

Abdul Samad @ Samad Vs. State Of Karnataka By

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Court : Karnataka

Decided On : Jul-19-2024

Judge : Sreenivas Harish Kumar and S Rachaiah

Appeal No. : CRL.A 277/2018

Appellant : Abdul Samad @ Samad

Respondent : State Of Karnataka By

Judgement :

- 1 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE19H DAY OF JULY, 2024 PRESENT THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR AND THE HON'BLE MR JUSTICE S RACHAIAH CRIMINAL APPEAL No.277 OF2018(C) C/W CRIMINAL APPEAL No.372 OF2018(C) AND CRIMINAL APPEAL No.1540 OF2018(C) IN CRIMINAL APPEAL No.277 OF2018(C) BETWEEN:

1. ABDUL SAMAD @ SAMAD S/O. ABDUL AJEEJ SAB AGED ABOUT38YEARS RESIDING AT4H CROSS NEAR TIPPU ARABBI MADARASA, TIPPU NAGAR RAMANAGARA TOWN PIN - 562 159.

2. IRFAN KHAN @ KADUBU S/O. AMJAD KHAN AGED ABOUT25YEARS R/AT RENT IN AMANULLA BEG1T MAIN, NEAR TIN FACTORY DARGA MOHALLA, K.R. PURAM BENGALURU - 560 016. P/RESIDENT OF SHETTIHALLI BEEDI,

2ND CROSS RAMANAGARA TOWN - 562 159.

3. MUBARAK @ BATISTA - 2 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 S/O. MAHAMAD DASTAGIR AGED ABOUT 24 YEARS R/AT 1T CROSS, ISLAMPURA DODDABALLAPURA ROAD NELAMANGALA BENGALURU RURAL DISTRICT - 562 123.

4. SYED IMTIYAZ @ KURUPA S/O. LATE SYED GHOUSS MOYIDHIN AGED ABOUT 27 YEARS RESIDING AT No.224 BEEDI COLONY RAMANAGARA - 562 159.

5. ABDUL WAHID S/O. ABDUL AJEEJ AGED ABOUT 26 YEARS RESIDING AT TIPPUNAGARA KADRIYA MASEEDI ROAD RAMANAGARA TOWN - 562 159.

6. WASEEM PASHA S/O. ABDUL WAJID AGED ABOUT 23 YEARS R/AT RENT HOUSE IN CABLE FAYAZ, TIPPUNAGARA RAMANAGARA TOWN PERMANENT: SHETTIHALLI BEEDI NEAR ALADA MARA RAMANAGARA TOWN - 562 159. (VIDE

ORDER

DATED 04/09/2018 THIS APPEAL IS DISMISSED IN SO FAR AS APPELLANT - 6 IS CONCERNED) 7. SHAFI ULLA KHAN S/O. PYARU KHAN AGED ABOUT 38 YEARS RESIDING AT 2D CROSS NEAR ARIF MUTTON SHOP - 3 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 SHETTIHALLI BEEDI MADARKHAN MOHALLA RAMANAGARA - 562 159.

8. THOUHID PASHA S/O. WAHID ULLA KHAN AGED ABOUT 25 YEARS R/AT REHAMANIYA NAGARA JANATHA COLONY RAMANAGARA - 562 159.

9. WASEEM AKRAM @ PILLU S/O. ABDUL REHAMAN AGED ABOUT 22 YEARS RESIDENT OF 2D CROSS SHETTIHALLI BEEDI NEAR JIYA ULLA CLINIC RAMANAGARA - 562 159. (ALL THE APPELLANTS/ACCUSED ARE PRESENTLY IMPRISONED AT CENTRAL PRISON, PARAPPANA AGRAHARA, BANGALORE - 560 068) APPELLANTS (BY SRI. C H HANUMANTHARAYA, ADVOCATE FOR APPELLANT No.1; SRI. SANDESH J CHOUTA, SENIOR ADVOCATE FOR SRI. S SUNIL KUMAR, ADVOCATE FOR APPELLANT Nos.2

TO5 SRI. K RAGHAVENDRA, ADVOCATE FOR APPELLANT No.7; SRI. C PARAMESHWARAPPA, ADVOCATE FOR APPELLANT Nos.8 AND9 AND:

1. STATE OF KARNATAKA BY RAMANAGARA TOWN POLICE STATION RAMANAGARA - 562 159. REPRESENTED BY THE STATE PUBLIC PROSECUTOR HIGH COURT OF KARNATAKA AT BANGALORE.-. 4 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 2. MR. ZAKIR KHAN S/O. MR. ZIAULLAH KHAN AGED ABOUT30YEARS R/AT YARAB NAGAR HUNSENAHALLI MAIN ROAD OPP. TO KEB POWER STATION RAMANAGARA TOWN RAMANAGARA DISTRICT - 562 159.

3. MRS. SHAMMA TAJ S/O. LATE NIZAM PASHA AGED ABOUT30YEARS R/AT KUMDHAN MOHALLA WARD NO.13, RAMANAGARA TOWN RAMANAGARA DISTRICT - 562 159. RESPONDENTS (BY SMT. SUMATHI, SPL.PP FOR R1; R2 AND R3 SERVED) THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE

JUDGMENT

OF CONVICTION AND SENTENCE PASSED IN S.C.NO.35/2015 BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, RAMANAGARA, DATED11H DECEMBER 2017 AND ACQUIT THE APPELLANTS/ ACCUSED NO.1 TO5 7,9 AND10AND THEREBY

ORDER

THEIR RELEASE FROM THE PRISON, IN THE INTEREST OF JUSTICE. IN CRIMINAL APPEAL No.372 OF2018(C) BETWEEN: MR. WASIM BEG S/O ANWAR BEG AGED ABOUT23YEARS RESIDING AT2D CROSS REHAMANIYA NAGARA, RAMANAGARA TOWN PERMANENT ADDRESS: VADDARA PALYA MADAKASHIRA, ANDHRA PRADESH APPELLANT (BY SRI. NAUSHAD PASHA, ADVOCATE) - 5 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 AND:

1. STATE BY RAMANAGARA TOWN POLICE REPRESENTED BY S.P.P. HIGH COURT OF KARNATAKA HIGH COURT BUILDING, BANGALORE - 560 001.

2. MR. ZAKIR KHAN S/O. MR. ZIAULLAH KHAN AGED ABOUT 30 YEARS R/AT YARAB NAGAR, HUNSENAHALLI MAIN ROAD OPP. TO KEB POWER STATION RAMANAGARA TOWN RAMANAGARA DISTRICT - 562 159.

3. MRS. SHAMMA TAJ S/O. LATE NIZAM PASHA AGED ABOUT 30 YEARS R/AT KUMDHAN MOHALLA WARD NO.13, RAMANAGARA TOWN RAMANAGARA DISTRICT - 562 159. RESPONDENTS (BY SMT. SUMATHI, SPECIAL PUBLIC PROSECUTOR FOR R1 AND IMPEADING APPLICANTS) THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE

ORDER

OF CONVICTION AND SENTENCED DATED 11-12-2017 IN S.C.NO.35/2015 PASSED BY THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE AT RAMANAGARA. IN CRIMINAL APPEAL No.1540 OF 2018(C) BETWEEN: MR. WASEEM PASHA S/O ABDUL WAJID AGED ABOUT 23 YEARS R/AT RENT HOUSE IN- CABLE FAYAZ TIPPUNAGARA RAMANAGARA TOWN - 562 159 - 6 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 PERMANENT: SHETTIHALLI BEEDI NEAR ALADA MARA, MAKKA MASJID RAMANAGARA TOWN - 562 159. APPELLANT (BY SRI. NAUSHAD PASHA, ADVOCATE) AND: STATE BY RAMANAGARA TOWN POLICE REPRESENTED BY S.P.P. HIGH COURT OF KARNATAKA HIGH COURT BUILDING BANGALORE - 560 001. RESPONDENT (BY SMT. SUMATHI, SPECIAL PUBLIC PROSECUTOR) THIS CRL.A IS FILED U/S.374(2) CR.P.C PRAYING TO SET ASIDE THE

ORDER

OF CONVICTION AND SENTENCE DATED 11-12-2017 AND 12-12-2017 PASSED BY I ADDITIONAL DISTRICT AND SESSIONS JUDGE AT RAMANAGARA IN SC NO.35/2015 FOR THE ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 120B), 506, 302 R/W SECTION 149 OF IPC AND U/S 251-B) OF ARMS ACT. DATE ON WHICH THESE APPEALS WERE RESERVED FOR

JUDGMENT

25.04.2024 DATE ON WHICH THE

JUDGMENT

WAS PRONOUNCED 19.07.2024 THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF

JUDGMENT

, THIS DAY, S. RACHAIAH J, DELIVERED THE FOLLOWING:- CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR AND HON'BLE MR JUSTICE S RACHAIAH - 7 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 CAV

JUDGMENT

(PER: HON'BLE MR JUSTICE S RACHAIAH) 1. These three appeals arise out of the judgment of conviction dated 11.12.2017 and order on sentence dated 12.12.2017 in S.C No.35/2015 on the file of I Additional District and Sessions Judge at Ramanagara for the offences punishable under Sections 120-B, 506, 302 r/w 149 of IPC and Sections 25(1-B) of Arms Act, 1959.

2. The ranks of the parties in the Trial Court will be considered henceforth for convenience. Brief facts of the case:

3. It is the case of the prosecution that the brother of Nizam Pasha lodged a complaint stating that he had received a message on 13.01.2015 around 3.45 p.m., that his brother was being assaulted by unknown persons near KEB office. Immediately, he went to the place of occurrence and saw his brother lying on the ground with severe bleeding injuries on all over the body. On enquiry, he came to know that Samad and others - 8 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 assaulted his brother and ran away from the spot. Immediately, the injured was taken to the hospital in an auto-rickshaw, but, he succumbed to the said injuries. Therefore, he lodged a complaint against accused No.1 and others.

4. The jurisdictional police registered a case in Crime No.10/2015 for the offences under Sections 302 r/w 34 of IPC. After conducting the investigation, submitted the charge sheet for the offences stated supra against all the accused.

5. The Trial Court after framing the charge proceeded with the trial. The prosecution in order to prove its case, examined 31 witnesses as PWs.1 to 31 and got marked 35 documents as per Exs.P1 to P35 and also identified 16 material objects marked as M.O.1 to M.O.16. On the other hand, the accused marked four documents as Exs.D1 to D4.

6. We have heard Sri.C.H.Hanumantharaya, learned counsel for appellant No.1 / accused No.1, Sri.Sandesh J.Chouta, learned Senior Counsel for Sri.S.Sunil Kumar, learned counsel for appellant Nos.2 to 5 /accused Nos.2 to 5, - 9 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 Sri.K.Raghavendra, learned counsel for appellant No.7 / accused No.7, Sri.C.Parameshwarappa, learned counsel for appellant Nos.8 and 9 / accused Nos.9 and 10 in Crl.A No.277/2018, Sri.Naushad Pasha, learned counsel for appellant / accused Nos.8 and 6 in Crl.A No.372/2018 and Crl.A No.1540/2018 and Smt.Sumathi, learned Special Public Prosecutor for the respondent - State and the impleaded applicants. Submission of learned counsel for appellant:

7. It is the submission of the learned counsel for appellant No.1 that though the prosecution has examined several witnesses as eyewitnesses to the incident, they are all related witnesses. The Court, while appreciating the evidence of related witnesses, should be cautious and scrutinize it thoroughly in order to assess the credibility of the said witnesses.

8. It is further submitted that though immediately after the incident, the injured was shifted to the hospital by the witnesses, the blood stained clothes of the persons who have shifted injured to the hospital have not been seized - 10 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 by the investigating officer to substantiate that they were present at the scene of occurrence.

9. It is further submitted that immediately after receiving the complaint and after registering the FIR, the investigating officer visited the hospital and conducted inquest mahazar. In the said mahazar, the names of the immediate blood relatives who were present in the hospital and those who had shifted the injured to the hospital did not find a place, this creates doubt regarding their presence at the place of occurrence. However, the Trial Court failed to take note of the said aspect

and committed error.

10. It is further submitted that the investigating officer though stated to have visited the spot of occurrence and noticed that there were two to three long choppers and a bike lying at the spot, he did not depute any police to guard the place of occurrence till conducting spot mahazar which was also crucial to the case of the prosecution. The evidence of P.W.25 indicates that nothing was seized at the place of occurrence, even - 11 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 during spot mahazar, which is fatal to the case of the prosecution.

11. It is further submitted that though the investigating officer is said to have recorded the statements of eyewitnesses namely, PW.7 - Jakir Khan, PW.3 - Ameer Jan, PW.6 - Saleem Pasha and PW.11 - Saleem on 15.01.2015, the said fact has not been forthcoming in the remand application of accused No.1 which is contrary to the Karnataka Police Manual and also contrary to the procedure adopted under the said Rule.

12. It is further submitted that though there were several eyewitnesses to the incident, they are related to each other. However, none of the witnesses has deposed in their evidence regarding the presence of the other witness at the scene of occurrence, which is unbelievable and their presence at the spot appears to be doubtful.

13. It is further submitted that the recovery of long choppers and a bike at the instance of other accused is also doubtful for the reason that the said items had been - 12 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 recovered in an open place. Such seizure-mahazar loses its significance.

14. It is further submitted that though PW.3 had accompanied the deceased-Nazim Pasha and both were proceeding on the bike towards their respective houses, PW.3 did not inform either to the family members of the deceased or to the police about the incident which is unnatural and his presence is doubtful. Moreover, the clothes of P.W.3 have not been seized to substantiate that he was present at the spot.

15. It is further submitted that the investigating officer is said to have seized the revolver used for commission of the offence at the instance of accused No.1 at Doddabettahalli, Yelahanka. However, there is a discrepancy in the said revolver. As per the seizure mahazar which is marked as Ex.P.11, the revolver seized under the mahazar contained six chambers, but the ballistic expert after examining the revolver submitted his opinion stating that the revolver had seven chambers. This inconsistency goes to the root of the case of the - 13 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 prosecution. The Trial Court failed to appreciate the said aspects; the inconsistency in this regard has been ignored to record the conviction of accused No.1 which is liable to be set aside. Making such submissions, the learned counsel for appellant No.1 prayed for allowing the appeal.

16. Sri.Sandesh J.Chouta, learned Senior Counsel appearing on behalf of learned counsel Sri. S. Sunil Kumar appearing for accused Nos.2 to 5 submitted that the presence of eyewitnesses at the scene of occurrence was doubtful. Even assuming that there were eyewitnesses present at the scene of occurrence, they are all related and interested witnesses. Therefore, their evidence ought to have been considered by the Trial Court on proper scrutiny. As the Trial Court failed to appreciate the evidence of related witnesses properly, the impugned judgment is not sustainable.

17. It is further submitted that the overt-act of accused Nos.2 to 5 has not been established by the prosecution. The recovery has also not been established by the prosecution. When the presence of the accused Nos.2 to - 14 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 5 is not proved, the conviction against them ought not to have been passed.

18. It is further submitted that the prosecution case is that the deceased Nizam Pasha was shot dead and also he was assaulted with long choppers, machete, dagger and a wooden club. As a result of the said assault, the deceased had sustained bleeding injuries, but the Investigating Officer did not collect the blood stained clothes of the accused to substantiate their presence and participation in the said murder. Therefore, conviction against accused Nos. 2 to 5 is not justified

and it requires to be set aside.

19. To substantiate his contention, the learned Senior Counsel relied on the following judgments: i) MD.JABBAR ALI & Ors. V. STATE OF ASSAM¹ ii) SHIVASHARANAPPA & Ors. V. STATE OF KARNATAKA² 1 (2022) SCC Online SC14402 (2013) 5 SCC705- 15 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 20. Similarly, Sri.K.Raghavendra, learned counsel appearing for accused No.7 vehemently submitted that though the prosecution projected that accused No.7 had facilitated accused No.1 to fire the deceased-Nizam Pasha, the prosecution had not established that accused No.7 was having knowledge about the said shooting. The allegation against accused No.7 as per the prosecution is that accused No.7 constituted an offence under Section 120-B R/w Section 149 of IPC. However, the prosecution has not established his active participation in the said commission of offence. Therefore, the conviction against accused No.7 in respect of all the offences cannot be sustained and he is entitled for acquittal.

21. Sri.Parameshwarappa, learned counsel appearing for accused Nos.9 and 10 vehemently submitted that the Trial Court has committed error in recording the conviction against accused Nos.9 and 10 without any supporting evidence which is not appropriate and the same is liable to be set aside.-. 16 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 22. It is further submitted that as per the evidence of the so-called eyewitnesses, the accused Nos.9 and 10 have assaulted with clubs, but the investigating officer seized only one wooden club which is identified as M.O.6. Non-seizure of other wooden clubs is fatal to the case of the prosecution and the prosecution did not establish the overt-act of accused Nos.9 and 10. This discrepancy had not been considered by the Trial Court, consequently, the impugned judgment is liable to be set aside. With these submissions, the learned counsel for accused Nos.9 and 10 prayed for allowing the appeal.

23. Similarly, Mr.Naushad Pasha, learned counsel appearing on behalf of accused Nos.6 and 8 submitted that the entire case is based on circumstantial evidence. Though the prosecution projected some persons as eye witnesses to the incident,

they are not eyewitnesses to the incident and they are all related witnesses of the deceased. Therefore, their evidence ought not to have been considered by the Trial Court.

24. It is further submitted that the overt-act of the appellants viz., accused Nos.6 and 8 has not been properly - 17 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 established by the prosecution. Nothing has been recovered at the instance of these accused persons. Therefore, the accused persons are entitled for acquittal. Making such submission, the learned counsel for accused Nos.6 and 8 prays to allow the appeals.

25. Per contra, Smt.Sumathi, Special Public Prosecutor for respondent - State justified the judgment of conviction passed by the Trial Court and submitted that the Trial Court has rightly appreciated the evidence and recorded the conviction, which is appropriate for the reason that the evidence of related witnesses cannot be discarded, if their evidence is reliable and trustworthy.

26. It is further submitted that the entire case is based on the evidence of eyewitnesses. The eyewitnesses are consistent in their evidence in respect of overt-act of each accused and their participation. There might be some inconsistencies and improvements in their evidence, but, it is not so significant and material to discard their evidence.

27. It is further submitted that the commission of murder has been proved, the place of commission of the said offence - 18 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 has also been proved. The revolver which was used for the commission of said offence has been seized at the instance of accused No.1 in presence of PW.16, who is the panch witness. The said seizure mahazar has been marked as Ex.P11. Similarly, the long choppers, machete, dagger, wooden clubs and bikes used for the commission of the offence were seized at the instance of accused Nos.2, 3, 4, 6 and 7 in presence of PW.14 under Ex.P7.

28. It is further submitted that the investigating officer recovered the dagger which is marked as M.O.4 at the instance of accused No.5 under seizure-mahazar which

is marked as Ex.P10. The postmortem report which is marked as Ex.P18 indicates that the death was due to shock and haemorrhage, as a result of injury to the vital organs. The FSL report which is marked as Ex.P19 indicates that the items which were sent for chemical analysis were stained with human blood of O blood group. Ex.P20 is the certificate issued by the FSL authority, which indicates that the revolver was in working condition and its approximate range of firing has - 19 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 also been mentioned. Of course, there are some discrepancies in regard to chambers of the revolver, however it has been clarified by the Investigating Officer in the cross-examination.

29. On overall reading of the evidence of all the witnesses, it can be said that the prosecution proved the case beyond all reasonable doubt and the Trial Court rightly appreciated the evidence of all the witnesses and also the documents available on record and recorded the conviction, which contains either no infirmity or no error. Therefore, the conviction passed by the Trial Court requires to be confirmed. Making such submissions, the learned Special Public Prosecutor prayed for dismissing the appeals.

30. After having heard the learned counsel for the respective parties and also perused the findings of the Trial Court, it is necessary to state the background to re-assess it again. The case of the prosecution is that, deceased Nizam Pasha was the Councilor of Town Municipality, Ramanagara. He is stated to have killed the brother of accused No.1 and the case was pending against the - 20 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 deceased. The accused No.1 had enmity with the deceased and he was waiting for an opportunity to eliminate the deceased.

31. On 13.01.2015, around 2.30 to 3.30 p.m., when the deceased Nizam Pasha and PW.3 were returning on the motorcycle from the Municipality Office, accused No.1 fired at the deceased and then other accused also assaulted the deceased Nizam pasha with deadly weapons like long choppers, machetes, dagger and wooden clubs and caused injuries on the vital parts of the body. Immediately, he was shifted to the hospital however, he succumbed to the said injuries. Therefore,

his elder brother who is examined as P.W.1 lodged a complaint against accused No.1 and others. The police registered the case in Crime No.10/2015 for the offences stated supra, conducted the investigation and submitted the charge sheet.

32. The Trial Court recorded the conviction after appreciating both oral and documentary evidence on record. Being aggrieved by the same, the appellants arrayed as - 21 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 accused Nos.1, 2 to 5, 7, 9 and 10 are before this Court. In order to re-assess the entire evidence on record, it is appropriate to have a look upon the evidence of each witness.

33. PW.1 - Yunis Pasha is the brother of the deceased Nizam Pasha. He lodged the complaint regarding the murder of his younger brother before the police. In the said complaint, he mentioned the name of accused No.1 and others. However, he did not mention the names of other accused.

34. PW.2 is a chance witness; he deposed that, on 13.01.2015, he had been to hospital along with Mudabir who is examined as PW.10. Doctor was not there in the clinic and he was told that the doctor would come at 5 O clock. Therefore, they returned and while coming near KEB office on the motorbike, he could see to the incident by chance. He supported the case of the prosecution.

35. PW.3 is an eyewitness to the incident. On 13.01.2015, he had been to Jamia Masjid for namaz as the son of Haji Muneer had died. There, he met Nizam Pasha. According - 22 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 to him, he took Nizam Pasha to Municipality office as he had some work at Municipality office. After the work, he was bringing back the said Nizam Pasha on his motorbike to drop him to his house. In the meantime, when they came near KEB office, he heard the sound, and Nizam Pasha fell along with him on the ground. Immediately, he woke up and saw that, accused No.1 was firing at the deceased and he was asked by Nizam Pasha to run away from the spot. He has stated to have ran inside the KEB compound. Except that, he did not depose anything about the overt - act of other accused persons.

36. PW.4 is also a chance witness. He and his friend Babu had been to Ramanagara Taluk office in connection with katha issues of the property. On returning from the said office, they came near KEB office and witnessed the incident. He supported the case of the prosecution and identified the accused persons.

37. PW.5 is Jabeer Beg. On 13.01.2015, he and his friend Saleem Pasha were going to hospital as he had chest pain. In the meantime, when they crossed railway underpass and reached near KEB office, they heard the - 23 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 sound of shooting and saw Nizam Pasha being shot and being assaulted by the other accused. He supported the case of the prosecution.

38. PW.6 - Saleem Pasha who accompanied PW.5 has supported the case of the prosecution and deposed in consonance with P.W.5.

39. PW.7 - Zakir Khan is a relative of the deceased Nizam Pasha. He deposed that on 13.01.2015, around 3.00 p.m., he was bringing his younger sister from school. When he reached near KEB office to go to his house, he happened to see the incident. Immediately, he asked his brother Kaship to come to the spot and take his sister with him. Thereafter, he and his another brother and one Jabiulla, who is an auto driver, shifted the injured to the hospital. He supported the case of the prosecution.

40. PW.8 - Syed Syef @ Syef is an independent witness and also a chance witness to the incident. According to him, on 13.01.2015, around 3.15 p.m., he and his friend Imran Khan were going from Kumdhan Mohalla, after loading the materials into the auto, came to drink tea near railway station. When they were drinking tea, they - 24 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 heard a huge sound near KEB office and they saw that accused No.1 and deceased were quarreling with each other. Accused No.1 fired on the right thigh of the deceased and other accused assaulted the deceased with weapons each of them had. He supported the case of prosecution and narrated the incident.

41. PW.9 - Rahamathulla deposed that he was drinking tea in the hotel of Ahmad along with Saleem Khan. He and Saleem have stated that they saw the incident and also involvement of other accused. He is an eyewitness to the incident and supported the case of the prosecution.

42. PW.10 - Mudabir Khan is the relative of the deceased. He deposed that he and his friend had been to Jiaulla hospital. When the Doctor was not available, he was coming back along with P.W.2 to go to his house and when they were going near KEB office, they happened to see the incident. He supported the case of the prosecution.

43. PW.11 - Saleem deposed that he and P.W.9 were drinking tea near railway station. When both were - 25 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 drinking tea, P.W.9 received a phone call and was asked to go to Municipal office. When both he and P.W.9 were going near KEB office, he happened to see the incident and they he deposed as eyewitness to the incident. Therefore, he is also a chance witness.

44. PW.12 - Mohammed Jabiulla is the auto rickshaw driver. On 13.01.2015, he has stated to have gone to railway station to drop the passenger and after that he was going near railway station to go to tea stall to have tea. After drinking tea, he was cleaning his auto rickshaw; at that time he heard the sound and saw the incident. After the incident he has stated to have shifted the injured in his auto rickshaw to the hospital. He supported the case of the prosecution.

45. PW.13 - Shivaraju was working as ASI. He was entrusted the work of bringing the blood stained cloths of the deceased from the hospital. He went to hospital and contacted the Doctor and brought some items which they had given to him. After handing over the said items to Investigating Officer, those items were seized by the - 26 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 Investigation officer. The said seizure - mahazar is marked as Ex.P5.

46. PW.14 - Devendra was working as Pourakarmika of Municipality office at Ramanagara. He was asked to accompany the Investigating officer as a witness to seizure mahazar. As per his evidence, five accused persons led the police and

panch witnesses to the place where they had hidden the long choppers, machete and motorbike. Those items have been seized at their instance and it was marked as Ex.P7. He supported the case of the prosecution.

47. PW.15 - Irfan was working as auto driver. He was asked to be a witness to the seizure mahazar. He accompanied the police along with Abdul Waheed. As per his evidence, Abdul Waheed showed the dagger which was thrown under the bridge, near the KEB compound. The Police is said to have drawn the seizure - mahazar as per Ex.P10. He supported the case of the prosecution.

48. PW.16 - Thanveer was asked to be a witness to the seizure mahazar of the gun which was used for commission of the offence. The said gun was seized - 27 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 under the seizure mahazar which is marked as Ex.P11 at the instance of accused No.1. He supported the case of the prosecution.

49. PW.17 - Iliyaz Pasha is a relative of the deceased Nizam Pasha. On receiving the information that his brother-in-law was killed, he went to the hospital and saw the dead body. He is a witness to Inquest - mahazar which is marked as Ex.P4. He supported the case of the prosecution.

50. PW.18 - Syed Imthiyaz is a mechanic by profession. He had received a message that Nizam Pasha was shot dead. He is stated to have gone to hospital to see the dead body and he was asked to be a witness to Inquest which is marked as Ex.P4.

51. PW.19 - Devkumar.M was working as Head Constable. He was deputed to arrest the accused. Accordingly, he and his colleague were going near Gousia College. However, both were waiting near the college after receiving the credible information that accused Nos.5 and 9 were coming near the college. Immediately, they - 28 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 apprehended the accused Nos.5 and 9 and produced before CPI.

52. PW.20 - Jabbir is a silk merchant. He was standing near the KEB office along with Afsar. The police called him near the place of occurrence. He stated in his

evidence that, Yunis had also accompanied with the said police. He went near the KEB office and noticed that the compound was stained with blood. The Police collected the samples and obtained his signature on Ex.P13. He supported the case of prosecution.

53. PW.21 - Sufiyan was working as welder. He was asked to accompany the police. He went along with his friend Waheed. Accused No.7 - Shafi Ulla Khan showed the bike which was used at the time of committing the murder. It was seized at his instance under the seizure mahazar which is marked as Ex.P14. He supported the case of the prosecution.

54. PW.22 - V.Govindaraju was working as Assistant Engineer, PWD, Ramanagara. He stated to have - 29 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 prepared the sketch of place of occurrence. The sketch is marked as Ex.P15.

55. PW.23 - Swamy.K was working as Head Constable. He has stated to have arrested accused persons, namely, accused Nos.2, 3, 4, 6, 7 and 10 and produced them before the Investigating Officer. He supported the case of the prosecution.

56. PW.24 - C.Sathish was working as PSI of Pura Police Station. He is stated to have recorded the statement of Yunis Pasha and registered a case in Crime No.10/2015. The said FIR is marked as Ex.P16.

57. PW.25 - Venkatesh was working as Head Constable. He stated to have handed over the items given by the Doctor to the FSL and brought endorsement for having delivered the said items.

58. PW.26 - Dr.Shashidhar.S was working as Doctor. He has stated to have conducted postmortem of the deceased and submitted the report as per Ex.P18 and supported the case of the prosecution.

59. PW.27 - Shahnaj Fathima was working as Scientific Officer in Bengaluru. She stated to have conducted - 30 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 scientific examination of the materials sent to the

laboratory. The said report is marked as Ex.P19. She supported the case of the prosecution.

60. PW.28 - B.C.Ravindra was working as Assistant Director in the department of ballistic division. He is said to have examined the revolver used for commission of the offence and submitted his report as per Ex.P20.

61. PW.29 - Srividya was working as an In-charge Assistant Director, Physics department. She has examined the items sent to her and submitted the report as per Ex.P21.

62. PW.30 - Anil Kumar.V was working as Circle Inspector of the respondent - police. He said to have conducted investigation and submitted the charge sheet.

63. PW.31 - P.T.Subrahmanya was working as CPI, Ramanagara Town Police Station deposed about partial investigation conducted by him. ANALYSIS⁶⁴ In the context of arguments put forth by learned counsel, it is relevant to refer to the judgment of the Honble Supreme Court on the propositions of law for better understanding. The Honble Supreme Court in the case of - 31 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 SARWAN SINGH and others vs. STATE OF PUNJAB³ observed in paragraph No.10 as under: 10. The next argument by learned counsel for the appellants was that the evidence of the eyewitnesses consisted of partisan evidence and should not, therefore, be relied upon, particularly because the evidence showed that there were two opposing factions in the village - one led by the deceased and the other by the accused. Mr Hardy, however, fairly conceded that even though the eyewitnesses may have belonged to the group of the deceased there was nothing to show that the two groups were on inimical terms with each other, but he contended that the fact the witnesses came from one particular group was by itself sufficient to show the interested nature of the evidence. In our opinion this argument is not based on a correct appreciation of the evidence. To begin with, it cannot be said that PW8Gurdev Singh and PW9Pal Singh were interested or partisan witnesses. All that the accused have been able to show is that PW8Gurdev Singh was on visiting terms with the deceased. In villages where population is scanty every villager is usually on visiting terms with another villager, unless there is animus between

them. That by itself is not sufficient to label him as being a partisan witness. So far as PW9Pal Singh is concerned, there is 3 (1976) 4 SCC369- 32 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 positive evidence to show that he was not at all an interested witness but was a completely independent witness. PW2Ajaib Singh the first eyewitness has stated at p. 40 of paper-book II that Pal Singh was not on visiting terms with Jit Singh prior to the occurrence. When Mr Hardy drew our attention to this statement he seemed to suggest that the word not was printed by mistake and what really was recorded by the judge was that Pal Singh was on visiting terms with Jit Singh. We have, however, perused the original record and we find that the word not is present there also. What has happened is that the word on after not seems to have been inadvertently omitted. But then the sentence read as a whole clearly indicates that Pal Singh was not on visiting terms with Jit Singh. There is no evidence to show that Pal Singh was in any way closely connected or interested in the deceased, apart from the fact that he was a co-villager. In these circumstances, even if the evidence of Ajaib Singh and Gurdev Singh be treated to be interested and partisan, since their evidence is corroborated by the evidence of Pal Singh who is an independent witness, the infirmity from which the evidence of PW2Ajaib Singh and PW8Gurdev Singh suffered disappears. Moreover, it is not the law that the evidence of an interested witness should be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested - 33 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration. Indeed there may be circumstances where only interested evidence may be available and no other, e.g. when an occurrence takes place at midnight in the house when the only witnesses who could see the occurrence may be the family members. In such cases it would not be proper to insist that the evidence of the family members should be disbelieved merely because of their interestedness. We, however, need not dilate on this point, because assuming as we have said

that PW2Ajaib Singh and PW8Gurdev Singh were interested witnesses, here we have the fact that their evidence has been clearly and consistently corroborated on all points by PW9Pal Singh who is an independent witness and who bore no animus whatsoever against the accused. The learned Additional Sessions Judge has, however, overlooked this important aspect of the case and we find no reason whatsoever to distrust the evidence of Pal Singh even on its intrinsic merit. We have carefully perused the evidence of PW2Ajaib Singh, PW8Gurdev Singh and PW9Pal Singh and we are satisfied that their evidence is creditworthy and there are no strong or cogent - 34 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 reasons why their evidence should be completely discarded.

65. In another recent judgment, the Honble Supreme Court in the case of RAJESH YADAV AND ANOTHER ETC. vs. STATE OF U.P⁴ paragraph Nos.26, 27 and 28 read thus: 26. A chance witness is the one who happens to be at the place of occurrence of an offence by chance, and therefore, not as a matter of course. In other words, he is not expected to be in the said place. A person walking on a street witnessing the commission of an offence can be a chance witness. Merely because a witness happens to see an occurrence by chance, his testimony cannot be eschewed though a little more scrutiny may be required at times. This again is an aspect which is to be looked into in a given case by the court. We do not wish to reiterate the aforesaid position of law which has been clearly laid down by this Court in State of A.P. v. K. Srinivasulu Reddy, (2003) 12 SCC660 12. Criticism was levelled against the evidence of PWs 4 and 9 who are independent witnesses by labelling them as chance witnesses. The criticism about PWs 4 and 9 being chance witnesses is also without any foundation. They have clearly explained as to how they happened to be at the spot of occurrence and the trial court and the High Court have accepted the same.

13. Coming to the plea of the accused that PWs 4 and 9 were chance witnesses who have not explained how they happened to be at the alleged place of occurrence, it has to be noted that the said witnesses were independent witnesses. There was not even a suggestion to the witnesses that they had any animosity towards any of the accused. In 4 (2022) Livelaw (SC) 137 - 35 - CRL.A

No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 a murder trial by describing the independent witnesses as chance witnesses it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere chance witnesses. The expression chance witness is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.

27. The principle was reiterated by this court in *Jarnail Singh v. State of Punjab*, (2009) 9 SCC719 21. In *Sachchey Lal Tiwari v. State of U.P.* [(2004) 11 SCC410 2004 SCC (Cri) Supp 105]. this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and a passerby had deposed that he had witnessed the incident, observed as under: If the offence is committed in a street only a passerby will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there. The Court further explained that the expression chance witness is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is - 36 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.

22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh* [(1997) 4 SCC192 1997 SCC (Cri) 538]., *Harjinder Singh v. State of Punjab* [(2004) 11 SCC253 2004 SCC (Cri) Supp 28]., *Acharaparambath Pradeepan v. State of Kerala* [(2006) 13 SCC643 (2008) 1 SCC

(Cri) 241]. and Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC360 (2009) 1 SCC (Cri) 188].). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan [(2004) 10 SCC632 2005 SCC (Cri) 579].).

23. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident (vide Thangaiya v. State of T.N. [(2005) 9 SCC650 2005 SCC (Cri) 1284].). Gurcharan Singh (PW18 met the informant Darshan Singh (PW4 before lodging the FIR and the fact of conspiracy was not disclosed by Gurcharan Singh (PW18 and Darshan Singh (PW4. The fact of conspiracy has not been mentioned in the FIR. Hakam Singh, the other witness on this issue has not been examined by the prosecution. Thus, the High Court was justified in discarding the part of the prosecution case relating to conspiracy. However, in the fact situation of the present case, acquittal of the said two co-accused has no bearing, so far as the present appeal is concerned. - 37 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 Related and Interested Witness:

28. A related witness cannot be termed as an interested witness per se. One has to see the place of occurrence along with other circumstances. A related witness can also be a natural witness. If an offence is committed within the precincts of the deceased, the presence of his family members cannot be ruled out, as they assume the position of natural witnesses. When their evidence is clear, cogent and withstood the rigor of cross examination, it becomes sterling, not requiring further corroboration. A related witness would become an interested witness, only when he is desirous of implicating the accused in rendering a conviction, on purpose.

66. On careful reading of the dicta of the Honble Supreme Court, it becomes clear that the quality of the evidence that matters; if the evidence is reliable, notwithstanding the classification, namely, chance witness, related witness or any other witness, it becomes just evidence. Such testimony being natural adding to the degree of probability, the Court has to place reliance upon it.

67. Having considered the said principle of law, now, it is necessary to refer the evidence of eyewitnesses. The - 38 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 prosecution examined PWs.2 to 12 who are the eyewitnesses to the incident.

68. PWs.2 and 10 are one set of witnesses, they had been to Jiaulla hospital to see the Doctor, as the doctor was not available and they were asked to come after 5 O clock, they were returning to their respective houses and by chance, they saw the incident and witnessed the said murder. No doubt, PW.2 is the independent witness and he has supported the case of the prosecution in spite of subjecting him for lengthy cross-examination. PW.10 is the relative of the deceased. He has also supported the case of the prosecution. Merely because he is a relative of the deceased, his evidence cannot be discarded and there is no reason to disbelieve his evidence.

69. PW.3 is an eyewitness to the incident. He deposed in his evidence that he and deceased Nizam Pasha were coming back after attending the work at Municipality office. When they reached near KEB office, he heard a huge sound and he thought that the tyre of his vehicle might have burst. However, immediately, both PW.3 and Nizam Pasha fell down on the ground. Nizam Pasha - 39 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 instructed him to run away from the place. Accordingly, he went inside the KEB compound. However, he saw that accused No.1 had revolver in his hand. Though the conduct of PW.3 appears to be strange, the fact remains that he was riding the motorcycle when the incident had occurred. Mindset may differ from person to person, it is not always safe to measure the mindset of a person with mathematical precision. He might not have disclosed the said fact soon after the incident to the relatives of the deceased, that does not mean that he was not present at the spot. His presence has been noticed by several other eyewitnesses, therefore, his evidence is reliable and relevant.

70. The third set of witnesses are PWs.4, 9 and 11. As per the evidence of PW.4, he and CW.11 had been to Municipality office around 2.00 to 2.30 p.m., as they had some work at the said office. He further deposed that he had instructed PW.9

to come near the said office. However, as PW.9 did not receive his call, he was coming back from the Municipality office. On the other hand, PW.9 deposed in his evidence that he and PW.11 were - 40 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 drinking tea at Ahamad tea-stall. When he was drinking tea, received phone call from PW.9 to go to Municipality office, hence, he was going along with PW.11. PW.11 also endorsed the evidence of PW.9 and supported the case of the prosecution that accused No.1 fired towards Nizam Pasha to kill him, and other accused also assaulted Nizam Pasha with their respective weapons. Even though, these three witnesses were subjected to cross examination to elicit from them about the enmity with the accused, nothing has been brought on record which makes their testimony unbelievable. Though these witnesses were chance witnesses, it is not possible to state that they could not have seen the incident while going to Municipality office. Therefore, their evidence is natural, reliable and believable.

71. It is the contention of all the counsel for appellants that witnesses are planted to be eyewitnesses. Even though all these witnesses were present at the vicinity of the place of occurrence, none of the them has stated about the presence of other witnesses, even though they were acquainted with each other. Merely because they did not - 41 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 disclose the presence of other witnesses, that may not be a ground to disbelieve their evidence. Some errors are bound to occur in the evidence of the witnesses. In such circumstances, the Court has to see only whether such errors really affect the case of the prosecution or not. If those errors are trivial contradictions, it would not affect the case of the prosecution materially and obviously, it may be ignored and relevant part of the evidence may be considered.

72. The evidence of PW.11 is significant for the reason that he is the relative of accused No.1. According to him, accused No.1 married the daughter of his sister. However, he supported the case of the prosecution and explained the overt-act of each accused being an eyewitness to the incident. His evidence is reliable and relevant and nothing is there to disbelieve his evidence.

73. PWs.5 and 6 who are the witnesses, they were going to Abhi Hospital as PW.5 was stated to be suffering from chest pain. These two witnesses are chance witnesses and both these witnesses are not relatives of either deceased or accused. Both are independent witnesses.-. 42 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 Even though they have been subjected to lengthy cross- examination, nothing is there to disbelieve their evidence and they withstood the cross-examination and supported the case of the prosecution.

74. Another set of witnesses are PWs.7 and 12. PW.7 deposes that he was bringing his younger sister from her school. When he reached near KEB office, he saw that PW.3 and his maternal uncle Nizam Pasha were proceeding in front of him and accused Nos.1 and 7 were following them in the motorbike. The accused No.1 fired on the back of Nizam Pasha. Thereafter, he saw the entire episode of the said incident and stated in his evidence. According to him, he along with his another brother Musabveer Khan shifted the injured in the autorickshaw of PW.12. He admitted that his cloths were stained with blood of Nizam Pasha, however, the said cloths were not seized by the police. Similarly, PW.12 who is an auto driver had also deposed in his evidence that his auto seat cover was stained with human blood, but, the seat cover was not seized by the Investigating Officer. Merely because the Investigating Officer did not - 43 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 seize the cloths of PW.7 and seat cover of the auto rickshaw of PW.12, that may not be significant. It could have been seized, its non seizure is just a lapse in investigation. For this reason if it can be assumed that the evidence of PW.7 is not believable, the other witnesses who are the eyewitnesses to the incident have supported the case of the prosecution and their evidence is reliable.

75. It is needless to say that to arrive at a conclusion, the Court has to see not the quantity, but, the quality of the evidence. The conviction can be recorded even on the evidence of solitary witness, if it is reliable and believable.

76. PW.8 is another independent witness and also chance witness to the incident. According to him, he and C.W.10-Imran Khan after having loaded the items to the

auto rickshaw at Kumudhan Mohalla, came near the railway station road and they were drinking tea in the tea stall. They had witnessed the incident by chance. The prosecution examined only PW.8 and given up CW.10. He is an independent witness and also natural witness to - 44 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 the incident who explained the overt-act of each accused properly. Though the defence tried to impeach his evidence by trying to force his animosity with the accused, he denied the said fact and supported the case of the prosecution.

77. On overall reading of the evidence of all the witnesses stated supra, it appears that all the witnesses are consistent in their evidence that accused No.1 - Samad fired Nizam Pasha on three different parts of the body and other accused, namely, accused No.2 - Irfan Khan, accused No.3 - Mubarak assaulted Nizam Pasha on his head with long choppers. Accused No.4 - Imtiyaz assaulted with machetes on the chin of the deceased. Accused No.5 - Wahid assaulted with a dagger. Accused No.6 - Waseem Pasha assaulted with machete. Accused Nos.8 and 9 assaulted with wooden clubs on different parts of the body. Thereafter, all the accused ran away from the place of occurrence towards Tippunagara. The eyewitnesses have supported the case of the prosecution and even though they have been cross-examined on different subjects and also in the different contexts, the - 45 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 facts remain that these witnesses are consistent in their evidence regarding the place of occurrence and the incident. Merely because there are some minor contradictions, omissions and embellishment in their evidence, that would not take away the case of the prosecution. In other words, the said contradictions are not material contradictions. Recovery of material objects:

78. Accused No.1 - Samad voluntarily surrendered before the Magistrate on 16.01.2015. It is stated that he made a confession statement voluntarily. And he took the police to Doddabettahalli and there he went near house of Chand Pasha and handed over the revolver to the police in the presence of panch witness, namely, PW.16. The said revolver was seized under the seizure mahazar which is marked as Ex.P11. As per the said mahazar, the said revolver was stained with mud and it had six chambers. However, PW.28 - B.C.Ravindra being a ballistic

expert after examining the said fire arm, opined that it contained seven chambers. The defence put a question in regard to this inconsistency to PW.30, the - 46 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 Investigating Officer. He clarified that it was not opened when it was seized and he could not see the exact chambers of the said revolver. Be that as it may, the Doctor who conducted postmortem has been examined as PW.26 and submitted his report as per Ex.P18. The said Doctor found three gun shot injuries on the body of the deceased and the said injuries had been caused by the gun which was seized at the instance of accused No.1 and the same has been clarified by the ballistic expert. Merely because, some inconsistencies in the evidence of PW.16 and Ex.P11 regarding the chambers of the revolver, that may not be material contradiction and the fact remains that accused No.1 fired thrice on different parts of the body of Nizam Pasha in front of the KEB office and the same has been witnessed by 12 eyewitnesses.

79. PW.14 is the witness who deposed about the recovery of long choppers and motorbike etc. According to him, he knew the names of only accused Nos.2 and 3 and he was not aware of the names of the other accused. As per Ex.P7, two long choppers, one machete, one club and two - 47 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 motorbikes were seized. Though the said seizure mahazar has been doubted by the defence, the fact remain that all the material objects were stained with human blood and it is O group blood as per Ex.P19. The Scientific Officer who examined the articles has been examined as PW.27 and she has supported the case of the prosecution. The accused in their statements recorded under Section 313 of Cr.P.C., did not offer any explanation as to how the said articles were stained with human blood. This is one circumstance that buttresses the prosecution case.

80. On 20.01.2015, accused Nos.5 and 9 were produced before the Investigating Officer. Their voluntary statements were also obtained. It has come in evidence that recovery of dagger was at the instance of accused No.5 in the presence of P.W.15 and one Suhail who were witnesses to recovery panchanawa. The said dagger was seized under the seizure mahazar which is marked as Ex.P10. The said seizure mahazar has been proved and P.W.15 has supported the case of the

prosecution.-. 48 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 81. PW.21 - Sufian deposed in his evidence that accused No.7 showed the bike which was used by him at the time of committing the offence. The said bike has also been seized under the seizure mahazar which is marked as Ex.P14. The said seizure mahazar has been supported by P.W.21.

82. On overall reading of the evidence of these witnesses, it appears that the Investigating Officer might have committed certain defects in conducting the investigation. However, the said defects cannot take away the case of the prosecution, as the eyewitnesses and recovery witnesses are consistent in their evidence in respect of the incident and overt-act of each accused. The Honble Supreme Court time and again reiterated that mere defects in the investigation cannot be sole ground for acquittal. In this context, it is relevant to refer the judgment of the Honble Supreme Court in the case of C.MUNIYAPPAN AND OTHERS V. STATE OF TAMIL NADU⁵ Paragraph No.55 reads thus:

55. There may be highly defective investigation in a case. However, it is to be 5 (2010)9 SCC567- 49 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

83. On careful reading of the dictum of the Honble Supreme Court, it makes it clear that defect in investigation by itself cannot be a ground for acquittal. It may not be impertinent to opine here that foolproof evidence, as the defence expects, is never possible to be obtained. Therefore, we are of the opinion that, the points raised by the learned counsel for the appellants do not dislodge the prosecution case.-. 50 - CRL.A No.277 of 2018 C/W CRL.A No.372 of 2018 CRL.A No.1540 of 2018 84. In the light of the observation made above, we are of the considered opinion that, the findings of the Trial Court in recording the conviction is appropriate and proper and there is no good reason to interfere with the said findings. Hence, the appeals deserve to be dismissed and now the following:

ORDER

The Appeals are dismissed. Sd/- (SREENIVAS HARISH KUMAR) JUDGE Sd/- (S RACHAIAH) JUDGE UN

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