedly the accused persons and the witnesses are belonging to the same village and were also acquainted with each other. 139 - - Under such circumstances, identification of the accused persons by these witnesses cannot be doubted. When the husbands of PWs.1 and 2 have lost in the said incident and a strong motive was their as earlier the cases have been registered, then under such circumstances they are not considered to be or categorized them as interested witnesses.

69. As could be seen from the evidence of PW1 and the cross-examination of the said witness, the presence of the said witness has not been specifically denied and it is the contention of the learned Senior Counsel that the presence of PW3 and 4 at the place of incident is doubtful and that they have not seen the real assault said to have been committed by the accused persons. It is his further submission that the presence of the accused persons at the place of incident itself is doubtful. But as could be seen from the evidence of PW1 she has categorically deposed before the Court the presence of accused No.1 Pampapathi, 140 - - accused No.2 Durgappa, assault by Kallappa to Ramana Gouda on his forehead two to three times with matchhu and thereafter he snatched the pounder (onake) and has assaulted on the head of Ramana Gouda. Subsequently he has also snatched the Tali of PW1. Further she has also deposed the overt acts of accused No.4 Chandra by deposing that he has assaulted Ramana Gouda on his head with matchhu on his left palm. In respect of Eranna accused No.6, she has deposed that he has assaulted with axe on the head. She has also deposed that accused No.7 Nandihalli has assaulted on the head of Ramana Gouda with matchhu. Accused No.9 Eranna assaulted Ramana Gouda with hands, accused No.12 Mallaiah assaulted on the head and left thigh with matchhu on Ramana Gouda, accused No.13 assaulted on the face of Ramana Gouda with matchhu. PW16 Dhananjaya closed the mouth of PW1 and pressed her to wall. When admittedly PW1 is an injured witness and she has 141 - - categorically stated the overt acts of the above said persons. Even as could be seen from the evidence of PW2 she has deposed that accused No.3 dragged the deceased Sanna Mallana Gouda and has

assaulted with matchhu and PW1 has also deposed that he assaulted Sanna Mallana Gouda with matchhu, after assaulting Ramana Gouda. PW2 has also deposed that accused No.4 assaulted Ramana Gouda with machhu on the left hand, accused No.7 dragged deceased Sanna Mallana Gouda and had assaulted with machhu on the right shoulder after dragging him and has also assaulted PW2 with machhu on the left hand. PW2 has also deposed about the overt acts of each of the accused persons assaulting her husband, deceased Sanna Mallana Gouda and herself.

70. On going through the evidence of these two witnesses, the presence of the witnesses at the place of incident cannot be doubted. 142 - - 71. As discussed above, evidence of injured witness has to be given a greater weightage and if at all their evidence has to be discarded, then under such circumstances very cogent and convincing grounds are required to be made out by the accused persons. But on perusal of the evidence of the witnesses, no such case has been made out. Even as could be seen from the evidence of PWs.1 and 2, their testimony is taken as a injured eyewitnesses and the said evidence corroborates with the evidence of the Doctor PW37 who has conducted the post mortem over the body of Ramana Gouda and has issued the post mortem report as per Ex.P63 and the post mortem report of Sanna Mallanna Gouda and had issued as per Ex.P64. On perusal of the evidence of these two witnesses they have spoken in one voice with regard to the motive and the occurrence of the alleged incident in the house of deceased Ramana Gouda and have specifically stated accused persons attacking the deceased and assaulting 143 - - with lethal weapons. It is well settled proposition of law that credibility of the witness has to be looked into while appreciating the evidence. If the evidence is trustworthy to rely on the same, same can be accepted. This proposition of law has been held in the case of Anil Ankush Gadekar Vs. State of Maharashtra quoted supra, wherein at paragraphs Nos.43, 44, 45 and 47 it has been observed as under:

43. Coming to the role attributed to the other accused, PW2 stated that accused Vishnu Bule (A-5), Anil Gadekar (A-6) and Sandeep Bhosale (A-4) assaulted on his right wrist, near his eye and abdomen region, while accused Sunil Kashinath Chandanshiva (A-1), Latesh (A-3) and Vijay alias Istriwala (A-2) assaulted his

brother on his head and hands. It is settled law that oral evidence takes precedence over the medical evidence unless the latter completely refutes any possibility of such occurrence [Rakesh v. State of M.P. [Rakesh v. State of M.P., (2011) 9 SCC698: (2011) 3 SCC (Cri) 803]. ; Kathi Bharat Vajsur v. State of Gujarat [Kathi Bharat Vajsur v. 144 - - State of Gujarat, (2012) 5 SCC724: (2012) 2 SCC (Cri) 740]. and State of U.P. v. Hari Chand [State of U.P. v. Hari Chand, (2009) 13 SCC542: (2010) 1 SCC (Cri) 1112].]. In order to establish the consistency of the evidence and to further buttress the conclusion, we may have to observe the injuries noted during the medical examination on the body of the deceased. Injury 1 (sutured wound), Injury 2 (incised wound), Injury 3 (incised wound), Injury 4 (incised wound) and Injury 5 (incised wound) are present on the head. While Injury 7 (contusion), Injury 8 (incised wound), Injury 9 (incised wound), Injury 10 (incised wound), Injury 11 (incised wound), Injury 12 (incised wound), Injury 13 (incised wound), Injury 18 (incised wound), Injury 19 (incised wound), Injury 21 (incised wound), Injury 22 (incised wound), Injury 23 (incised wound), and Injury 24 (chop wound) were found to be inflicted on the deceased. We find that the injuries attributed by PW2 to the accused are attributable to a sharp weapon. Even PW18 (Dr Sunil Mohanrao Jawale) opined that the cause of death was shock due to head injury in the form of fractured skull bones with intra- 145 - - cranial haemorrhage with stab wounds with multiple incised wounds (unnatural). The fact that Accused 1 was caught red-handed with chopper (sharp weapon) which is corroborated with the evidence of PW2 PW1 panch witness for the arrest, seizure of weapons and clothes, and also in terms of expert evidence. Thus, the prosecution, by adducing cogent evidence, has successfully brought home the guilt of Accused 1 beyond reasonable doubt.

44. Coming to the involvement of Accused 5 and 6, they are named in the FIR as well as in the alleged oral declaration made by the deceased. Even the recovery of weapons supports the case and the statements of prosecution witnesses are also consistent pointing at the guilt of the accused. The counsel on behalf of these accused tried to submit that the evidence of PW2 cannot be believed as there are contradictions between his statement in the FIR and the evidence before the court. They submit that PW2 has not attributed individual role on the day of the incident. The evidence of the doctor and the injuries sustained by the deceased clearly 146

- - establishes the guilt of Accused 5 and 6 and, as already observed by us, merely not attributing specific overt act to an accused would not be fatal to the case of the prosecution. In every criminal trial, normally discrepancies are bound to occur due to long lapse of time between the date of incident and deposition of witnesses before the court. When the contradictions are so serious and create doubt in the mind of the court about the truthfulness of the statement, then such evidence is not safe to rely upon. We feel that the contradictions in the evidence concerning this case are very trivial in nature and will not affect the case of the prosecution.

45. Looking at the injuries caused to PW2 it can be seen from the injury certificate (Ext.

20) that these are Injury 1 (incised wound on forehead), second injury (incised wound on the right forearm), and third injury (incised wound on the right hypochondria with omentum protruding out). Taking into account all the abovestated circumstances coupled with the evidences, we are of the considered opinion that the case of the prosecution clearly 147 - - establishes the fact of involvement and guilt of Accused 5 and 6 beyond reasonable doubt.

46. xxxx xxxx xxxx 47. In light of the above discussion, we are in agreement that the case against Accused 2 and 3 has not been established beyond reasonable doubt, whereas the same cannot be said with respect to others, whose roles have been proved with cogent evidence available on record. Therefore, while setting aside the conviction and sentence against Accused 2 and 3, we maintain the conviction and sentence under Section 302 IPC with respect to Accused 1 and conviction and sentence under Section 307 read with Section 34 IPC with respect to Accused 5 and 6. Accordingly, we direct the authorities concerned to set free Accused 2 and 3 forthwith, if not required in any other offence.

72. Even as could be seen from the statement of the accused recorded under Section 313 of Cr.P.C. they 148 - - have not made out any such case so as to discard the evidence of these two witnesses.

73. Though the prosecution has got examined PWs.3 to 5 as an eyewitnesses, they are not considered to be an eyewitnesses on perusal of their evidence. But as

rightly pointed out by learned Senior Counsel, they are semi eyewitnesses for limited purpose their evidence is corroborated with reference to the alleged incident or happening of the incident is concerned. In that light, if we perused the evidence of PW.3 she came to the house only after somebody has informed about the galata. Though she has deposed that she has seen accused Ningappa, Marianna, Sunkanna, Thayappa accused No.24, Ganesha accused No.23 and Dhananjaya accused No.16 holding axe, rods, sticks in their hands and she has also seen accused No.1 Pampapathi, accused No.5 Doddabasaiah, accused No.4 Chandra, accused No.3 Kallappa, accused No.6 Eranna, accused No.12 Mallaiah and another Mallaiah, 149 - - accused No.21 Ramanjini, accused No.14 Gadilinga and accused No.8 Kadappa, his son accused No.9 Eranna and another Gadanna accused No.11, accused No.13 Rama and accused who were before the Court. She has stated that accused No.14 Gadilinga assaulted her with chopper on her right palm. Though she has deposed before the Court that she has suffered with injuries, the prosecution has not produced the wound certificate. If really the accused has assaulted with chopper and has suffered with the injuries, definitely the wound certificate could have been produced. In that light the presence of this witness at the place of incident at the time of alleged incident creates a doubt. But however, immediately after the incident she might have come over there and on the basis of that she might have deposed before the Court.

74. As could be seen from the evidence of PW4 Palakshi, in his evidence he has deposed that himself and his brother Suresh and PW1 Susheelamma and the 150 - - deceased were watching the T.V. and at that time accused persons barged into the house by holding lethal weapons and have assaulted Ramana Gouda with chopper and sticks etc.,. He has further deposed that PW1 tried to rescue the deceased Ramana Gouda and the accused persons have assaulted her also. This evidence is corroborated with the evidence of PW1 and also the contents of the complaint Ex.P1. During the course of cross-examination, nothing has been elicited so as to discard the evidence of this witness. His presence at the place of the alleged incident appears to be probable, natural and justifiable.

75. Though during the course of arguments it is contended by the learned Senior Counsel by contending that no Test Identification Parade has been conducted to

identify the accused persons, but when the accused persons were known, belonging to the same village and they are not the strangers, under such circumstances, the witnesses are capable of identifying the accused 151 - - persons. In that light, no Test Identification Parade is required. Test Identification Parade is required only if they are strangers and the witnesses have seen for the first time or there is canceling of face at the time of alleged incident. As could be seen from the evidence of PW4 who is a minor and his evidence is consistent and corroborated with the evidence of PW1. As per Section 118 of the Evidence Act, the evidence of the child witness is also admissible, but the Court has to be very careful to rely upon such evidence. Nothing has been even suggested to call it as a tutored witness. Because of many persons having entered into the house, he might have gone inside the house in the kitchen, but it cannot be held that he was not at all present at the place of the alleged incident.

76. Taking into consideration of the above facts and circumstances, the alleged incident has been proved by the prosecution. 152 - - 77. Though the prosecution has proved the alleged incident, whether all the accused persons were the members of the unlawful assembly so as to attract the provisions of Section 149 of IPC has to be looked into in order to hold all the accused persons liable. It is the specific contention of the learned Senior Counsel that the names of some of the accused persons has not been found in the complaint and even injured eyewitnesses have also not referred their names. It is his further submission that mere presence of the accused persons at the place of incident does not make a person the member of unlawful assembly and no such person could be convicted for any of the offence with the aid and assistance of Section 149 of IPC. But it is well settled proposition of law that Section 149 of IPC is like a Vicarious liability and if an offence has been committed by any member of unlawful assembly in prosecution of the common object of the said assembly or member of the assembly, then vicariously the 153 - - accused persons can also be held liable though there is no serious overt acts alleged as against the accused persons. This interpretation has been made by the Honble Apex Court in the case of Ramachandra & Others Vs. State of Kerala reported in 2011 (3) SCC (Crl.) 677 wherein at paragraph Nos.17, 18 and 19 it has been observed as under: 17. Section 149 IPC has essentially two ingredients viz. (i) offence committed by any

member of an unlawful assembly consisting of five or more members, and (ii) Such offence must be committed in prosecution of the common object (under Section 141 IPC) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object.

18. For common object, it is not necessary that there should be a prior concern in the sense of a meeting of the members of the unlawful assembly, the common object may form on the spur of the moment; it is enough if it is adopted by all the members and is shared by all of them.

19. In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members (Vide *Bhanwar Singh v. State of M.P.*). Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under the second part of Section 149 IPC if it can be held that the offence was such as the members knew was likely to be committed. The expression know does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that if a body of persons go armed to take forcible possession of the land, it would be right to say that someone likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be guilty under the second part of Section 149 IPC. There may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149 IPC cannot be ignored or obliterated.

78. On perusal of the above said decision and Section 149 of IPC, the essential feature of Section 149 of IPC is that there must be common object of the persons forming unlawful assembly. Whether the object is in their mind, when they came together, or whether it occurs to them afterwards is not material. It is also held that the object should be common to the persons who compose the assembly and the offence which has been committed to accomplished the common object of the assembly or was one which the member knew likely to be committed. There must be nexus between the common object and the offence committed. Under such circumstances, every member of the assembly is liable. This proposition of law

has been laid down by the Honble Apex Court in the case of Radha Mohan Singh alias Lal Saheb and Others v. State of Uttar Pradesh reported in 2006 (2) SCC450 wherein at paragraph Nos.21 and 22 it has been held as under: 21. The question arises whether the conviction of the remaining accused under Section 302 read with Section 149 IPC is legally sustainable. The scope of Section 149 I.P.C. was explained in Mizaji v. State of U.P. AIR 1959 SC572 which decision has been followed in many later cases, in the following manner :

"The first part of section 149 IPC means that the offence committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. It is not necessary that there should be a preconcert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members 157 - - and is shared by all of them. In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149 if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. Though it can be said that when an offence is committed in prosecution of the common object, it would generally be an offence which the members of the unlawful assembly knew was likely to be committed in prosecution of the common object that does not make the converse proposition true; there may be cases which would come within the second part but not within the first. The distinction between the two parts of Section 149 Indian Penal Code cannot be ignored or obliterated. In every case it would be an issue to be determined whether the offence committed falls within the first part of Section 149 as explained above or it was an offence such as the 158 - - members of the assembly knew to be likely to be committed in prosecution of the common object and falls within the second part.

22. In Alauddin Mian v. State of Bihar AIR 1989 SC1456 the import of Section 149 IPC was explained as under :

"..... This section creates a specific offence and makes every member of the unlawful assembly liable for the offence or offences committed in the course of the occurrence provided the same was/were committed in prosecution of the common object or was/were such as the members of that assembly knew to be likely to be committed. Since this section imposes a constructive penal liability, it must be safely construed as it seeks to punish members of an unlawful assembly for the offence or offences committed by their associate or associates in carrying out the common object of the assembly. What is important in each case is to find out if the offence was committed to accomplish the common object of the 159 - - assembly or was one which the members knew to be likely to be committed. There must be a nexus between the common object and the offence committed and if it is found that the same was committed to accomplish the common object every member of the assembly will become liable for the same. Therefore, any offence committed by a member of an unlawful assembly in prosecution of anyone or more of the five objects mentioned in Section 141 will render his companions constituting the unlawful assembly liable for that offence with the aid of Section 149, it is not the intention of the legislature in enacting Section 149 to render every member of an unlawful assembly liable to punishment for every offence committed by one or more of its members. In order to invoke Section 149 it must be shown that the incriminating act was done to accomplish the common object of the unlawful assembly. Even if an act incidental to the common object is committed to accomplish the common object of the unlawful assembly, it 160 - - must be within the knowledge of other members as one likely to be committed in prosecution of the common object. If the members of the assembly knew or were aware of the likelihood of a particular offence being committed in prosecution of the common object, they would be liable for the same under Section 149.

79. On going through the decision quoted supra, it also enumerate that the number of persons involved in commission is a important object and common object could be formed on the spur of moment and does not require any prior deliberation. To consider the said aspect whether the said assembly was unlawful assembly with a common object, the Court has to appreciate the entire evidence placed before the Court and if there is all the basic relevant factors are present, the Court has to assess the conduct adopted, their behavior during and after the

incident, armed carried are some of the objects which are to be taken into 161 - - consideration to determine whether the accused persons had common object. This proposition of law has been laid down by the Honble Apex Court in the case of Manjith Singh Vs. State of Punjab, reported in (2019) 8 SCC529 At paragraph No.14.1 to 14.5 it has been observed as under: 14.1. The relevant part of Section 141 IPC could be usefully extracted as under:

141. Unlawful assembly.- An assembly of five or more persons to designated an unlawful assembly, if the common object of the persons composing that assembly is- xxx xxx xxx Third.- To commit any mischief or criminal trespass, or other offence; or xxx xxx xxx Explanation.- An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

14.2. Section 149, rendering every member of unlawful assembly guilty of offence committed in prosecution of common object reads as under:- 162 - - 149. Every member of unlawful assembly guilty of offence committed in prosecution of common object.- If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

14.3. We may also take note of the principles enunciated and explained by this Court as regards the ingredients of an unlawful assembly and the vicarious/constructive liability of every member of such an assembly. In Sikander Singh, this Court observed as under:- 15. The provision has essentially two ingredients viz. (i) the commission of an offence by any member of an unlawful assembly, and (ii) such offence must be committed in prosecution of the common object of the assembly or must be such 163 - - as the members of that assembly knew to be likely to be committed in prosecution of the common object. Once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability for the offence committed by a member of such unlawful assembly under the provision, the

liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew beforehand that the offence actually committed was likely to be committed in prosecution of the common object. *** ** 17. A common object does not require a prior concert and a common meeting of minds before the attack. It is enough if each member of the unlawful assembly has the same object in view and their number is five or more and that they act as an assembly to achieve that object. 164 - - The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. For determination of the common object of the unlawful assembly, the conduct of each of the members of the unlawful assembly, before and at the time of attack and thereafter, the motive for the crime, are some of the relevant considerations. What the common object of the unlawful assembly is at a particular stage of the incident is essentially a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident. It is not necessary under law that in all cases of unlawful assembly, with an unlawful common object, the same must be translated into action or be successful. 165 - - 18. In *Masalti v. State of U.P.*: AIR 1965 SC202a Constitution Bench of this Court had observed that: (AIR p. 211, para

17) 17. Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.

14.4. In the case of *Subal Ghoral* (supra), this Court, after a survey of leading cases, summed up the principles as follows:- 166 - - 52. The above judgments outline the scope of Section 149 IPC. We need to sum up the principles so as to

examine the present case in their light. Section 141 IPC defines unlawful assembly to be an assembly of five or more persons. They must have common object to commit an offence. Section 142 IPC postulates that whoever being aware of facts which render any assembly an unlawful one intentionally joins the same would be a member thereof. Section 143 IPC provides for punishment for being a member of unlawful assembly. Section 149 IPC provides for constructive liability of every person of an unlawful assembly if an offence is committed by any member thereof in prosecution of the common object of that assembly or such of the members of that assembly who knew to be likely to be committed in prosecution of that object. The most important ingredient of unlawful assembly is common object. Common object of the persons composing that assembly is to do any act or acts stated in clauses First, Second, Third, Fourth and Fifth of that section. 167 - - Common object can be formed on the spur of the moment. Course of conduct adopted by the members of common assembly is a relevant factor. At what point of time common object of unlawful assembly was formed would depend upon the facts and circumstances of each case. Once the case of the person falls within the ingredients of Section 149 IPC, the question that he did nothing with his own hands would be immaterial. If an offence is committed by a member of the unlawful assembly in prosecution of the common object, any member of the unlawful assembly who was present at the time of commission of offence and who shared the common object of that assembly would be liable for the commission of that offence even if no overt act was committed by him. If a large crowd of persons armed with weapons assaults intended victims, all may not take part in the actual assault. If weapons carried by some members were not used, that would not absolve them of liability for the offence with the aid of Section 149 IPC if they shared common object of the unlawful assembly. 168 - - 53. But this concept of constructive liability must not be so stretched as to lead to false implication of innocent bystanders. Quite often, people gather at the scene of offence out of curiosity. They do not share common object of the unlawful assembly. If a general allegation is made against large number of people, the court has to be cautious. It must guard against the possibility of convicting mere passive onlookers who did not share the common object of the unlawful assembly. Unless reasonable direct or indirect circumstances lend assurance to the prosecution case that they shared

common object of the unlawful assembly, they cannot be convicted with the aid of Section 149 IPC. It must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but at all the crucial stages and shared the common object of the assembly at all stages. The court must have before it some materials to form an opinion that the accused shared common object. What the common object of the unlawful assembly is at a particular 169 - - stage has to be determined keeping in view the course of conduct of the members of the unlawful assembly before and at the time of attack, their behaviour at or near the scene of offence, the motive for the crime, the arms carried by them and such other relevant considerations. The criminal court has to conduct this difficult and meticulous exercise of assessing evidence to avoid roping innocent people in the crime. These principles laid down by this Court do not dilute the concept of constructive liability. They embody a rule of caution.

14.5. We need not expand on the other cited decisions because the basic principles remain that the important ingredients of an unlawful assembly are the number of persons forming it i.e., five; and their common object. Common object of the persons composing that assembly could be formed on the spur of the moment and does not require prior deliberations. The course of conduct adopted by the members of such assembly; their behaviour before, during, and after the incident; and the arms 170 - - carried by them are a few basic and relevant factors to determine the common object.

72. Whether an accused person is a member of unlawful assembly or not is going to be determined whether such act of the accused was committed in prosecution of the common object of the assembly and the member of the assembly knew, then the offence is likely to be committed in prosecution of the common object or some of the factors determined the circumstances. This proposition of law has been laid down by the Honble Apex Court in the case of Bal Mukund Sharma Alias Balmukund Chaudhary and Others Vs. State of Bihar reported in (2019) 5 SCC469 wherein at paragraph No.24 it has been observed as under: It is well settled that to determine whether an accused, being a member of an unlawful assembly, is liable for a given offence, it needs to be seen 171 - - whether such act was committed in prosecution of the common object of the assembly, and alternatively whether the

members of the assembly knew that the offence was likely to be committed in prosecution of such common object. This, in turn, has to be determined from the facts and circumstances of each case.

73. Keeping in view the aforesaid principles of law, let us consider the evidence which has been produced by the prosecution to know whether it constitute an unlawful assembly to execute the common object.

74. On perusal of the case of the prosecution, it indicates that the deceased persons were not living near the canal water, and there used to be a galata and accused persons have come there to done away with the life of the deceased, so that they can put an end to the said problem. 172 - - 75. It is the specific contention of the learned Senior Counsel that complainant has suffered injuries and even under great sufferings and shock she has given the details of the names of 16 accused persons along with the specific weapons used by them and the same is not probable and acceptable. But as could be seen from the contents of the complaint Ex.P1, she has given the names of 16 persons clearly. In her evidence, she has clearly stated about the overt acts of accused No.3 Kallappa, accused No.4 Chandra, accused No.6 Eranna, accused No.7 Nandihalli, accused No.12 Mallaiah, accused No.13 Ramu and she has further deposed that it is accused No.16 Dhananjaya closed her mouth and pressed her to the wall and has assaulted, so also accused No.25 Kaggal Venkatesha. When the accused persons are the close relatives and within the close vicinity they have assaulted the Ramana Gouda and have done away with the life of her husband, then under such circumstances, it cannot be 173 - - said that the conduct of the complaint PW1 is unnatural. She being an eyewitness and has suffered injuries and had given the names of 16 accused persons in the complaint, it is natural and probable. Even as could be seen from the complaint Ex.P1, name of accused Nos.1 to 16 finds place. On perusal of evidence of PWs.1 and 2 there are serious overt acts alleged as against accused Nos.1 to 14, 16, 17, 19 and 25. They have deposed actual participation in the at. In that light, it can be held that they may be member of an unlawful assembly with a common object they have come and have assaulted the deceased person and also PWs.1 to 4. It is well settled proposition of law that it is not necessary that there should be prior concert or meeting of members of that

assembly, the object may be on the spur of moment. It is enough if it is adopted by all the members and is shared by them. To make them liable there must be some overt act during incident. This proposition of law has been laid down in 174 - - the case of Ramachandran and Others vs. State of Kerala, reported in 2011(3) SCC Crimes) 677, wherein it has been laid down at paragraph Nos.17 and 18 quoted supra.

76. Be that as it may. Mistakes in filing the complaint are not a good ground to discard the entire complaint. This proposition of law has been laid down in the case of Mallappa Siddappa Alakanur and Others quoted supra, wherein at paragraph Nos.16 it has been observed as under:

16. We have, ourselves, seen the cross-examination and very strangely, the witness was asked the questions about the actual assaults in his cross-examination, thereby actually admitting his presence at the spot. He explained in his cross-examination that A-3 and A-4 attacked the boy and threw him down on the ground and he identified the accused even at that time. His not shouting can also be explained that he was feeling extremely apprehensive on 175 - - account of such dastardly attack on the deceased, who was his friend. Graphic description as to how the attack was made by A-1 and A-2 with the help of A- 3 and A-4 has come in Para 7, in his cross-examination. The omissions brought out in Para 9 are also of miniscule nature. His story that A-3 and A-4 whisked away the deceased and thereafter, overpowered him and A-1 and A-2 committed the dastardly attack on the helpless boy, however remained unshaken throughout the cross-examination. The reasons given by the Sessions Judge to reject the evidence appear to be non-existent. In fact, the trial court started with an expression of doubt, holding that the evidence appears to be unnatural. There was nothing unnatural in the evidence. His presence at the spot was well explained. The story that he went along with the deceased to take bath after the work at the jaggery plant, also remained unshaken and ultimately his story as to how the attack occurred has also 176 - - remained unshaken in his cross- examination. Very strangely, the Sessions Judge calls him an interested witness. In our opinion, his evidence could not be rejected on that ground. If he was actually the cousin of the deceased, he could not change that situation. There is neither evidence nor any

suggestion that this boy was tried to be influenced either by his father or the relations of the deceased. We have already stated that the omissions proved at Exhibits D-1(A) and D-1(B) are most insignificant and, therefore, we are quite satisfied with the finding of the High Court that the evidence of this witness was credible.

77. It is held in a catena of decisions that the complaint and FIR are not encyclopedia. Omission of facts is not a fatal. It is held in *Manjith Singh Vs. State of Rajasthan* reported in 2012(3) Crimes 192(SC), wherein at paragraph Nos.13 and 14 it has been observed as under. 177 - - 13. We are unable to agree. The fact that the assault by the bottle on Hemant is not mentioned in the parcha bayan is, at best, an omission and it does not in any way affect the veracity of PW2 not to say the other three eyewitnesses. As a matter of fact, in the cross-examination a question was put to PW2 regarding this omission in the parcha bayan and he said that at the time the parcha bayan was recorded he was in shock and was being administered intravenous drip. He was, therefore, not in a position to give a detailed account of the occurrence and he simply stated about the main assault by knives.

14. In any event, the omission in the FIR would not, in any way, affect the depositions of PWs 1, 3 and 4. Mr Mehrotra was unable to show that those three witnesses had not mentioned about the assault on Hemant by bottle in their statements recorded under Section 161 of the Code of Criminal Procedure.

78. Yet another decision in the case of *Harijan Jivrajbhai Badhabhai* quoted supra, at paragraph No.12 it has been observed as under:

178. - - 12. We have considered the rival submissions and have gone through the testimony of the eyewitnesses and other material on record. It is true that even before the registration of FIR the inquest was undertaken and the post-mortem was conducted. In this case, the assault was made right in the courtroom which called for immediate action on part of the investigators to clear the courtroom as early as possible. The investigating officer had initially requested the Presiding Officer to lodge a complaint. Upon his refusal, the investigating officer then had to make enquiries and record the complaint of PW30Bhanji. In the meantime, if

inquest was undertaken and the body was sent for post-mortem, we do not see any infraction which should entail discarding of the entire case of prosecution. We also do not find anything wrong if the first informant soon after the recording of the assailant corrected himself, as a result of which name of the third assailant came to be dropped. So long as the version coming from the eyewitnesses inspires confidence and is well corroborated by the material on record, any 179 - - such infraction, in our view would not demolish the case of the prosecution in entirety.

79. Even it is well settled proposition of law that sometimes because of animosity though the alleged offence might have been committed by some of the accused persons, in order to rope up all the members of the family, the false implication also cannot be over-ruled. But the Court has to separate the chaff from the grain. This proposition of law has been laid down in the case of Ramesh Harijan Vs. State of Uttar Pradesh reported in (2012) 5 SCC777 and after perusal of the entire evidence and material placed on records, after applying the principles laid down in Section 149, if with a common object, if he has come over there, even though there are not serious overt acts, but being the member of the said unlawful assembly he is also equally liable to be prosecuted for the alleged offence. 180 - - 80. As could be seen from the evidence of PW21, for conspiracy, but the said witness has not supported the case of the prosecution. In that light, the conspiracy has not been proved. Usually the conspiracy is going to be held secretly and to conspiracy there may not be any witness. But whether the accused persons have conspired to pursue the common object, must also be ascertained by the overt acts of the accused persons at the time of the alleged incident. It is well settled proposition of law that all the persons of the assembly do not make such persons a member of the unlawful assembly, unless it is shown that he has done something or omitted to do something which should make him a member of the unlawful assembly or unless these falls under Section 141 of IPC,. Mere presence in an assembly, does not make such person a member of unlawful assembly unless he has done something which he should make him a member of the unlawful assembly. This proposition of law has been 181 - - laid by the Honble Apex Court as far as in the year 1956 in the case of Baladin and Others Vs. State of Uttar Pradesh reported in (1956) SC181 wherein at paragraph No.19 it has been observed as under:

19. It is manifest that the first three grounds do not make out a case for special leave but we think that the fourth ground does. It is well settled that mere presence in an assembly does not make such a person a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Section 142 Indian Penal Code. In this case there is no doubt that the original inhabitants of the village were all inimically disposed towards the new-comers. From the site plan (Ex. P-18) of the houses of the refugees, it is clear that the houses of the accused persons and of the refugees are situated close to one another. The house of Mangal Singh which was the scene of the occurrence was surrounded by the houses of the original inhabitants of the village including some of the accused persons. According to the 182 - - prosecution case, one party of the members of the unlawful assembly entered the first floor of the house of Mangal Singh through the roof of the house of Parichhat Lodhi adjacent to the south-east and attacked the three persons who were there. The other party of the miscreants collected at the front door of Mangal Singh's house facing west. In front of Mangal Singh's house is the house of Mahabir, appellant, and on the other three sides of that house are the houses of Baladin Lodhi, Parichhat Lodhi and Ajodhia Lodhi, appellants. It would thus appear that the place of occurrence is surrounded on all sides by the houses of the appellants. If members of the family of the appellants and other residents of the village assembled, all such persons could not be condemned ipso facto as being members of that unlawful assembly. It was necessary therefore for the prosecution to lead evidence pointing to the conclusion that all the appellants before us had done or been committing some overt act in prosecution of the common object of the unlawful assembly. The evidence as recorded is in general terms to the effect that all these persons and many more were the miscreants and were armed with 183 - - deadly weapons, like guns, spears, pharsas, axes, lathis, etc. This kind of omnibus evidence naturally has to be very closely scrutinised in order to eliminate all chances of false or mistaken implication. That feelings were running high on both sides is beyond question. That the six male members who were done to death that morning found themselves trapped in the house of Mangal Singh has been found by the courts below on good evidence. We have therefore to examine the case of each

individual accused to satisfy ourselves that mere spectators who had not joined the assembly and who were unaware of its motive had not been branded as members of the unlawful assembly which committed the dastardly crimes that morning. It has been found that the common object of the unlawful assembly was not only to kill the male members of the refugee families but also to destroy all evidence of those crimes. Thus even those who did something in connection with the carrying of the dead bodies or disposal of them by burning them as aforesaid must be taken to have been actuated by the common objective. 184 - - 81. Keeping in view the ratio laid down and on perusal of the evidence produced by the prosecution, it goes to show that the place of occurrence is the house of PW1 and the deceased Ramana Gouda and it has taken place in a compact position. On perusal of the evidence of PWs.1 and 2 it indicates the presence of accused No.1 Pampapathi, accused No.2 Durgappa, accused No.3 Kallappa, accused No.4 Chandra, accused No.5 Doddabasappa, accused No.6 Eranna, accused No.7 Nandihalli, accused No.8 Kadappa, accused No.9 Eranna, accused No.10 Sadak Ali and accused No.11 Gadilinga, accused No.12 Mallaiah, accused No.13 Ramu, accused No.14 another Gadilingappa, and accused No.16 Dhananjaya and serious overt acts have been alleged as against accused Nos.3, 4, 6 to 9, 12 to 14, 19, 21 and 25 and the name of accused Nos.1 to 16 is also found in the complaint. The alleged incident has taken place on 9.11.2007 at about 7.45 p.m. and the complaint has been got 185 - - registered at about 11.00 p.m. that too by recording the statement of the complainant. Under such circumstances, when without there being any much delay the complaint has been registered and the names of the above accused persons have been found, then under such circumstances, the contention of the learned Senior counsel for the appellant accused that the implication of the accused itself creates a serious doubt cannot be accepted and even it cannot be held that after discussion and deliberation the names have been included. When admittedly, in her presence her husband has been brutally murdered and immediately she has also been taken to the hospital because of the injuries suffered by her and immediately thereafter the complaint Ex.P1 has been registered. There is nothing to doubt the evidence of PWs.1 and 2. The Court while appreciating the evidence has to keep in mind the situations which have arisen in the said village. If any such incident occurs in the village,

other villagers 186 - - would naturally gather in such galata between the two groups and it is possible to include such persons though they have not participated in such an incident with a common object, but the Court has to have a close scrutiny of the evidence. On perusal of the evidence of these witnesses, there is ample material as against accused Nos.1 to 14, 16, 17, 19, 21 and 25. Insofar as accused Nos.15, 18, 20, 22, 23, 24 and 26, no serious overt acts have been alleged and even it is said that they were only instigating. Under such circumstances, it can be held that there is possibility of false implication of accused Nos. 15, 18, 20, 22, 23, 24 and 26. In the evidence, while appreciating contradiction, inconsistencies, exaggeration or embellishment are common phenomenon when the witnesses are restricted and can develop a tendency of exaggerate. It does not mean that entire testimony of such witness is falsehood, minor contradictions are not fatal to 187 - - prosecution case. In that light, we want to rely upon the decision in the case of Prabhu Dayal Vs. State of Rajasthan reported in 2018(8) SCC127 wherein at paragraph Nos. 18 to 21, it has been observed as under; 18. It is a common phenomenon that the witnesses are rustic and can develop a tendency to exaggerate. This, however, does not mean that the entire testimony of such witnesses is falsehood. Minor contradictions in the testimony of the witnesses are not fatal to the case of the prosecution. This Court, in State of U.P. v. M.K. Anthony [State of U.P. v. M.K. Anthony, (1985) 1 SCC505:

1985. SCC (Cri) 105]. , held that inconsistencies and discrepancies alone do not merit the rejection of the evidence as a whole. It stated as follows: (SCC p. 514-15, para

10) 10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the 188 - - evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or

there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even 189 - - honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross- examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible. (emphasis supplied) 19. In State of U.P. v. Anil Singh [State of U.P. v. Anil Singh, 1988 Supp SCC686:

1989. SCC (Cri) 48]. , this Court observed that: (SCC p. 692, para

17) 17. invariably the witnesses add embroidery to prosecution story, perhaps for the fear of 190 - - being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses.

20. The Court can separate the truth from the false statements in the witnesses' testimony. In Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC525:

2000. SCC (Cri) 222]. , this Court held as follows: (SCC p. 534, para

12) 12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment - sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their overanxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is 191 - - unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.

21. Moreover, it is not necessary that the entire testimony of a witness be disregarded because one portion of such testimony is false. This Court observed thus in Gangadhar Behera v. State of Orissa [Gangadhar Behera v. State of Orissa, (2002) 8 SCC381:

2003. SCC (Cri) 32]. : (SCC p. 392, para

15) 15. To the same effect is the decision in State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC277:

1973. SCC (Cri) 886 : AIR 1973 SC2407 and Lehna v. State of Haryana [Lehna v. State of Haryana, (2002) 3 SCC76:

2002. SCC (Cri) 526]. . Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of falsus in uno, falsus in omnibus (false in one 192 - - thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The

maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. 193 - - 82. Though the prosecution has charge sheeted 26 accused persons, but on perusal of the evidence produced before the Court it goes to show that all the accused persons are not the members of the unlawful assembly with a common object. By taking into consideration the overt acts of each of the accused persons and the presence of the accused Nos.1, 2, 5, 10, 11 and 14 and though they have not assaulted, actually to any one of them including the deceased, but they were present inside the house and they were also having knowledge that they have come along with lethal weapons and have assaulted the deceased Ramana Gouda and thereafter they have dragged Sanna Mallana Gouda and have assaulted the deceased with lethal weapons and have also not tried even for preventing them or rescuing them. In that light, they can be held to be members of unlawful assembly with a common object and are liable to be convicted for the offences 194 - - which have been committed by other accused persons. As held above they are also vicariously liable.

83. Though the learned Senior counsel contended by bringing to the notice of some discrepancy by referring to the FIR and the other material evidence, it is well settled proposition of law that if the said contradictions are not material contradictions so as to take away the case of the prosecution, then the same can be ignored and it can be held that the prosecution has proved the guilt beyond all reasonable doubt.

84. The next contention of the learned Senior Counsel is that the prosecution has only produced serology report and has not got examined the chemical examiner and mere marking of the said serology report without examining him will not help the case of prosecution. In that light, he relied upon the decision in the case of LIC of India and Another Vs. Rampal Singh Bisen reported in (2010) 2 Supreme page 444. 195 - - 85. It is his further contention that if there is no link established between the blood found on the seized articles and blood of the deceased, the

benefit of doubt has to be given to the accused. In that light, he has relied upon the decision of the Honble Apex Court in the case of Sunil Kundu and Another Vs. State of Jharkand reported in (2013) 4 SCC422 86. I have carefully and cautiously gone through the said decisions and I am not having any difference of opinion with regard to the law that the mere marking of the documents is not a proof. But on careful perusal of the said decision, a grave suspicion has been created about the involvement of the accused in the offence of murder and he has been implicated on suspicion and seized articles were also not sent to the forensic science laboratory and in the absence of any explanation offered by the prosecution, the benefit of doubt has been given. But as could be seen from the evidence 196 - - produced in the case on hand, there is consistency in the evidence of PWs.1 and 2 and even the death of the deceased Ramana Gouda and Sanna Mallana Gouda as a homicidal death has not been disputed during the course of cross-examination. Under such circumstances, non-examination of the chemical examiner from forensic laboratory will not be fatal to the case of the prosecution. It is well settled proposition of law that non recovery of weapon does not detract the case of prosecution, where a clinching and direct evidence is available and acceptable. This proposition of law has been laid down in State of Rajasthan Vs. Arjun Singh and Others reported in 2011(3) SCC (Criminal), wherein at page No.647 paragraph No.18, it has been held as under:

18. As rightly pointed out by the learned Additional Advocate General appearing for the State that mere non- recovery of pistol or cartridge does not 197 - - detract the case of the prosecution where clinching and direct evidence is acceptable. Likewise, absence of evidence regarding recovery of used pellets, bloodstained clothes, etc. cannot be taken or construed as no such occurrence had taken place. As a matter of fact, we have already pointed out that the gunshot injuries tallied with medical evidence. It is also seen that Raghuraj Singh and Himmat Raj Singh, who had died, received 8 and 7 gunshot wounds respectively while Raj Singh (PW2 also received 8 gunshots scattered in front of left thigh. All these injuries have been noted by the doctor (PW1 in his reports, Exts. P-1 to P-4.

87. In that light, the decisions quoted by the learned Senior Counsel are not applicable to the facts of the case on hand and the said contention is not having

any force. The same is liable to be rejected and accordingly it is rejected. 198 - - 88. It is the submission of the learned Senior counsel that as per the case of the prosecution at the instance of accused No.1 Pampapathi a club has been seized as per Ex.P31 on 15.11.2007, one motorcycle has been seized and two mobile phones as per Ex.P53 on 18.11.2007. It is his further submission that at the instance of accused No.4 Chandra as per Ex.P41 a chopper has been seized on 21.11.2007. At the instance of accused No.3 Kallappa as per Ex.P42 a club has been recovered on 21.11.2007. At the instance of accused No.6 Eranna as per Ex.P43 axe and clothes were recovered on 21.11.2007. At the instance of accused No.2 Durgappa a club has been recovered as per Ex.P32 on 17.11.2007. At the instance of accused No.12 Mallaiah a chopper has been seized as per Ex.P33 on 17.11.2007. At the instance of accused No.13 Ramu a club has been seized as per Ex.P34 on 17.11.2007. At the instance of accused No.10 Sadakali, the place of parking of the motorcycles at the time of 199 - - alleged incident has been shown as per Ex.P35 on 17.11.2007. So also accused No.11 Gadilingappa showed the place of use of the motorcycles and a mahazar has been drawn as per Ex.P36 on 17.11.2007. At the instance of accused No.5 Doddabasappa he has shown the place of conspiracy for commission of the murder as per Ex.P37 on 17.11.2007. At the instance of accused No.16 Dhananjaya two cart pegs have been seized by drawing a mahazar as per Ex.P28. At the instance of accused No.7 Nandihalli Malliah a chopper, a Banian and a towel has been seized by drawing a mahazar as per Ex.P25 on 10.11.2007. At the instance of accused No.19 Somalinga chopper and clothes have been seized by drawing a mahazar as per Exs.P45 and 46. At the instance of accused No.25 Kaggal Venkatesha a chopper has been seized as per Ex.P48 on 9.1.2008. All these witnesses have not supported the case of the prosecution on the aspect of recovery which is intended to be relied upon by the prosecution. 200 - - We are conscious of the fact that the recovery evidence at the instance of the accused is admissible only under Section 27 of the Evidence Act. The recovery evidence played a vital role if the entire case rests on circumstantial evidence. But in the instant case on hand PWs.1 and 2 are the eyewitnesses to the alleged incident and 3 and 4 are semi eyewitnesses and have spoken with regard to the circumstances. When they have categorically deposed before the Court about the participation and overt acts of the accused

persons, then the recovery evidence will not be having much importance and it will not take away the case of the prosecution in its entirety. The said evidence is only a corroborative evidence to the evidence of eyewitnesses. But if the evidence of the eyewitnesses is cogent, trustworthy and reliable, then the said material will not help to deny the case of the prosecution as quoted earlier in the case of Rajasthan Vs. Arjun Singh, it will not be clinching direct evidence. The witnesses who are 201 - - from the same locality may not have supported the case of the prosecution either due to the influence of the accused persons or they may be intended to adopt the method of neutrality, so that they do not want to create enmity either with the family of the complainant or with the accused. Taking from any angle the said evidence is not going to help the accused in any manner.

89. Be that as it may. Even as could be seen from the evidence of the Doctor who has conducted the autopsy over the body of the deceased Ramana Gouda and Sanna Mallana Gouda goes to show that the deceased Ramana Gouda has received the Cranium was fractured into four pieces, Membranes torn and multiple injuries were found over the body of the deceased and has opined that death is due to shock and hemorrhages as a result of multiple injuries sustained. Similarly in respect of Sanna Mallana Gouda, he has also suffered with chop wound extending from the left angle of the mouth, right side of 202 - - the nose, right eye, right tempero partial region, cut laceration over the chin and below the chin, fracture of central part of mandible and has opined that death is due to shock and haemorrhage as a result of multiple chop injuries sustained.

90. When death of two persons have been established as a homicidal death and the eyewitnesses have also clearly stated with regard to the assault committed by the lethal weapons and the evidence of investigating officer-PW51 has clearly stated with regard to recovery of the said articles as stated above and there is nothing to discard the evidence of the eyewitnesses and the investigating officer. Taking into consideration the above facts and circumstances, I am of the considered opinion that the contention of the learned Senior counsel that the witnesses to recovery have not supported the case of the prosecution and it is fatal to the case and the accused are entitled to be acquitted is not acceptable. 203 - - 91. It is his further submission that mere recovery is not sufficient without

there being any serologist report to connect the link to the alleged crime. Though the serology report has been produced, it only reveals human blood. When five persons on the side of the complainant have suffered with injuries, a detailed serology report is necessary to connect the link. In that light, he relied upon the decision in the case of LIC of India and another Vs. Ram Pal Singh Bisen reported in 2010 (2) Supreme 444, wherein at paragraph No.26 it has been observed as under: 26. We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to 204 - - under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry C.A. No.893 of 2007 the case of the appellants any further and much to the prejudice of the respondent.

92. Though Serology Report is available, the same has not been marked. The only thing which has been mentioned is human blood. Further, when five persons have suffered injuries, a detailed Serological Report is very much necessary to connect the link. In that light he has also relied upon the decision in the case of Sunil Kundu and another Vs. State of Jharkhand reported in (2013) 4 SCC422 wherein at paragraph No.29 it has been observed as under: We began by commenting on the unhappy conduct of the investigating agency. We conclude by reaffirming our view. We are distressed at the way in 205 - - which the investigation of this case was carried out. It is true that acquitting the accused merely on the ground of lapses or irregularities in the investigation of a case would amount to putting premium on the deprecable conduct of an incompetent investigating agency at the cost of the victims which may lead to encouraging perpetrators of crimes. This Court has laid down that the lapses or irregularities in the investigation could be ignored subject to a rider. They can be ignored only if despite their existence, the evidence on record bears out the case of the prosecution and the evidence is of sterling quality. If the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case, they can be ignored. In this case, the lapses are very serious. PW-5 Jaldhari Yadav is a pancha to the seizure panchnama under which weapons and other articles were seized from the

scene of offence and also to the inquest 206 - - panchnama. Independent panchas have not been examined. The investigating officer has stated in his evidence that the seized articles were not sent to the court along with the charge-sheet. They were kept in the Malkhana of the police station. He has admitted that the seized articles were not sent to the Forensic Science Laboratory. No explanation is offered by him about the missing sanha entries. His evidence on that aspect is evasive. Clothes of the deceased were not sent to the Forensic Science Laboratory. The investigating officer admitted that no seizure list of the clothes of the deceased was made. Blood group of the deceased was not ascertained. No link is established between the blood found on the seized articles and the blood of the deceased. It is difficult to make allowance for such gross lapses. Besides, the evidence of eye-witnesses does not inspire confidence. Undoubtedly, a grave suspicion is created about the 207 - - involvement of the accused in the offence of murder. It is well settled that suspicion, however strong, cannot take the place of proof. In such a case, benefit of doubt must go to the accused. In the circumstances, we quash and set aside the impugned judgment and order. The appellants- accused are in jail. We direct that the appellants - A1-Sunil Kundu, A2-Bablu Kundu, A3-Nageshwar Prasad Sah and A4-Hira Lal Yadav be released forthwith unless otherwise required in any other case. (Emphasis supplied by me)

93. As could be seen from the decision quoted supra by the learned Senior counsel, therein it has been observed that the Honble Apex Court has laid down that the lapses or irregularities in the investigation could be ignored with a rider only if despite their existence the evidence on record bears out the case of the prosecution and the evidence is of 208 - - sterling quality and if the lapses or irregularities do not go to the root of the matter, if they do not dislodge the substratum of the prosecution case they can be ignored.

94. Keeping in view the said proposition of law and there is no grave suspicion created about the involvement of the accused in the gruesome murder case wherein two persons have been killed mercilessly. It is also well settled that suspicion however strong cannot take the place of proof, but if a strong evidence is there, then under such circumstances, the irregularities and lapses in the investigation will take a back seat. In that light, the contention of the learned Senior counsel is not acceptable and liable.

95. It is further contended that PW44 the Head Constable took 34 sealed articles to give it to FSL on 6.12.2007 and the Deputy Superintendent of Police called him to bring them back on 17.12.2007. There is 209 - - no evidence produced to show that subsequently the said articles have been submitted to the FSL and given to chemical examination. It is his further submission that the FSL report given by PW54 on 29.11.2010 itself creates a doubt.

96. As discussed above, the serological report plays a role only when the death has been disputed and it has been alleged that it is not due to the assault, so also the injured persons.

100. During the course of cross-examination through out the said aspect has not been denied and when the said articles have been identified by the witnesses and the same have been recovered from the possession of the accused on the basis of the voluntary statement. Then under such circumstances, it is not having any impact on the case of the prosecution. Even as could be seen from the serological report dated 29.11.2010, on items 4 to 34 were stained with human blood and blood grouping has been also mentioned on 210 - - the said articles as O Group. Until and unless the said fact has been proved, the persons injured are having a different blood group. Then the said document cannot be doubted. During the course of cross-examination of the Investigating Officer, the same has not been disputed and questioned.

101. Be that as it may. Even when the Assistant Director of FSL came to be examined by the Court as PW52, they have made a suggestion that no articles have been examined and without verifying the articles the report has been given as per Ex.P83, the same have been denied. Even nowhere in the evidence of PWs.40 or 52 it has been suggested that there is a manipulation or planting of the weapons. The evidence of eyewitnesses is corroborated with post mortem report Ex.P63 and P64 and also the evidence of Dr.PW37 and even the doctors who have examined the injured witnesses have also opined that the said 211 - - injuries have been caused with lethal weapons and have also issued wound certificate.

102. Taking into consideration the above said aspects I am of the considered opinion that the contention raised by the learned Senior counsel is not acceptable.

103. Be that as it may. There is no allegation of falsification of the incident. The incident has been admitted. The only dispute which has been made is that the complainant has implicated some of the accused with a previous rivalry. That has to be determined by the Court only when the entire evidence is going to be scrutinized. In that light, the contentions raised are also not acceptable.

104. It is the submission of the learned Senior counsel that the material witnesses examined before the Court are not trustworthy and no satisfactory explanation has been given with regard to omissions 212 - - and improvements made in the FIR. It is his further submission that if the material contradictions in the deposition cannot be relied upon. In that light, he relied upon the decision in the case of Bhaskar Rao and Others Vs. State of Maharashtra, reported in AIR 2018 SC2222 wherein at paragraph Nos.32, 33 and 37 it has been observed as under: 32. The prosecution has heavily relied on the statement of PW1 that the accused-appellants assaulted her husband with deadly weapons on his hands and legs while dragging him for about 2 kms from his house to the fields, which led to his death. The weapons used in the crime were stated to be sword, sticks, axe and pipe. Admittedly, there were no bloodstains found on any of the weapons allegedly recovered from the accused. The allegation particularly levelled was that the accused carried the assault on the deceased at three places i.e., in front of the house of the 213 - - deceased and near the house of PW3- Vinayak Bhalekar and at the fields of Yeshwant Thawale. However, in their depositions PWs 2, 4 and 5 did not mention about such assault on the deceased in front of Vinayak Bhalekar house. It appears from the material that there are no eyewitness who had seen the accused attacking the deceased in the fields of Yashwant Thawale. The statements of PW3- Vinayak Bhalekar also appears to be not consistent throughout. At one point of time, he deposed that the deceased had died in front of his house. Altogether a different statement was given to the investigating authorities and in the Court. Similar is the case of PW4-Sudha, who has made improvements as regards to the assault on the deceased. Also there were varying statements by the prosecution witnesses as regards PW4-Sudha on the aspect of receiving the blow. 214 - - 33. The deposition of PW4-Sudha Bhalekar shows that she had seen the involvement of A-1, A-4, A-11, A-13, A-14 and A-16 in the crime. Though she stated that she could recognize the assailants by their face as she does not know their names, yet

test identification parade was not conducted which is fatal to the case of prosecution. In their depositions PWs 2, 3 and 5 gave contradictory statements as to the involvement of number of accused persons in the crime and also about noticing the accused who dragged the deceased while assaulting him and dragging towards school whereas PWs.1 and 4 were silent on this aspect. There were also contradictory statements by prosecution witnesses as regards the availability of light at the time of occurrence. According to PW3- Vinayak, husband of PW4-Sudha, whose house is the last in the mohalla and situated at a distance of four other houses from the house of deceased, the 215 - - incident took place at 9 pm. The way behind his house goes to the school and there is a tamarind tree in front of his house and the house of Shamrao is not visible by sitting in the courtyard of his house. In his cross-examination, he denied to have deposed to police that the house of deceased Shamrao is situated in the rear side of his house. He further stated, there is L type turn from his house to the house of deceased which is not visible from his courtyard. According to him, deceased Shamrao died in front of his house and on the next day, he saw the dead body of Shamrao in the field.

37. Now we need to concentrate on the other aspects of the case such as the contradictions in the evidence of prosecution witnesses as to the number of accused persons involved in the alleged crime and also in respect of their identification thereby the very purpose of the prosecution in proving the common object of unlawful assembly gets defeated 216 - - to attract the provisions of Section 149, IPC. An accused is, of course, vicariously guilty of the offence even if he is not directly indulged in the commission of offence but committed by other accused, in case he is proved to be a member of unlawful assembly sharing its common object. It is evident that as per PW1 (wife of the deceased)-complainant, in the FIR (Ext.

55) the number of persons mentioned by her, who have entered into their house was four, while about 20 to 25 persons were assembled outside the house and all of them assaulted the deceased. However, in the examination-in-chief she deposed that there were in all 15 assailants who attacked her husband. Though she failed to name the assailants in her deposition she made out a point that she

knew all the assailants. According to PW10- Shrikrishna, the author of complaint, PW1 did not state about entry of accused Nos. 13 and 15 into her house. There was also no mention by her at the time of lodging of FIR about carrying an axe by A-11, a sword by A-13, a pipe by A-15 and sticks 217 - - by other accused. Going by the material on record, it can be said that there was no satisfactory explanation on the part of PW1 for omissions in the FIR and improvements before the Court.

105. Though the said provision of law speaks with regard to the material contradictions, it is well settled proposition of law how the contradictions of the statement of the witnesses must be proved and marked. To prove the contradictions, the statement recorded by the investigating officer under Section 161 of Cr.P.C. must be confronted to the witness and it must be got marked and subsequently the said marked statement must be read out to the investigating officer, then the said contradictions can be considered to be either omission or improvements. In that light, I rely upon the decision in the case of V.K.Mishra & another Vs. State of Uttarakhan & another, reported in (2015)9 SCC588 wherein the Apex Court in paragraphs 14 to 19 has observed thus:- 218 - - 14. Mr.K.T.S. Tulsi, learned Senior Counsel for the appellants submitted that FIR contains only allegations of torture and cruel behaviour on the part of the appellants towards the deceased and in his statement recorded by the police under Section 161 Cr PC, PW1 had not stated anything about the alleged dowry demand whereas in his statement recorded by the police PW1 had only stated about many restrictions imposed on his daughter due to which Archana felt suffocated. Contending that there were no allegations of cruelty in connection with dowry demand or any such conduct of the appellants which could have driven Archana to commit suicide either in the FIR or in the statement of PW1 recorded on the next day by the investigating officer, the learned Senior Counsel urged and tried to persuade us to look into the statement of PW1 recorded under Section 161 Cr PC.

15. Section 161 Cr PC titled Examination of witnesses by police provides for oral examination of a person by 219 - - any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 Cr PC can be used at any trial are indicated in Section 162 Cr PC. Section

162 Cr PC reads as under: 162. Statements to police not to be signed: Use of statements in evidence.-(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid any part of his statement if duly proved may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination. (2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act. Explanation .-An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. 16. Section 162 Cr PC bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) Cr PC can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162(1) Cr PC. The Statements under Section 161 Cr PC recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose: (i) of contradicting such witness by an accused under Section 145 of the Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court; and (iii) the re- examination of the witness if necessary.

17. The Court cannot suo moto make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the 222 - - witness in the court. The words in Section 162 Cr PC if duly proved clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross- examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction.

18. Section 145 of the Evidence Act reads as under: 145. Cross-examination as to previous statements in writing.- A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing his attention must, before the writing can be 223 - - proved, be called to those parts of it which are to be used for the purpose of contradicting him. 19. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, 224 - - but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves

referring to statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction.

106. On perusal of the evidence of the Investigating Officer and the evidence of the material witnesses, no such material contradictions have been confronted during the course of evidence to the witnesses and have not been got marked and the same 225 - - have not been confronted in accordance with law to the investigating officer. In that light, the contention which has been made by the learned Senior counsel is not having any force. In that light, it is liable to be rejected.

107. Though it is contended by the learned Senior counsel that the prosecution has not held the Test Identification Parade, non holding of the Test Identification Parade is not considered to be fatal to the case of the prosecution. The alleged incident has taken place in the house of PW1 and PWs.1 and 2 were present and there was sufficient light and all the accused persons were acquainted and known to each other by face to face. Under such circumstances, mistaken identity will not be there. Question of holding the Test Identification Parade arises only when if the miscreants are not known or they have appeared in the alleged offence only on that day. But in the instant case on hand, the cases have also been filed earlier and the animosity was also nurturing between the two groups. 226 - - Under the said facts and circumstances, the said contention is also not acceptable.

108. It is one more contention of the learned Senior Counsel that as per the case of the prosecution 19 persons have entered into the house and the sketch produced indicates that it was a very small house and it will not accommodate 19 persons in the said hall. That itself falsifies the ground. But when the miscreants have entered into the house with an intention to assault the deceased Ramana Gouda and even as could be seen from the sketch Ex.P51, the length of the said room is 4.75 meters and width is 2.5 meters. Under such circumstances, it cannot be held that it will not accommodate 19 persons at the place of offence.

109. Even as could be seen from the evidence of PW13, during the course of cross-examination no such suggestions have been made to the effect that the said 227 - - house or a room is small room and it will not accommodate 19 persons. When the miscreants are intending to done away with the life of the deceased, then under such circumstances, they will rush inside the room and work out their object. In that light, the said contention is not acceptable.

110. One more contention which has been taken up by the learned Senior counsel is that accused Nos.1, 2, 13 and 14 were not present. Even as could be seen from the evidence the same thing has been suggested. When once they take a defence of alibi, they were not present and when eyewitnesses have stated their presence at the place of incident, then it is for the accused Nos.1, 2, 13 and 14 to establish that they were not present and if they fail, then the case of the prosecution stands proved. In that light, the said contention is not acceptable. 228 - - 111. It is the contention of the learned Special Public Prosecutor that the State has come up in appeal challenging the sentence and the petitioner accused have committed the gruesome murder of two persons brutally and as such the trial Court ought to have imposed the death sentence. But on perusal of the records, it indicates that since from the beginning the animosity was existing between the parties and in that light they went to the house of Ramana Gouda and Sanna Mallana Gouda and have assaulted with lethal weapons. The said case will not fall within the definition of rarest of rare case and no such circumstances have been made out to come to the conclusion that it requires death sentence. In that light, the appeal preferred by the State in Criminal Appeal No.100128/2017 deserves to be dismissed. At this juncture, we want to place it on record the valuable assistance extended by Sri C.V. Nagesh, Senior Counsel for the appellants and Sri L.S. Sullad, 229 - - learned Special Public Prosecutor for the State, for disposal of these appeals. For the discussion held by us above and for the reasons stated therein, we pass the following

ORDER

Criminal Appeal No.100276/2016 is partly allowed. Accused Nos.15, 18, 20, 22, 23, 24 and 26 are acquitted of all the charges leveled against them. They have been set at liberty forthwith, if they are not required in any other case. Insofar as

accused Nos.2 to 5, 7 to 9, 11 to 14, 16, 17, 19 and 25 is concerned, same has been dismissed by confirming the judgment and order of the sentence passed by the trial Court. So also, Crl. A. No.100345/2016, Crl. A. No.100253/2016, Crl. A. No.100193/2018 filed by accused Nos.1, 10 and 21 are also dismissed by confirming the judgment of conviction and order of sentence passed by the trial Court. 230 - - Criminal Appeal No.100128/2017 filed by the State is also dismissed as devoid of merits. All the sentences shall run concurrently in respect of the accused who have been convicted. Registry is directed to intimate the Jail authorities to release accused Nos. 15, 18, 20, 22, 23, 24 and 26 forthwith, if they are not required in any other case. In view of disposal of the appeals on merits, all pending IAs stand disposed of. SD JUDGE SD JUDGE *AP/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com