In Re: Tamappa and ors.

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Court : Karnataka

Decided On : Jul-21-1965

Reported in : AIR1967Mys71; 1967CriLJ565

Judge : A.R. Somnath Iyer and ;Ahmed Ali Khan, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 157, 344, 423 and 540; Indian Penal Code (IPC), 1860 - Sections 34, 40, 302 and 324

Appeal No. : Criminal Appeal No. 74 of 1964

Appellant : In Re: Tamappa and ors.

Advocate for Def. : Murlidhar Rao, High Court Govt. Pleader

Advocate for Pet/Ap. : Appa Rao, Adv.

Judgement :

Somnath Iyer, J.

1. In the village of Chintanapally in the District of Gulbarga, there lived two brothers Chintalayya and Hanumappa. Hanumappa had 4 sons and they are the four appellants before us. Chintalayya had a daughter Gangavva who was married to a certain Maryappa. On April 20, 1962 sometime late in the evening, Maryappa was killed and his dead body was brought on April 21, 1962 to P. W. 18 Dr. Ramachandra who was a medical Officer in Gurmitkal at 8-30 A. M. He observed

on that dead body two cut wounds behind the right ear, one punctured wound on the back of the neck and two cut wounds on the middle of the head. He also observed three multiple fractures on the frontal and parietal bones. In his opinion, Mariappa died in consequence of the injury to the head which produced shock and haemorrhage.

2. The prosecution case was that the four appellants before us who were the sons of Hanumappa and who had settled down in the village of Kandkur, 3 miles away from Chintanapally, had killed Mariappa. It was said that they killed him at 6 P. M. in Kandkui and that when P. W. 7 Thimmappa who witnessed the murder tried to intervene, Accused 2 who is the 2nd appellant, gave him a blow with a stick and caused him hurt. AH the tour appellants, were, on the basis of these allegations, Inert by the Court of Session. The first charge was against all the 4 appellants and that charge was that in furtherance of the common intention to murder Mariappa, the 4 accused caused injuries to him with axes, sticks and 'Katdar' stick with the intention of causing his death and that they committed an offence of murder punishable under Section 302 read with Section 34 of the Penal Code.

3. The second charge which was brought against only Accused-2 was that he caused hurt to P. W. 7 and committed an offence punishable under Section 324 of the Penal Code.

4. The Sessions Judge found all the 4 accused guilty of the first charge, and the 2nd accused guilty of the second. For the offence of murder, he sentenced the 4 appellants to imprisonment for life, and for causing hurt to P. W. 7 he sentenced Accused 2 to one year's rigorous imprisonment. The 4 accused appeal from their respective convictions and sentences.

5. It was alleged by the prosecution that in respect of a land which belonged to Chintalayya, the father-in-law of the deceased Mariappa, there were some disputes between Accused-1 to 4 on the one hand and the deceased Mariappa on the other. Evidence was produced that Mariappa had become the Illatom son-in-law of Chintalayya and that in a suit which had been brought by Mariappa against Chitalayya, there was a collusive decree declaring Mariappa as illatom son-in-law of Chintalayya. Evidence was also produced that that decree was made

notwithstanding an attempt made by the 4 accused to get themselves impleaded as supplemental defendants in that suit.

6. According to the prosecution case, Chintalayya's land was leased to P. W. 4 Mallappa, who, in his turn, asked P. W. 10. Hanamanthappa to cultivate it. It was said that on the day on which Mariappa was killed, P. W. 10 Hanamanthappa went to the land to plough it, and, that he was driven out of that land by the 4 accused, and, that information about that incident was imparted to Mariappa sometime in the afternoon. Mariappa, it was said, then undertook a journey sometime in the evening to the village of Kandakur to investigate the matter. It was explained that since the accused were all living in Kandkur and the land was also in Kandkur, that journey was performed by Mariappa to Kandkur.

7 The evidence in support of the charge which the prosecution produced was that at about 6 P. M, when the deceased Mariappa wag standing in front of the house of one Rayappanavar, he was surrounded by the 4 accused and done to death, and that P. W. 6 Basappa who witnessed the occurrence returned to the village of Chintanapally and informed P. W. 3, the wife of Mariappa, and P. W. 5, his son, both of whom proceeded to the village of Kandkur and sat near the dead body of Mariappa weeping until P. W. 16, the Sub-Inspector, reached that place ill about 3 A. M. that night.

8. In proof of the accusation against the 4 accused, the prosecution produced evidence which may be classified under three heads. One category consisted of evidence produced to prove the motive for the murder, the other category consisted of evidence given by the supposed eyewitnesses, and the third consisted of allowed recovery of incriminating articles discovered on information given by the accused. The Sessions Judge believed all these pieces of evidence and thought that there was a sufficiently string motive for the murder and that the participation by the 4 accused in the murder was established by the evidence of the eye witnesses, but that, however, the recovery of the incriminating articles was not of any importance to the prosecution case. He therefore convicted all the 4 accused of an offence of murder punishable under Section 302 read with Section 34 and accused 2 of an offence of hurt punishable under Section 324. It is from

these convictions that this appeal is preferred.

9. Many submissions were made before us by Mr. Appa Rao in support of his contention that the accused were wrongly convicted by the Sessions Judge. His principal submission was that the evidence of the 3 eye-witnesses whom the Sessions Judge believed, was so untrustworthy that it was impossible to take any other view than that that evidence should be discarded. His next submission was that material evidence which the prosecution should have produced was suppressed, and, that even an endeavour made on behalf of the accused to have that material placed before the court met with failure on account of a wrong decision made by the Sessions Judge on the relevant application made on behalf of the accused for that purpose. His third submission was that the conduct of the trial by the Sessions Judge was both unfair and unreasonable and that at every stage the accused were deprived of a reasonable opportunity to defend themselves in manner they desired.

10. Before proceeding to consider the other submissions made on behalf of the appellants, it would be useful to advert to the complaint that no adequate opportunity was afforded lo the accused for their defence. It has been explained to us that on behalf of all the 4 accused Mr. Appa Rao, an Advocate of this Court, was engaged for the defence, and that on September 27, 1963 when the trial commenced, an application was presented by Mr. Srinivasa Rao Chappalgaonkar on behalf of all the 4 accused for an adjournment of the trial on the ground that Mr. Appa Rao, his senior Counsel appearing for the Defence, had suddenly taken ill. That that request was made on behalf of the accused is beyond controversy. It is also on record that at 12.5 P. M. a telegram was also received from Mr. Appa Rao that he had suddenly fallen ill and that the trial may be adjourned. But by the time that telegram was received, the Sessions Judge had dismissed the application made by Mr. Srinivasa Rao Chappalgaonkar.

11. In that application, it was explained that Mr. Srinivasa Rao did not even have the records of the case with him since Mr. Appa Rao was exclusively in charge of the Defence and that Mr. Srinivasa Rao had as a matter of mere formality affixed his signature to the vaka-lath. It was also stated by Mr. Srinivasa Rao that since

Mr. Appa Rao had suddenly fallen ill and could not leave Bangalore, the trial may be adjourned and that if the trial was not adjourned Mr. Srinivasa Rao asked for permission to retire from the case adding in effect that the accused did not wish to be defended by him but only by Mr. Appa Rao.

12. On that application, the Sessions Judge made the following Order:

'The case was posted long back and sufficient intimation of the same and time has already been given. There is nothing to show that 'it is just learnt' that the pleader is sick. Moreover, there is another pleader engaged. The other grounds mentioned in the application are neither satisfactory nor relevant. The application is rejected.'

After making this Order, the Sessions Judge insisted upon Mr. Srinivasa Rao proceeding with the participation in the trial and by the time Mr. Appa Rao's telegram was received at 12.5 P. M. some part of the evidence had already been recorded. It Is obvious that the Sessions Judge Insisted upon Mr. Srinivasa Rao conducting the cross-examination of the prosecution witnesses declining permission for him to withdraw from the case even thereafter.

13. After the receipt of the telegram from Mr. Appa Rao, the Sessions Judge made the following record :

'A wire is received at 12-5 P. M. after the case was begun and the evidence of 2 witnesses is recorded.'

This record was followed by the recording of further evidence and 7 witnesses in all were examined on September 27, 1963. The meaning of the record made by the Sessions Judge with reference to the telegram is that the trial should proceed and that no adjournment would be granted.

14. The trial was adjourned to the next date. On that day, 9 witnesses were examined for the prosecution and only one witness remained to be examined who was the Doctor who conducted the autopsy on the body of Mariappa, and, who treated P. W. 7 for the injuries supposed to have been sustained by him during the encounter. The case was adjourned to the next day, namely, September 30, 1963. But the Doctor was not present on that date, and so the trial was adjourned to

October 14, 1963 on which date also the doctor was absent. So the trial was again adjourned to November 11, 1963, when again the doctor did not make his appearance. The trial was again adjourned to December 2, 1963 on which date the Doctor appeared and was examined.

15. Mr. Appa Rao, it appears, found it possible to appear in the case for the first time on October 14, 1963 after his application for adjournment had been refused, and what he was able to do was to conduct the cross-examination of the Doctor P. W. 18 and to address arguments.

16. The grievance ventilated on behalf of the accused by Mr. Appa Rao is that there was an unreasonable refusal of an adjournment on September 27, 1963. It seems to us that this complaint is substantial. When Mr. Srinivasa Rao explained to the Sessions Judge that Mr. Appa Rao had suddenly fallen ill and that he had 'just learnt' about his illness, the Sessions Judge, it appears, was reluctant to think that that information had been received by Mr. Srinivasa Rao only on the date of the trial. The Sessions Judge stated that there was nothing to show that it was 'just learnt' that Mr. Appa Rao was ill. We do not think that the Sessions Judge had any reason to doubt the truth of the statement made by Mr. Srinivasa Rao that he had acquired information on the dale of the trial that Mr. Appa Rao was not well. If Mr. Srinivasa Rao made that statement, that statement coming from a member of the bar should have been accepted by the Sessions Judge as true, particularly since it was not controverted on behalf of the prosecution.

17. The other reason assigned by the Sessions Judge for the refusal of the adjournment was that there was another pleader who appeared for the accused along with Mr. Appa Rao. We are convinced that this reason is as unconvincing as the other. It should be remembered that Mr. Srinivasa Rao was in great difficulties when the trial commenced. He did not have even the papers of the case with him since Mr. Appa Rao, as explained by him, was in sole and exclusive charge of the defence. It is not uncommon that although many counsel do affix their signatures to the vakalath, only one amongst them is really the person who studies the case and conducts it, there being no real activeparticipation either in the preparation of the case or in its conduct by the others. When Mr. Srinivasa Rao further explained

that the accused did not like the defence to be conducted by him and that they had pinned their faith to the conduct of the defence only by Mr. Appa Rao, it was really unmeaning on the part of the Sessions Judge to insist that Mr. Srinivasa Rao without any preparation should conduct the defence for the accused and cross-examine the prosecution witnesses.

18. There was really no reason for the Sessions Judge to entertain the belief that the prayer for an adjournment was some kind of a subterfuge which had for its aim the postponement of the trial. Even if the Sessions Judge in the exercise of his discretion which of course should be a judicial exercise and not an arbitrary or capricious exercise, thought that an adjournment should be refused what he should have done was to allow Mr. Srinivasa Rao who was not wanted by the accused to retire and to afford a sufficiently reasonable opportunity to the accused to engage other counsel if they wished to do so. If they did not do so, the accused should have Dean offered the choice of some one such as a standing Counsel since the charge was the charge of a murder. But if instead of adopting either of these two courses, the Sessions Judge insisted that Mr. Srinivasa Rao with all his un-preparedness for the conduct of the trial, should impose himself upon the accused who did not want him, and make a farce of the cross-examination, what the Sessions Judge did, invites the denunciation that the trial lacked that element of fairness which should be displayed by every sessions trial.

19. The condemnation of what the Sessions Judge did, becomes even more mainfest from the fact that after the refusal of the adjournment for the accused which was prayed for on grounds the insufficiency of which could hardly be doubted, the trial was adjourned from time to time on at least 4 occasions awaiting the presence of the Doctor who was the only witness remaining to be examined for the prosecution. Those adjournments were long adjournments from September to October and from October to November and from November to December. The fact that those adjournments were made in that way and the fact that the presence of the doctor who neglected to appear in obedience to the summons was not secured by other available processes clearly demonstrate that the refusal of the adjournments by the Sessions Judge to the accused expose him to the reproach that there was discrimination against the accused. If the trial could be adjourned

for the sake of one prosecution witness by more than two months, it passes our comprehension why an opportunity so essential to the accused for the conduct of their defence especially when they were facing a criminal trial on the charge of a murder which was sought on a ground the reasonableness of which can hardly be doubted, was declined.

20. But Mr. Murlidhar Rao, the learned Government Pleader, is, in our opinion, right in placing the contention before us that the mere refusal of an adjournment or the insistence uponMr. Srinivasa Rao's participation in the defencewould by itself not vitiate the trial or render the conviction unsustainable and that what is necessary for the accused to establish if they wished to depend upon the refusal of an adjournment is that that refusal prejudiced their defence, and resulted in failure of justice. So what we should proceed to consider is whether in consequence of the awkward and difficult predicament in which the accused were placed by reason of what was done by the Sessions Judge, any prejudice was caused to the accused and whether there was consequent failure of justice.

21-29. (After perusing the record, Court held that trial resulted in a failure of justice to the accused.)

30. Mr. Murlidhar Rao's submission was that if we found it possible to come to that conclusion, what we could do is to merely set aside the convictions and order a re-trial. That indeed is what we should proceed to do unless we are satisfied on the material on record that the convictions are even otherwise unsustainable.

31. Mr. Appa Rao's submission to us was that even with the inadequate and insufficient cross-examination of the prosecution witnesses which was in the circumstances inevitable, the prosecution case has collapsed and that the evidence on record does not bring home the guilt to the accused beyond reasonable doubt. In support of that submission, he depended upon not only the suppression of material evidence by the prosecution but also the probabilities and the untrustworthy nature, according to him, of the evidence given by the witnesses who implicated the accused.

32-48. Now the 3 witnesses who directly implicate the accused are P. Ws. 6, 7 and 9. (Court after considering their evidence, doubted its truthfulness and proceeded:

49. Mr. Government Pleader strenuously contended that the evidence given by P. Ws. 6 and 7 received corroboration from the evidence of P. Ws. 3 and 5. P. W. 3, it will be recalled, is the wife of Mariappa and P. W. 5 is his son. Both these witnesses stated that sometime in the early hours of the night, P. W. 6 arrived in Chintanapally with the information that Mariappa had been killed and that a little later P. W. 7 arrived with the same information and that both of them mentioned the accused as the assailants. P. Ws. 3 and 5 added that on receipt of this information they hastened to Kandkur where they found the dead body of Mariappa where they continued to stay near the body until P. W. 16 arrived at 3 A. M. Exhibit P-4 which was the information given by P. W. 5 to P. W. 16 was communicated to P. W. 17 only thereafter. Normally, Exhibit P-14 which is that information recorded by P. W. 16 would have been entitled to some weight as a piece of evidence corroborating the testimony or P. W. 5.

50. But it was urged by Mr. Appa Rao that Ex. P. 4 stands enveloped in any amount o! suspicion. His first submission was that if really P. Ws. 6 and 7 had transmitted information to P. Ws. 3 and 5 about the murder of Mariappa, one would have expected the transmission of that information to either the police patil of Chintanapally or to the police patil of Kandkur either by P. W. 6 or by P. W. 7 or at least by P. Ws. 3 and 5. We were asked to say that the conduct of P. Ws. 3 and 5 in not making any complaint or report until P. W- 16 arrived late in the night was what denuded Exhibit P-4 of the weight which otherwise might have been attached to it.

51. But the more serious submission made by Mr. Appa Rao was that something else had happened before P. W. 16 arrived at the scene of occurrence about which the first information Exhibit P-12 itself makes reference. In Exhibit P-12, P. W. 16 stated that at about 12-30 A. M. on the night of April 20, 1962, which P. W. 16 referred to as April 21, 1962, an excise contractor Yadan Gouda of Kandkur came to his residence in Gurumitkal, eleven miles distant from Kandkur with a written complaint in the Marathi script that in the evening of that day while he was

in his toddy shop, four persons of Kandkur arrived at his toddy shop, drank toddy and assaulted him when he asked them for the price of the toddy. Exhibit P-12 proceeded to state that that Yadan Gouda also stated in his complaint that when he was returning from his toddy shop at 6 P. M., those very persons stopped him on the way and again assaulted and that them was another simultaneous assault by some unknown persons of Kandkur on an unknown man and that that unknown man who was .10 assaulted was lying on the ground and was in an unconscious condition.

52. P. W. 16 stated in Exhibit P-12 that he then made an entry in the General Diary and proceeded to Kandkur along with a head constable and two police constables and reached that place at 3 A. M. in order to make an arrest of those four persons who had assaulted Yadan Gouda and that he then saw the dead body of Mariappa in front of the house of Sabanna son of Rayappa. He also added that some valikars of Kandkur were also sitting around the dead body and that when he reached Kandkur, P. W. 5 came to him and made an oral report that the dead body was that of his father and that he was murdered by the four accused before us and that he then recorded his statement which be reproduced in Exhibit P-12.

53. It is obvious from Exhibit P-12 that, when P. W. 16 reached the village of Kandkur, the dead body of Mariappa was being guarded by the valikars of Kandkur. A valikar is a village watchman working under the Patel which Mr. Government Pleader does not dispute. So, Mr. Appa Rao contended that the fact that those village watchmen were guarding the body made it clear that the police patel of Kandkur must have already acquired information about the murder of Mariappa and that some one had reported to him about it. Mr. Government Pleader however submitted to us that there was evidence that the police patel was not in Kandkur mat day and that P. W. 16 gave evidence that Yadan Gouda when he came to him that day at Gurmatkal, told him that he approached P. W. 16 since the police patel of Kandkur was not in the village that day. But the evidence of P. W. 7 was that the police patel was not in his house. And except the hearsay evidence given by P. W. 16 there is no evidence that the police patel was not in Kandkur. However that may be, if the valikars were watching the body, the fact

that they were doing so is a clear indication that someone did report the murder of Mariappa to someone in authority and that someone had arranged for the guard. In any view of the matter, the fact that the valikars were indeed there makes it very doubtful whether the police patel had not been informed about the incident. The prosecution did not examine the police patel. Nor was any evidence produced as to the exact circumstances in which the valikars came to know about the murder or were present at the scene of occurrence.

54. But the stress of the argument of Mr. Appa Rao was that Yadan Gouda had mentioned every detail about the murder of Mariappa and that the complaint made by him to P. W. 16 contained all the information which related to the murder, Mr. Rao's complaint was that that complaint never saw the light of day and that all that was done by P. W. 16 was to incorporate in Exhibit P-12 his own summary of what was stated by Yadangoud in his complaint. It was submitted to us that in those circumstances it was the clear duty of the prosecution to cell Yadangoud to give evidence and that although Yadangoud's name was included in the charge sheet he was not called. Mr. Government Pleader does not dispute that the charge sheet did contain the name of Yadangoud and he was unable to tell us why he was not called to give evidence. On December 2, 1963 on which date the trial had not yet concluded an application was made for the accused in which the prayer was that the prosecution should be directed to produce the Marathi complaint of Yadangoud and the general diary in which the necessary entries relating to that complaint had been made. The other part of the prayer was that the Sessions Judge should examine Yadangoud as a Court witness under Section 540 of the Code of Criminal Procedure. The Assistant Public Prosecutor opposed the application and recorded his objection on the very application and that objection reads :--

'The information given by Yadangouda was not regarding tin's offence of murder, but had casually mentioned that somebody is lying unconscious.

This informations is (sic) information of cognizable offence.

The I. O. after recording the statement of the complainant has issued the F. I. R. The complainant P. W. 5 is examined in the Court.

Sd/-.

Asst. P. P.'.

The order made by the sessions Judge on the application reads :--

'Rejected, But he may urge the point during the course of arguments.'

55. In the course of his discussion on this matter the Sessions Judge observed that the Assistant Public Prosecutor was right in making the submission that neither the complaint given by Yadangoud nor his examination would in any way aid the decision in the present case andthat the complaint of Yadangoud had 'NO bearing at all on the incident in question.'

56. We do not find it possible to concur in this view. We think that the Sessions fudge was in error in not granting the application made for the accused. The Assistant Public Prosecutor was not right in opposing the application, nor was the Sessions Judge right in thinking that the complaint made by Yadangoud had no bearing on the murder of Mariappa. There can be no doubt that the person to whom Yadangoud referred in his complaint as the person whom he saw lying unconscious after he was assaulted, was no other than Mariappa. It was not suggested by any one that any other person had been so assaulted or, was lying unconscious in Kandkur. Further Yadangoud stated, according to P. W. 16, that the assault on that person who became unconscious was made at 6 P. M., and the attack on Mariappa was also at that identical point of time.

57. That being so, it does not require much persuasion to think that Yadangoud, when he alluded to another simultaneous attack on someone else, was referring to the attack made on Mariappa, and, what creates very great suspicion in our minds about the truth of the prosecution case is that the prosecution should be so reluctant and unwilling to produce the original complaint presented by Yadangoud. It is difficult to understand why the prosecution should have insisted upon the summary made by P. W. 16 in Exhibit P-12 being accepted as a correct summary of what was stated by Yadangoud. It is also unintelligible why the prosecution did not call Yadangoud notwithstanding the fact that he was the person who had the

earliest information about the incident in which Mariappa was involved.

58. An argument was maintained before us that after the receipt of the information from Yadangoud and after it record was made in the general diary on the basis of that information, P. W. 16 did commence his investigation and that the first step taken by him in such investigation Wits to proceed to Kandkur to gather information about the incident, The concomitant argument presented was that, if that was the true position, Exhibit P- 1 the information subsequently given by P. W. 5, was a statement made in the course of investigation, and there-fore became inadmissible. The competing argument addressed by Mr. Government Pleader was that, since Yadangoud did not give any intelligible information about the murder of Mariappa and that since all that he stated was that some unknown person was assaulted by some unknown persons and that the person assaulted was lying unconscious, it could not be said that P. W. 16 commenced investigation when he proceeded to Kandkur after making a note about the complaint of Yadangoud in the general diary.

59. Now, it is impossible for any one to contend that the receipt of every information by the police starts an investigation. An investigation consists of several steps, the first of which is the journey made by the person receiving information to the scene of occurrence in orderto gather information and to acquaint himself with all relevant materials. But there may be oases in which the information is no more than that some offence was being committed or had been committed in some place, without there being a disclosure of any facts which might reveal even the bare outline of the criminal activity. Surely, the person who received that information does not commence an investigation if he proceeds to the scene of occurrence only to find out what really happened. And if he actually reaches that place and someone gives him information as to what actually happened, that information would be the first information and the investigation commences only if some material step is taken in that direction thereafter. In that view of the matter, if we feel convinced that Yadangoud told P. W. 16 no more than that some person whom he did not know had been assaulted by some others who were also not known to him, and P. W. 16 went to the scene of occurrence not to investigate that offence but only to arrest those others who had assaulted,

Yadangoud it would not be correct for Mr. Appa Rao to contend that the information given by Yadangoud was the first information or that when P. W. 16 went to the scene of occurrence he commenced his investigation.

60-70. (After giving other reasons also for doubting the truth of testimony of prosecution witnesses, Court proceeded:)

71. Another argument presented before us by Mr. Government Pleader was that the prosecution had established a strong motive for the commission of the murder and that that motive which was, according to him, more than satisfactorily established, corroborated to some extent the evidence of the eye-witnesses.

72-75. In regard to the motive the prosecution did produce some evidence that, about a land belonging to Chintaliah there were claims and counter claims. The evidence was chat Mariappa claimed to be an illatom son-in-law of Chintaliah while the four accused who were the nephews of Chintaliah were claiming the land for themselves. (After considering evidence in this respect, judgment proceeded:)

76. As has often been explained, motive, is treacherous and elusive around. There may be an offence without a motive in the same way in which the strongest motive may not impel a person to commit an offence. In that view of the matter, and having regard to what we have said in the context of this motive, we lake the view that the dispute between the accused on the one hand and Chintaliah and Mariappa on the other in relation to the land, does not really provide any assistance to the prosecution case.

77. In our opinion this is a case in which we should be justified in taking the view that the prosecution has failed to bring home the charges to the accused beyond reasonable doubt. There is more than one feature of the prosecution case which punctuates the prosecution story with doubts which are not only apparently well founded but extremely serious, to the benefit of which the accused are obviously entitled.

78. In our opinion we should say that P. Ws. 6, 7 and 8 are not witnesses of truth and that we should not believe them and that the Sessions Judge was in error in

considering their evidence to be trustworthy. We are also of the opinion that it is not proved that any of the four accused was the assailant of P. W. 7 or that the injuries referred to in Exhibit P. 5 or referred to by P. W. 13 were caused by accused 2 or by any one of them.

79. In the view that we take the submission made to us by Mr. Government Pleader that there should he a re-trial by reason of our finding that there was an unreasonable refusal of adjournment, does not survive.

80. We allow appeal, set aside the convictions of the appellants and the sentences imposed upon them. We acquit them of the offences of which they were convicted or with which they were charged. We direct that they shall be forthwith set at liberty.

81. GJ/AKJ/D.V.C. Appeal allowed.