

Balappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Feb-12-1987

Reported in : ILR1987KAR1019; 1987(1)KarLJ320

Judge : Nesargi and ;Laxmeshwar, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154, 156, 157 and 164

Appeal No. : Crl. Appeal No. 163 of 1985

Appellant : Balappa

Respondent : State of Karnataka

Advocate for Def. : K.H.N. Kuranga, State Public Prosecutor

Advocate for Pet/Ap. : B.G. Naik, Adv.

Judgement :

Nesargi, J.

1. Appellants are 13 in number. Two charge sheets were filed, involving all the accused and one Bhimanagouda Desai of Hadnoor village, Taluk Shorapur, by the Kembhavi Police, alleging that they had committed offences punishable under Sections 147, 148, 302 read with Section 149 I.P.C. The deceased is one

Siddangouda of Yevoor village situated 5-6 kms. away from Hadnoor. Bhimanagouda Desai was shown as absconding.

2. The cases were committed by two Committal orders to the Court of Sessions, Gulbarga. The Additional Sessions Judge, Gulbarga clubbed the two cases and held common trial. He re-arraigned the accused in the two cases as A-1 to A.13. The case against Bhimanagouda Desai was bifurcated as he was absconding.

3. The prosecution case is that there were two factions, one headed by Channareddy of Hadnoor and the other by Bhimanagouda Desai of Hadanoor. All the accused belonged to the faction of Bhimanagouda Desai of Hadnoor while the deceased, his son PW-1; Shankargowda. PW-3 a relative of the deceased, Chandrayya PW-4 a close relative of the deceased being his sister's son and others belonged to the faction of Channareddy. Because of this faction between the said persons, cases and counter cases and proceedings under Section 107 of the Code of Criminal Procedure and also proceedings for extradition were pending. In the year 1978 a compromise between the two factions was struck in the Office of the Deputy Commissioner and District Magistrate, Gulbarga. Thereafter no incidents of serious nature had taken place between the parties. In 1982 a Swamiji of Gadag Samsthan came to the village and brought about further understanding between the two factions. Photographs as evidenced by M.Os. 12 and 13 were taken at that time. In spite of this truce between the two factions having been brought about in 1978 and 1982 enmity between A.9 and the deceased continued to exist.

4. On 5-9-1983 PW-2 Mallinatha Reddy son-in-law of deceased, who is a resident of Hadnoor had gone to Yevoor to the house of his father-in-law -- the deceased -- as the mother of the deceased was ailing and he wanted to look her up. He intended to go to Hadnoor on the same day, but the people of the house of the deceased persuaded him to stay overnight and proceed on the next day. PW-2 agreed. In the early morning of 6-9-1983 PW-2 proceeded to the bus stop to go to Hadnoor. Deceased PW-1, PW-3, and PW-4, who according to the prosecution, was residing in the house of the deceased accompanied PW - 2 and reached the Shahapur-Bijapur Road by 6-30 a.m. Tea shops and residential houses are

situated on either side of the road. The bus-stop, it is undisputed is near Venkappa's tea shop. The situation shown in the sketch Ex.P,27 in this respect is also not disputed.

5. It is further the prosecution case that on reaching the locality, the deceased proceeded towards the manure pits situated on the northern side of the road saying that he would answer the first call of nature and return. PWs., 1, 2 and others waited near the flour Mill of Siddanna, which is on the southern side of the road. Bus was due to arrive at about 7 or 7.30 A.M. While the deceased was returning all the accused and Bhimanagouda Desai, the absconding accused emerged from the general direction of the Tea shop of A.8, which is situated on the northern side of the road and ran towards the deceased all along shouting at the deceased. Bhimanagouda Desai, A.5, A.8 & A.9 were armed with axes. A.3, A.4 & A.13 caught the deceased firmly and Bhimanagouda called upon them not to release their hold on the deceased. Bhimanagouda-Desai cut with axe on the neck of the deceased' A.9 also cut on the neck of the deceased with axe. A.3, 4 and 13 released their grip and the deceased fell down. Then A.5 and A.8 cut on the head, face, neck and other parts of the deceased. The remaining accused surrounded the deceased and assaulted. When P.Ws. 1, 2 and 4 attempted to go to the rescue of the deceased, they were threatened by all the accused, saying that if they proceeded further, they would also meet with the same fate. PW-7 Dawalsab, has his tea shop -- in which he, his wife and two children reside -- near the tea shop of A.8. In between their two tea shops there is a shop of accused No. 3. When the incident was about to occur, PW-7 was about to serve tea to one Shankargowda -witness No. 6 in the charge sheet. He had, therefore, occasion to see the incident. He also attempted to go to the rescue of the deceased, but was threatened by the accused.

6. According to the prosecution, it so happened that PW 14 the Sub-Inspector of Kembhavi Police Station, which is the jurisdictional Police station, and situated about 20 kms, from the spot, was proceeding on his motor cycle to Gulbarga to attend the monthly Crime Meeting, scheduled to be held in the office of the Superintendent of Police, Gulbarga. He happened to reach the spot at about 7 A.M. or so. He saw a crowd of people at the spot and stopped his Motor cycle. He

saw a dead body. He also saw P.Ws. 1 to 4, 7 and others. PW-1 who had by that time written his complaint Ex.P.1, sitting near the flour mill of Siddanna Angadi, gave it to PW-14. PW-14 endorsed on it the date and time of his receiving it and signed below it, P.Ws. 2 to 4 and 7 narrated the incident to him at that time. He gave up the idea of going to Gulbarga and proceeded back to Kembhavi Police Station after instructing P-Ws. 1 to 4 and 7 to remain at the spot till he returned. On reaching there, he registered the case in Crime No 51 of 1983 as against all the accused persons for offences punishable under the aforementioned Sections. He got prepared FIR Ex.P.28, attached Ex.P-1 to it and handed it over to PW-12 - a constable, directing him to deliver the same to the Court of the Magistrate at Shorapur. He also issued express reports and entrusted them to PW-12 directing him to deliver the same to the Circle Inspector - PW-15 and the then S.P. The time then was 10-30 A.M. At this juncture we find it appropriate to narrate what PW-12 did.

7. PW-12 has sworn that he waited to get a Government bus, but did not find one, within a reasonable time. Therefore, he boarded a private bus and went to Shorapur. He went to the Court and handed over the Ex. P. 28 and Ex. P. 1 at 2-15 p.m. Then he went to the Office of the C.P.I. to deliver the express report. He was informed that the C P.I. had gone to Gulbarga to attend the monthly Crime Meeting. Therefore, he went to Gulbarga and handed over the express reports. At 8-30 p.m. he went to the residence of the then S. P. and delivered the express report and at 10 p.m. he delivered the report to the Dy. S. P.

8. PW-14 returned to the spot and attended to the holding of inquest over the dead body. The Inquest panchanama is Ex. P. 17, which has been recorded between 11-30 a.m. and 2-30 p.m. He found that the dead body was not in a condition to be transported to hospital and therefore, wrote a requisition Ex. P. 29 to the Doctor at Naganur - PW-8, to go over to the spot. It was received by the Doctor at 2-50 p.m. The Doctor came to the spot and conducted the post mortem examination on the dead body between 3-40 p.m. and 5-30 p.m. on that day. PW-14 held the scene of offence panchanama between 3-40 p.m. and 5-45 p.m. He instituted search for the accused persons but was unable to secure them, though the search continued till night. At 9-30 p.m. he secured PW-1 and Boramma, wife of the deceased at the

Panchayat Office and recorded their statements. He again continued the search for the accused persons, but was unsuccessful. By about 9 a.m. on 7-9-1983, C.P.I-PW-15 reached the spot and took over investigation from PW-14. He searched the houses of the concerned accused persons as per the search panchanamas Exs.P. 32 to 42, and then returned to the V.P.C, Office. He recorded the statements of P-Ws. 2, 4 and 7 and CW-6 Shankargowda and others from 1 p.m. onwards. It is his say that he received the express report at the Gulbarga monthly Crime Meeting. Investigation continued.

9. PW-16 got credible information on 8-11-1983 that A.1 to A-4 were available in Jalimanha village. He arrested them there and brought them to the Kembhavi Police Station. When interrogated A.1 gave voluntary statement as per Ex. P. 43 and A.2 as per Ex. P. 44. Pursuant to his information A-1 produced a stick from the cattle shed. It was seized and sealed under Ex. P. 20. A.2 produced a Jali stick from the residential portion of his house and the same was seized and sealed under Ex. P. 21. On 28-11-1983 PW-16 got information that A.5 to A.8 were available in Hunasagi village. He arrested them there and brought them to Kembhavi Police Station. When he interrogated, A.5 stated as per Ex. P. 45, A.6 stated as per Ex. P. 47, A.7 as per Ex. P. 48 and A.8 as per Ex.P. 46. Pursuant to his information A.5 produced axe MO 9. It was seized and sealed under panchanama Ex.P. 22. A.6, pursuant to his information produced M O. 14 stick, which was seized and sealed under panchanama Ex.P. 24. A-7, pursuant to his information produced M.O. 15 stick, which was seized and sealed under panchanama Ex. P. 25. Pursuant to his information A.8, produced M.O. 11 axe from hidden condition, which was also seized and sealed under panchanama Ex. P. 23. On 29-12-1983 PM-5 Lokanath Kadri, P.S.I. Badagal P.S. found a person moving about in suspicious manner within the jurisdiction of his Police Station. He apprehended that person and came to know that he was A.9 required in Crime No. 51/1983 of Kembhavi Police Station. He sent a wireless message to PW-14. A.9 was produced before the C.J.M., Bidar and remanded to Judicial custody. He was secured by PW-16 and arrested on 5-1-1984. When interrogated A.9 voluntarily stated as narrated in Ex. P. 50 and pursuant to the information produced axe M.O. 10 from hidden condition. It was seized and sealed under panchanama Ex. P. 26.

10. After receiving reports from the Chemical Examiner and Serologist in regard to the various material objects seized and sent to them for examination, a charge sheet was filed on 6-2-1984 as against A.1 to A.9 and the remaining accused showing them as absconding. Committal order was passed as against A.1 to A.9 after bifurcating the case. Thereafter A.10 to 13 surrendered to the Court. As directed by the Court another charge sheet was filed against them. As against A.1 to A.9 Sessions Case No. 47 of 1984 was registered and against A.10 to A.13 Sessions Case No. 70 of 1984 was registered in the Court of Sessions, Gulbarga. As already narrated above, both these cases have been clubbed and common trial held by the Additional Sessions Judge.

11. The Sessions Judge had held all the 13 accused persons guilty of the offence under Section 148, and 302 read with Section 149 I.P.C. He has sentenced each one of them to undergo imprisonment for life and to pay a fine of Rs. 500/-for the offence under Section 302 read with Section 149 I.P.C. and to undergo R.I. for three years for the offence under Section 148 I.P.C. He has directed that the sentences should run concurrently.

12. The defence of the accused Nos. 1 to 8 and 10 to 13 is total denial. All the accused have contended that Siddanagouda must have been murdered during the late hours of the night between 5-9-1983 and 6-9-1983 and PW-1 and his people have concocted and foisted the case against them. A.9 has pleaded that he had gone to Tonnur village on 5-9-1983 to attend the funeral of the father of DW-1 Amereshgowda' Advocate Gulbarga, as message had been sent to him and after the funeral was over he accompanied DW-2 Lachappareddy, to his village, viz., Birnoor in the vehicle that had been brought from Muddanur and spent the night between 5-9-1983 and 6-9-1983 in the house of Lachappareddy. On 6-9-1983 he proceeded to Gulbarga. The further contention of all the accused is that Ex.P.1 was not prepared by about 7 a.m. - - as tried to be made out by P.Ws. 1 and 14 and other prosecution witnesses - - and presented to PW-14 by about 7 a.m. on the spot. According to the accused the complaint Ex.P.I has seen the light of the day only after 11 a.m. on 6-9-1983 and Ex.P.1 and Ex.P.28 have been sent by special messenger to the Magistrate so as to reach the Court by 2.15 p.m. Lastly they have contended that the enmity between the two factions no longer existed in

view of the compromise between them in the office of the District Magistrate in the year 1978 and was completely smothered out by the settlement effected by the Swamiji of Gadag in the year 1982. Therefore, there was no reason for them to take revenge against any member of the party of Channareddy and commit this heinous offence.

13. The relationship between the deceased and the following prosecution witnesses is undisputed. PW-1 is the son of the deceased. PW-2 of Hadnoor is the son-in-law of the deceased. PW-4 is the son of the sister of the deceased, PW-3 as admitted by him is a relative of the deceased.

14. As amongst the accused persons A.9 and A.10 are brothers. A.12 is the son of the uncle of A.9. Bhimanagouda Desai is the brother-in-law of A.9. Mothers of A.9 and A.11 are sisters. A.3 and A.8 are brothers. A.6 is the son of A.8. A.2 and A.4 are brothers. Fathers of A.1 and A.4 are brothers. A.13 is the brother-in-law of A.9.

15. The prosecution has claimed that A.8 is the cousin brother of PW-7. It is challenged by the defence. PW-7 has stated that his father and the father of A.8 are brothers. The evidence requires to be examined.

16. It is stated that PW-3 claims to be related to A. PW-4 claims to be related to A.11 by saying that A.11 is his 'mava'. This is disputed.

17. That there were two factions one headed by Bhiman(sic) gouda Desai of Hadnoor and the other headed by Channa(sic) reddy of Hadnoor is not in dispute. That there was a compromise effected in the office of the Deputy Commissioner and District Magistrate of Gulbarga in the year 1978 is also not in dispute. The defence has claimed that the Swamiji(sic) Gadag had finally settled the factious aspects of the two factions in the year 1982. It has relied in this behalf on the photographs M.Os. 12 and 13. This aspect is not seriously disputed by the prosecution.

18. That Siddanagouda was brutally murdered by cutting(sic) on him with sharp edged weapons like axes is not in dispute and does not admit of any dispute. It is also not in dispute that his dead body was found lying on the southern edge of the

Shahapur-Bijapur Road. This makes it unnecessary for us to go into the evidence adduced by the prosecution in proof of the said facts.

19. It is certain that the dead body of Siddanagouda must have been noticed by the persons moving around in the area or residing in that area after dawn on 6-9-1983. Therefore the news of murder of Siddanagouda must have spread like wild fire in Yevoor village which is undisputedly situated about 200' away from the spot where the dead body was lying. This leads us to the conclusion that P.Ws. 1, 3 and other persons from Yevoor must have collected near the dead body by that time and hence naturally must have been present near the dead body by about 6-30 or 7 A.M. PW-2 has his shop on the northern side of the road, where he, his wife and two children reside. That shop is situated about 55 metres or so from the spot. All the distances are gathered by us from Ex.P. 27 the sketch which is not disputed by the defence. Hence, it is quite natural to accept his presence also near the body at that time. Therefore, we hold that P.Ws. 1, 3, 4 and 7 and others were present near the dead body round about 6-30 or 7 A.M. on 6-9-1983. So far as PW-2 is concerned, it is claimed by the prosecution that he had visited his deceased father-in-law's house on 5-9-1983 to look up the mother of the deceased as she was ailing, he was persuaded to stay overnight, he had to catch the bus at 7 or 7-30 A.M. on 6-9-1983 to go to his village Badanoor, he proceeded in that direction and was on the road by 6-30 A.M. Deceased, PW-1, PW-3 and PW-4 accompanied him. It was argued by Sri B. G. Naik the Learned Advocate appearing on behalf of the appellants that apart from the evidence of P.Ws. 1 to 4 there is no other evidence adduced by the prosecution to establish that in fact Amamma the mother of the deceased was ailing by 5-9-1983 and PW-2 had that reason to go to that village on that day. P.Ws. 1 and 4 are witnesses competent to speak to this aspect of the matter. PW-4 was residing in the house of the deceased attending to the agricultural work. PW-4 being the son of the sister of the deceased, it is quite natural that he was residing with the deceased as claimed by him. This aspect does not appear to be seriously disputed by the defence. Any other evidence apart from this evidence would not be as natural as the evidence of these witnesses, in regard to the question whether Amamma was ailing or not. It is in the evidence of the prosecution that Amamma was treated by one Doctor Timmaji. The contention is that the Doctor is not examined. We do not see how the

matters would have improved much if that Doctor Timmaji was examined, because even then it could be contended that PW-2 had not gone to that place. Presence of PW-2 can also be conclusively decided on the basis of the other evidence made available by the prosecution in this case. We will record our conclusion in this behalf while dealing with the evidence, particularly of PW-14.

20. The next question is whether Siddanagouda was cut to death at the spot where his dead body was lying or he was murdered in some other place and his dead body was placed there, because the latter aspect is one of the contentions of the appellants. Sri B. G. Naik, pointed out from evidence of the Doctor PW-8 and the post mortem notes prepared by him - Ex.P. 14, that a part of the right middle ringer was found severed. He argued that the severed part of the finger is not seized from the spot, but on the other hand the Investigating Officer has stated that inspite of his best efforts he could not secure it from any where near the spot. This according to Sri Naik shows that Siddanagouda might not have been murdered at the spot and might have been murdered at some other place, his dead body brought and kept there later.

21. Ex-P.29 is the requisition said to have been sent by PW-14 to PW-8. It was received by PW-8 at 2. 50 P.M. as narrated by PW-8. It was argued by Sri B. G. Naik, that according to PW-14 he had despatched this Ex.P. 29 from the spot but after inquest, but in fact it was not because it is seen from it that the seal which is ordinarily in the Police Station at Kembhavi, is affixed below the signature of PW-14. We are unable to see how this aspect leads us to any inference or conclusion of assistance to us, as PW-8 has sworn that he received Ex.P. 29 at 2. 50 P.M. and because of that he conducted the post mortem examination between 3.40 P.M. & 5.40 P.M. at the spot. The object of sending Ex. P. 29 was to secure PW-8 to the spot. Therefore, wherefrom Ex.P.29 was despatched by PW-14 is of no consequence. The evidence of PW-8 and also what is narrated by him in Ex. P. 14 makes it abundantly clear that the head of Siddanagouda was Almost severed as it was hanging to the trunk by a piece of the skin only on the left side. PW-14 has stated that the condition of the body was not such as to permit transportation of it to the Hospital at Naganoor for getting the autopsy made over it. When that is so, it is difficult for us to understand how any one could have -- if Siddanagouda had

been murdered at some other place, other than the spot - - managed to bring the dead body and dump it at the spot. Profuse blood had flown and stained the earth on the spot and around it and this was noticed in the inquest and the blood stained earth was seized. That is another factor which shows that Siddanagouda must have been done to death at that spot. Therefore, the non-finding of the piece of the right middle finger by the Investigating Officer cannot lead to the conclusion or inference that possibly Siddanagouda must have been murdered in some other place. Lots of people must have gathered at the spot on coming to know of the murder of Siddanagouda. That must have been the reason why the Investigating Officer might have been unable to find the piece of the middle finger. Hence we reject this argument.

22. This takes us to the question about the time of murder of Siddanagouda the deceased. It may be remembered that according to the prosecution he was cut to death at 6-30 A.M. on that day, while the contention of the defence is that there is every possibility that Siddanagouda might have been murdered even when it was dark and not at 6-30 A.M. We proceed to examine this aspect, keeping apart the evidence of P. Ws. 1 to 4 and 7.

24. PW-8 the Doctor, has observed that the stomach of the deceased was empty, the large intestine was loaded with faecal matter, kidneys and bladder were normal and the small intestine was also normal. He has also observed that the injuries were almost fresh. According to him the injuries were 6 to 12 hours old before the commencement of the post-mortem examination. When it is seen that he commenced the post-mortem examination at 3-40 P.M. Siddanagouda could have met his death at any time between 3. 40 A.M. and 9-30 A.M. on 6-9-1983. We have already shown that the body of Siddanagouda was at the spot by 6.30 A.M. Hence the time element is cut down to 3.40 A.M. to 6 A.M. on that day. The evidence of the Doctor and the circumstances available on record do not lead us any closer to the time of murder of Siddanagouda. That is to be determined with reference to the other evidence made available in this case.

24. PW - 14 has sworn that he was proceeding on his motorcycle to Gulbarga and reached the spot by about 7 A.M. It is to be stated in this connection that the case

of the prosecution as made out in the evidence of PW-1 is that a little time after the murder of Siddanagouda, he went near the Mill of Siddanna Angadi and wrote Ex.P.1. It is elicited in his cross-examination that he secured the paper there and wrote it. The flour Mill of Siddanna is shown to be 25 to 40 metres away from the dead body. In a short time PW-14 came there on motor cycle and stopped there and he handed over Ex.P.1 to PW-14. In this connection it was pointed out by Sri B.G. Naik, that one of the versions is that when PW-14 was going on his motorcycle he was stopped and then Ex.P.1 was handed over, while the present version of PW-14 is that on seeing the crowd there he stopped the motor cycle and found a murder had taken place and so on. The pointed question, whether he was stopped or whether he stopped on his own, is not put to PW-14 to elicit the variance in this connection. He was the most competent witness in that behalf. We have pointed out that already a crowd must have gathered near the dead body. Therefore, on seeing the crowd of the crowd signalling to him, he had to stop his motor cycle in case he was proceeding to Gulbarga. According to him he was proceeding to attend the monthly Crime Meeting at Gulbarga, scheduled at 11 A.M. Whether the Crime Meeting was scheduled to be held on 6-9-1983 is to be decided. PW-15 CPI has sworn to the same effect. He has further stated that he attended that meeting and after the meeting he was given the express report despatched to him. PW-12 to whom the express report was entrusted to be carried to the Court and CPI has sworn that in the first instance he went to Shorapur to hand over the express report to PW-15 and learnt that PW-15 had gone to Gulbarga to attend the Monthly Crime Meeting. Hence, he proceeded to Gulbarga. This material is sufficient to establish that infact there was a Crime Meeting of the Police Officers of that District on that day.

25. PWs. 1 and 14 supported by the evidence of other eye witnesses have sworn that Ex.P1 was handed over to PW-14 at the spot and PW-14 endorsed the date and time of receipt of the same on it. This aspect is seriously disputed by the defence. It is to be remembered that the contention of the defence is that Ex.P. 1 has seen the light of the day at 11-30 A.M. after a lot of deliberation and it has been handed over in the Police Station to PW-14. If PW-14 were to receive Ex.P. 1 in the Police Station at 11-30 A.M. he must be present in the Police Station at that time on that day, which could not be the case, as he would have to in the

ordinary course of events attended the Monthly Crime Meeting at Gulbarga scheduled at 11 A.M. unless he had a premonition of the commission of this offence and had therefore decided to wait for Ex.p.II Sri B.G. Naik pointed out from Ex.P.1 that below the endorsement made by PW-14, the seal of the Police Station appears and argued that it must have been received by PW-14 in the Police Station. PW-14 when questioned on this aspect has sworn that after he took Ex.P. 1 from the spot to the Police Station, he affixed the seal. The seal reads as 'Sub-Inspector of Police, Kembhavi Police Station.' We have already shown that the theory that Ex-P. 1 was presented before PW-14 in Kembhavi Police Station by about 11 or 11-30 A.M. does not stand the test of logical reasoning. Therefore, this argument of Sri B.G. Naik is not sound and the explanation given by PW-14 is to be accepted. Apart from this we find on the basis of the other material, viz., Ex.P. 28 the F.I.R. also that the above conclusion is sound. Ex.P. 28 is said to have been despatched by PW-14 with PW-12 to the Court at Shorapur. It bears the endorsement of the Magistrate that he received it at 2-15 p.m. from P.C. 1667, Kembhavi P.S., who is PW-12 himself. It further shows that Ex.P. 1 was sent along with it. Column No. 8, which is blank portion wherein the first information is generally written, discloses that PW-14 has stated therein that when on that day he was going from Kembhavi to Gulbarga, he saw a crowd near the bus-stand of Yevoor village and he heard sound of weeping. He stopped and enquired and found Siddanagouda s/o Basavantharaya of Yevoor had been murdered. He saw the dead body lying in a pool of blood. He enquired whether any complaint would be given by any one, when PW-1 handed over the complaint written in Kannada at 7-15 A.M. He took that complaint, went back to Kembhavi, reached Kembhavi Police Station at 8-30 A.M., registered Crime No. 51/83 for offences under Sections 147, 148, 302 read with Section 149 I.P.C and that he had attached the complaint along with the F.I.R. This narration consists of three portions: the first portion relates to PW-14 leaving Kembhavi P.S. and proceeding towards Gulbarga by the said road, seeing a crowd collected near the bus-stand at Yevoor, and making enquiries; the second portion consists of his learning that Siddanagouda of Yevoor had been murdered and his enquiring whether any complaint would be given; the third portion consists of the narration that PW-1 had handed over the complaint written in Kannada language at 7-15 A.M. and his going back to

Kembhavi P.S. and reaching at about 8-30 A.M. The question is whether this material is admissible in evidence.

27. Out of the three portions as narrated above, the first and the last portions are narration of facts observed by PW-14. The middle portion narrates what PW-14 learnt at the spot. Section 154 of the Cr.P.C. reads as follows :-

'154. (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police Station, shall be reduced in writing by him or under his direction, and be read over to the informant ; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an Officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned, who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any Police Officer subordinate to him, in the manner provided by this Code, and such Officer shall have all the powers of an officer in charge of the police station in relation to that offence.'

PW-14 was at the spot on his way to Gulbarga. He was not in charge of the Police Station at Kembhavi at that time. He has stated that H.C. 579 was in charge of the Police Station. Therefore, in case Ex.P.I was presented at the spot, the necessary ingredient of Section 154 Cr.P.C. would not be satisfied. Section 157 Cr.P.C. is as follows :-

'157. (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is

empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate Officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender :

PROVIDED that :

(a) When information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the Officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot ;

(b) If it appears to the Officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

(2) In each of the cases mentioned in Clauses (a) and (b) of the proviso to Sub-section (1), the Officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in Clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.'

A plain reading of this Section shows that when information is received by the Officer in charge of the Police Station and makes him suspect that an offence which can be investigated by him Under Section 156 Cr.P.C. has been committed he has to report forthwith to the jurisdictional Magistrate and either proceed to the spot by himself or depute somebody to go to the spot to investigate into the facts. The ingredients of this Section also will not be satisfied as PW-14 was not Officer-in-charge of the Kembhavi Police Station. PW-14 was proceeding to Gulbarga on duty. When Ex.P.I was given to him at the spot, he could not have acted as required by the provisions of Section 154 or 157 of Cr.P.C In this connection Sri B.

G. Naik pointed out Order 1196 in Volume II of the Mysore Police Manual which reads as follows :

'1196. If the Officer-in-charge of a police station receives an oral report of a cognizable offence during his tour, he should take down the report in writing and have it signed or marked by the person who made it. He should then send it, with an endorsement duly signed by him, to the Police Station, where it will be treated as a written report and registered in the First Information Report book. In the meantime, he will himself commence the investigation.'

Of course this is a relevant Rule by which an Officer in charge of the Police Station has to be guided. PW-14, as already pointed out, was on duty. He was, till he left Kembhavi Police Station, Officer in charge of the Police Station. Because he left the Police Station, though on duty, H.C. 578 came to be Officer in charge of the Police Station. Hence, there is no doubt that while travelling from Kembhavi to Gulbarga PW-14 was on tour to Gulbarga. Therefore, it was the duty of PW-14 to send Ex-P.1. to the Police Station at Kembhavi and get it registered in the first information book. PW-14 has in this connection claimed that he himself took Ex.P.1 to the Police Station at Kembhavi and then as Officer in charge of the Police Station on reaching the Police Station, registered Crime No. 51 of 1983 and issued F.I.R. Ex.P.28. The said order does not prohibit an officer on tour going to the Police Station, himself and registering the crime number, as on reaching the Police Station he becomes an officer in charge of the Police Station. It only lays down that after sending it to the Police Station for the purpose of getting it registered he will himself commence investigation. But PW-14 had no one with him to send to the Police Station. Hence without sending Ex.P.1 to the Police Station he could not commence investigation. Therefore, his proceeding to the Police Station, registering the crime and then taking up investigation is quite in order, as it is in accordance with the procedure prescribed. Ex P 28 becomes a report as contemplated by the statute viz., Section 157 Cr-P.C The best evidence of sending the report, is the report itself. Ex.P.28 is that report and it has reached, as already pointed out, the Magistrate by 2-15 p.m. on that day. Ex.P.28, thus, becomes evidence. It is to be seen whether all the contents of Ex.P.28 can be relied upon as evidence by the prosecution.

27A. When an informant appears in the Police Station and gives information to the Officer in charge of the Police station disclosing that a cognizable offence has been committed Section 154 of the Cr. P.C. comes into operation. If the information conveyed to the Officer in charge of the police Station creates a suspicion in the mind of the Officer about the commission of a cognizable offence, he is required to proceed to the spot and investigate the facts forthwith. It follows that in both cases, the Officer in charge of the Police Station has to record in his report how and when he received the information. If the information of commission of the offence is received in the Police Station he has to record in the report that he received the information while he was in the Police Station. If the information is secured by him after reaching the spot, pursuant to the provisions of Section 157 Cr.P.C., he has to record in the report that he had gone to the spot and there the information was given to him. Therefore, the first portion of what is narrated in column No. 8 of Ex.P. 28 to the effect that PW-14 had gone to the spot and the third portion wherein it is narrated that Ex.P. 1 was handed over to him at 7-15 A.M. by PW-1 at the spot will in law be part of the report. These facts are within the personal knowledge PW-14. What PW-14 saw on the spot would also be within his personal knowledge and he would be competent witness to record the summary of it. Therefore, the contents of Ex.P. 28 would be evidence of the facts that PW-14 saw. This material contained in Ex.P. 28 goes a long way in corroborating the testimony of PW-14 that it was at Yevoor Bus-stand that PW-1 handed over Ex.P. 1 to him at 7-15 A.M. on that day. Therefore, the evidence of PW-1 that he handed Ex.P. 1 to P.W-14 at the bus stand at Yevoor is further supported. Hence our conclusion is that PW-14 was on the way to Gulbarga to attend the monthly Crime Meeting and while he was at the bus-stand of Yevoor, he saw a crowd and stopped his motor-cycle and he himself saw the dead body of Siddanagouda and further that Ex.P.1 was handed over to him by PW-1 at the spot at 7.15 A.M. is satisfactorily established. Therefore, the contention of the defence that Ex.P.1 has seen the light of the day long after 7.15 A.M. on that day cannot be accepted.

28. PW-14 has sworn that at the spot he saw PWs. 1 to 4 and 7 and they told him that these accused persons and Bhimanagouda Desai -- absconding accused, had committed the murder. Therefore, Sri B. G. Naik, argued that as per the provisions

in the order referred to above, PW 14 must have commenced his investigation on receiving Ex.P. 1 and therefore, those statements said to have been made by PWs. 2 to 4 and 7 would be hit by Section 161 Cr. P.C. The Learned State public Prosecutor contended that PW-14 had not yet commenced his investigation, but only received Ex.P. 1 and had still to register the crime in the Police Station, and therefore, the say of P.Ws. 2 to 4 and 7 was only information given to him and it was as good as, so far as its evidentiary value is concerned, the information provided by PW-1. The next contention of Sri B. G. Naik, in his behalf is what PW-14 has narrated in Column No. 8 of Ex.P. 28 does not make out that he had seen P. Ws, 2 to 4 and 7 at the spot and they also stated to him about the incident.

29. We do not consider it worthwhile to go into the question, whether he saw P.Ws. 2 to 4 and 7 and they informed him that these accused persons had committed the murder of Siddanagouda is admissible in evidence or not. We feel much concerned with his stay in regard to the presence of PW-2 at the spot at that time. So far as the presence of PWs. 1, 3, 4 and 7 is concerned we have already shown that they must have been there because of the dead body of the deceased having been found lying at the spot. If PW-2 was there and PW-14 had seen him it would be within the knowledge of PW-2 and he is a witness competent to speak to that fact. We have already shown as to what would be the requisites to be mentioned in a report sent under Section 157 Cr.P.C. These requisites are, to reiterate, how, where and under what circumstances the information about the commission of a cognizable offence was received by the Officer in charge of a Police Station, may be in the Police Station or on tour. If any other detail is narrated in it, it would not be within the ambit of the report that is to be sent statutorily under Section 157 Cr.P.C. Therefore, the middle portion of the narration in Ex. P. 28 lies beyond the scope of such a report. Even if PW-14 had narrated in Ex. P. 28 that PW-2 to PW-4 and PW-7 and so on were present at the spot that also would have been beyond the ambit of such a report, These facts would not be part of the statutory reports under Section 157 Cr.P.C. Hence, the absence of the narration regarding the presence of P.Ws. 2 to 4 and 7 in column No. 8 of Ex. P. 28 would not be of much assistance to the defence in support of the contention that PW-14 saw P.Ws 2 to 4 and 7 when he stopped the motor cycle and therefore their presence is suspicious. Cross-examination of PW 14 has not brought out any

material to make us suspect that he had any reason to take sides with PW-1 and his people or whatever little he had done after registering the crime appears to be dishonest. On his own showing he has not at all recorded the statements of any witnesses till 9.30 P.M. on that day. If he was really enthusiastic to boost up the version in Ex. P-1 he would have taken the first opportunity to record the statements of the alleged eye witnesses particularly PW-7 and CW-6 who was it is said the customer of PW-7 at that hour on that day. He has not evinced his zeal or enthusiasm. In fact, non-recording of the statements of these witnesses is made one of the grounds of attack by the defence to view of the evidence of PWs 2 to 4 and 7 with suspicion. We will be dealing with that aspect later in the course of the judgment, It is suggested in the cross-examination of PW 14 that he brought the influence of one Babugowda Darshanapur to get himself posted to Kembhavi Police station and that party men of the deceased were the followers of the said person, who was the sitting MLA and therefore, he is obliged to these persons. Apart from this mere suggestion there is no other material to probabilise the suggestion. It need hardly be said that such suggestions can easily be made to witnesses of this type. If at all the investigation conducted by PW-14 till he handed over the investigation to PW-15 the CPI on 7-9-1983, is to be characterised as biased, the bias can only be, in the circumstances narrated above, in favour the defence and not in favour of the prosecution, because he has not recorded the statements of PWs. 2 to 4 and 7 even at 9-30 P.M. on that day. He did not record the statement of any other witness and left it to the lot of PW-15. These reasons lend assurance to our mind that the evidence of PW-14, that he was proceeding on his motor cycle from Kembhavi to Gulbarga on that road, stopped the motorcycle at the bus-stand at Yevoor, saw that a crowd had collected, saw the dead body of the murdered Siddanagouda and also saw PWs.2 to 4 and 7 and that PW-1 handed over Ex.P.I to him at 7.15 A.M. is reliable.

30. The learned Sessions Judge has placed reliance on the evidence of P.Ws. 1 to 4 and 7 and also on the evidence of P. Ws. 14 and 15. He has for reasons recorded by him rejected the evidence of DW. 1 and DW.2 relied upon by A.9 in proof of his alibi. He has rejected the evidence pertaining to the interrogation of the various accused persons and recovery of weapons like axes and sticks from hidden conditions at their instance.

31. Now it is to be seen whether the evidence of P.Ws. 1 to 4 and 7 is acceptable wholly or partly and is sufficient to bring home the guilt to all the accused or any of the accused appellants.

32. There can be no doubt that P.Ws. 1 to 4 are partisan witnesses. Principles of appreciating the evidence of partisan witnesses are well settled. We are clearly of opinion that these principles need not be stated over again. The defence has claimed that PW-7 is also a partisan witness. We have already noted that it is still to be examined and proceed to examine it first.

33. Ex.P.27 shows that PW-7 has his shop in between the house of A.8 and the tea shop of A.3. There is in between, an open space belonging to Laxmanrao i.e. between the hotel of PW-7 and the tea shop of A.3. These facts are not disputed. The distance between the Hotel of PW-7 and the spot where the dead body was found is marked as about 55 metres. The version of PW-7 that he was present in his tea shop in the morning at about 6.30 a.m. or so on 6-9-1983 is quite natural. He has claimed that his father and father of A.8 are brothers. When questioned as to what the name of his grandfather is, he has pleaded ignorance. When questioned about the name of the grandfather of A.8 he has pleaded ignorance. In view of this we are constrained to hold that the evidence of PW-7 to establish that A.8 is his cousin brother is not sufficient to make us conclude accordingly. 'But that fact does not make him a partisan witness. Two more facts are relied upon by the defence to show that PW-7 is a partyman of deceased Siddanagouda. Sri Naik pointed from the evidence of PW-1 that PW-7 is running the tea shop in the building of the deceased as a tenant. He further pointed out that when PW-7 was questioned whether he was a police witness in C.C.No. 245/83 on the file of the J.M.F.C., Shorapur as against A.1,4,7 and 8, he has denied the same, while the document serial No. 17 produced by A.9, during his statement recorded under Section 313 Cr.P.C. shows otherwise. He argued on these basis that PW-7 has deliberately stated falsehood and that he is obliged to PW-1 because he has his tea shop in the building of PW-1 and the deceased. According to him these facts are sufficient to make the Court, if not to conclude, at least to draw an inference that PW-7 appears to be a partyman of deceased Siddanagouda, PW-1 and their people. Sri Kuranga, the learned State Public Prosecutor contended that PW-7 is

only shown as a panch witness in the said Criminal case and that fact does not make him a witness to the merits of the case against A1, 4, 7 and 8, and therefore, it is not sufficient for the Court to hold or draw an inference that he had animosity against the said accused. According to him this factor by itself further leads to the conclusion that he is not partyman of the deceased and PW-1. In regard to his running his tea shop in the building of the deceased and PW-1, he pointed out that such a question is not asked to PW-7 and even what PW-1 has stated is that PW-7 is tenant of PW-1 and therefore, it cannot be said that PW-7 is obliged to PW-1 and his people and as such is a partyman of PW-1 and his people. So far as PW-7 running a tea shop in the building of PW-1 and his father is concerned we agree with the State Public Prosecutor and hold that the circumstance cannot lead to an inference that either PW-7 is obliged to PW-1 or is a party-man of PW-1 and his people. 'It is no doubt true that PW-7 has stated a lie that he is not a witness in CC No. 245 of 1983 on the file of the JMFC., Shorapur. The question is whether that fact is such as to make the Court draw an inference that he has stated falsely to suppress his allegiance to PW-1 and the deceased. Allegiance to PW-1 and the deceased has nothing to do with his being a witness against A1, A4, A7 and A8 and that too as a pancha, At the most the inference that can be drawn is that PW-7 has stated falsely to make it appear that he has no animosity against the accused persons particularly A1, A4, A7 and A8. But when it is seen that he is cited as a panch witness in the said case, even such an inference, in our considered opinion, cannot be legitimate. Therefore, we hold that there is no material on record to show that PW-7 belongs to the party of deceased and is against the party of Bhimanagouda Desai. This shows that PW-7 is an independent, disinterested witness. If at all the evidence of PW-7 is to be rendered suspect, it can be only on the basis of the inherent infirmities in his evidence and other established facts and circumstances that can make a dent in his evidence.

34. At this stage the belated recording of the statement of PW-7 and other witnesses and the contention based on that fact is required to be gone into. PW-15 has sworn that he took charge of the investigation from PW-14 at 9 A.M. on 7-9-1983 and proceeded to search the houses of the accused as per panchanamas Exs. P.30 to P.42 and thereafter went to the VPC Office and commenced recording the statements of PWs. 2,4, 7 and others from 1 P.M. onwards. PW-7

himself has stated that he was near the dead body till about 11 A.M. on 6-9-1983, He attended the funeral and returned to his house (shop-cum-house) and retired to bed by 10 P.M. PW-1 has sworn that the funeral was over by 7.30 P.M. This material satisfactorily shows that PW-7 was all along present at the spot and with the people attending the funeral and was in his shop-cum-house during the whole of the day 6-9-1983 and was also present on 7-9-1983 when PW-15 took over investigation. The fact that he was in his house in the afternoon on 7-9-1983 is very well established as PW-15 has recorded his statement after 1 P.M. PW-14 did not record his statement till he handed over the investigation to PW-15 on 7-9-1983. Hence it cannot be gainsaid that the statement of PW-7 was recorded late in the day.

35. We have while dealing with the evidence of PW-14 shown that he did not exhibit any zeal or enthusiasm in advancing the case of PW-1 and his people. If his investigation can be characterised as biased, the bias can only be in favour of the defence. The explanation of PW-14 for not recording the statements of witnesses is that he was busy holding the inquest and recording the scene of offence panchanama and searching out the accused till 9.30 or so and thereafter he sent for PW-1 and Boramma wife of the deceased and recorded their statement and continued the search for the accused. He has made out that in view of these facts and circumstances, he did not find time to record the statements of witnesses. The argument for the defence is that when PW-14 thought of sending for PW-1 and Boramma for recording their statements at 9-30 P.M. nothing prevented him to secure at least PW-7 and other witnesses and record their statements. Even if PW-14 had recorded the statement of PW-7 at or after 9-30 P.M. on 6-9-1983 it would Have been considered as a delayed statement. The argument of Sri B.G. Naik is that PW-14 ought to have recorded the evidence of this witness during the inquest or at least after the inquest has some force. When PW-14 was asked on that aspect, he has stated that he conducted the inquest proceedings from 11-30 A.M. to 2-30 P.M. and then held the scene of offence panchanama from 3-40 P.M. till 5-40 P.M. The inquest panchanama is at Ex.P. 17. The Learned Sessions Judge has admitted the whole of the panchanama as evidence while in fact only Column 7 and 9 shall be admissible in evidence, This error is committed by the Learned Sessions Judge. Column No. 7 and 9 do not

provide for recording of the evidence of witnesses. Column No. 7 requires that the state of corpse, such as wounds, particulars of wounds and list of property found on the corpse etc., are to be provided. Column No. 9 provides for recording the apparent cause of death. It is, of course, true that this does not mean that the Investigating Officer is in law prohibited from recording statements of witnesses during the inquest, because Column No. 10 provides for such recording. For the purpose of admissibility as evidence, the other Columns except Columns 7 and 9 of inquest panchanama are to be ignored. Hence PW-14 could as well have recorded the statements of witnesses during the inquest. But he has not done so. We cannot in this connection ignore the fact that inquest was to be completed early in view of the condition of the dead body of Siddanagouda. As the dead body was not in a position to be transported to Naganoor Hospital, PW-8 was requisitioned to the spot and autopsy was held at the spot. It is in these circumstances that PW-14 was to record the statements of witnesses. At the most he could have done so when PW-8 was conducting the post mortem examination on the spot, on the dead body. Inquest was being held at the spot on the road. Certainly that was not conducive for recording the statement on the spot under the circumstances. To do so PW-14 would have to go to the VPC Office where it appears he was camping, PW-15 had camped there. He could not have done so leaving the conduct of inquest proceedings to other Officers. As his presence there was necessary he could not have recorded the statements then. Therefore, the only time he could record the statements of the witnesses was before he proceeded in search of the accused or after he returned to the VPC Office and recorded the statements of PW-1 and Boaramma. Of course PW-14 has not offered satisfactory explanation why he did not make any attempt to secure the presence of PWs. 2 to 4 and 7 and record their statements, at 9-30 P.M. PWs. 2 to 4 are and were apparently ever ready to oblige PW-1. Even if their statements had been recorded earlier, their version would have been the same as the one they have given out in Court. PW-7 being an independent disinterested witness cannot be expected to change his version, whether recorded earlier or later. The question of delayed recording of the statement would be relevant only if an attempt is made by any person interested in the prosecution to create witnesses and put them forth as independent eye witnesses. Such an attempt is not discernible on the facts of

this case. The name of PW-7 is contained in Ex.P. 1, which we have held had been presented to PW-14 by PW-1 on 6-9-1983 at 7-15 A.M. itself. At this stage the contention of the defence that Ex. P. 28 has reached the Magistrate at 2-15 P M. and such a delay would be in favour of the defence to establish that time was required by the Investigating Officer to perfect the version of the prosecution and to put it forth for the prosecution, may be examined. When it is proved that Ex.P. 1 was given to PW-14 at 7-15 A.M. at the spot, the fact whether there was delay or not in reaching Ex.P. 1 to the Court at Shorapur becomes insignificant. The next argument in support of the contention that because of the delayed recording of the statement of PW-7, it is rendered suspect, is that the statements of PW-7 and PW-3 Shankargowda under Section 164 of the Cr. P.C. have been got recorded as per Ex.P. 10 and P. 6 on 31-1-1984 while the charge sheet has been filed on 6-2-1984 i.e. just about 5 or 6 days thereafter. The reasoning is that the Investigating Officers wanted to see that PWs. 3 and 7 should be bound to a particular version so that they would not later on during the trial resile from that version. It is to be noted that in law recording of the statement of a witness under Section 164 Cr.P.C. by itself does not render his evidence suspect. We consider it unnecessary to mention the citations. It would be rendered suspect, if there is any other material to show that an attempt has been made to create such a witness, that is during the investigation. We have already ruled out such a situation. Hence this argument has to fail. Therefore, we are satisfied that there are no inherent infirmities in the evidence of PW7. PW-7 has stated that on the morning of that Tuesday, Shankargouda -CW-6 came and sat on the Katta of a neem tree in front of his shop and asked him to supply him tea. He supplied tea and at that time, the deceased, P.Ws. 1, 2, 3 and 4 came from the side of Yevoor village and stood by the Katta of Angadi Irranna's flour mill. He has thereafter-narrated the names of the 14 accused persons, His further say in regard to the incident is recorded in his examination-in chief. At this stage, one more contention of the defence on the basis of the narration contained in Ex.P.1 requires consideration. The argument is that while Ex.P.1 narrates only the assault by Bhimanagouda Desai in the first instance, A9 in the second instance, A5 and A8, in the third instance and general assault by all the accused after surrounding the deceased, the overt acts ascribed in the evidence of these witnesses including PW-7 to A4, A2 and A13 and the

subsequent assault by A9 with the axe on the deceased are conspicuously absent. Therefore, there is a lot of improvement made in the version of these witnesses, during the investigation and hence it is not safe to rely on the evidence of the witnesses including P-W 7. The facts relied upon by the defence in this behalf are, Ex.P.1 does not refer to the overt acts of A.3, A.4 and A.13, and it does not make out that all the accused out and assaulted the deceased by axes and sticks.

36. The learned State Public Prosecutor contended that absence of details in Ex.P.1 is not sufficient to make the Court suspect the evidence of any of these witnesses particularly when the independent disinterested witness PW-7 has stated all these facts. It was further argued that the circumstances in which PW-1 wrote Ex.P.1 and the state of mind he was in when Ex.P.1 was written are required to be borne in mind while considering these aspects.

37. PW-1 has claimed that he wrote Ex.P.1 on his own while sitting on the Katta of Angadi Siddanna's Flour Mill. He has narrated in Ex.P.1 that all these accused came in a group from the direction of the tea shop of A.8 armed with axes and sticks and shouting at the deceased. Bhimanagouda cut on the left side of the neck of the deceased. A.9 also cut on the neck of the deceased. When the deceased fell down all the accused surrounded him and assaulted him with axes and sticks and ran away with the weapons. According to the prosecution it was within a short time of the incidents PW-1 wrote the narration in Ex.P. 1. It is to be noticed that the names of the witnesses are also stated in Ex-P. 1 and one of the names is of PW-7. PW-7 has given evidence in unequivocal terms that it was immediately after he supplied a cup of tea to Shankargouda CW-6 that the incident commenced and was over in little time. That was at about 6-30 A.M. according to his assessment. There is no contradiction or variance elicited in his evidence particularly on this aspect. We have already shown that the murder had taken place at any time between 3-40 A.M. and 6 A.M. on that day. The evidence, of PW-7 is in our considered opinion sufficient to establish that the murder of Siddanagouda was committed by about 6-30 A.M. or so on that day. When that is so, Ex.P. 1 has seen the light of the day a very little time after that. PW-1 is the son of the deceased. It must be that he was in great mental shock at that stage. It would be unreasonable for anyone to expect a cogent version with all the details,

except those which he at that time considered necessary. To expect such a person to narrate all the other overt acts of all the accused persons at such a time would not be just and reasonable. He has narrated how all the accused came, how the assault by Bhimanagouda till the deceased fell down was made and how the accused acted collectively and how all of them went away in a group taking away all the weapons with them. Therefore, the absence of other details in Ex.P.1 cannot render the evidence of PW-7 suspect. Moreover he is not the author or Ex.P. 1. He has stated that A.3, A.4 and A.13 caught the deceased and thereafter Bhimanagouda dealt a blow on his neck, thereafter A. 9 dealt a blow and the deceased fell down, and then all the accused dealt blows. This is also the evidence of all the eye witnesses PWs. 1 to 4. As to on which part of the body the blow of Bhimanagouda fell, on which part of the body the blow of A.9, fell and where the blows that were dealt by A.5 and A.8 fell is not narrated by these witnesses. All that accuracy cannot be expected from these witnesses in the narration. It would be highly unreasonable to do so. In case they were able to state like that and their statements are consistent such statements could be easily termed as parrot like statements. It is impossible for anyone witnessing such an incident to describe each blow except in regard to the initial part of the incident. It is to that effect that all these witnesses have stated, attributing the blows to Bhimanagouda and A.9. This aspect lends assurance to our mind that the evidence of P.W.7 is absolutely reliable in regard to the assault by the accused on the deceased.

38. The other aspect that is to be considered is whether the narration in Ex.P.1 and the evidence of PWs. 1 to 4 and 7 to the effect that all the accused surrounded the deceased and dealt blows with axes and sticks and then ran away is sufficient to prove the presence of all the accused and also sufficient to attract the provisions of Section 149 I.P.C. Reference may be made to the decision reported in Panduranga v. State of Hyderabad, : 1955 CriLJ572 to the observation which runs as follows :-

'Rasikabai says that the 'accused' raised their axes and sticks and threatened her when she called out to them, but that again is an all embracing statement which we are not prepared to take literally in the absence of further particulars. People

do not ordinarily act in unison like a Greek chorus and, quite apart from dishonesty, this is a favourite device with witnesses who are either not mentally alert or are mentally lazy and are given to loose thinking. They are often apt to say 'all' even when they only saw 'some' because they are too lazy, mentally to differentiate. Unless therefore a witness particularises when there are a number of accused it is ordinarily unsafe to accept omnibus inclusions like this at their face value. We are unable to deduce any prior arrangement to murder from these facts.'

The evidence of PW-7 and of PWs-1 to 4 that all the accused surrounded the deceased and assaulted him with axes and sticks can be said to be omnibus or allembracing. Hence, it is to be seen whether such evidence has been given just to rope in as many persons as possible as accused. In this connection the defence of A.9 (alibi) requires examination. Hence the evidence of DWs. 1 to 3 is to be looked into.

39. DW-1 has sworn that his father had expired on 5-9-83 and he had sent word to the villagers in the surrounding villages, A-9 had gone there along with ether persons from other villages to attend the funeral and thereafter A.9 had left Tonnur along with DW-2. DW-2 has also sworn that he attended the funeral of the father of DW-1 on that day. It is easy to see that such evidence can be secured as and when required. There is no other reliable material to establish that the father of DW-1 had expired on that day. Documentary evidence namely' extract from the Register of Death is not produced. It is not the evidence of DW-1 that A.9 was close to his family. On the other hand he has deposed that A.9 was only a client of his. It is also not his evidence that DW-2 was close to his family. Why DW-2 made it a point to attend the funeral is not explained by means of reliable circumstances. Moreover DW-2 has stated in his cross-examination that he went to PW-15 to get his statement recorded but PW-15 was not present. He has not stated that anytime thereafter he ever thought of approaching any of the Police Officers, investigating this case. No evidence in proof of A.9 being present in Gulbarga on 6-9-1983 is produced. Only DW-2 has stated that A.9 left his house in the morning of 6-9-1983 saying that he would go to Gulbarga. Whether in fact he went to Gulbarga cannot be gathered. Therefore even if the evidence of DW 1 is accepted

it is not sufficient to establish or even probabalise that A.9 could not be present at the spot by 6-30 A.M. on 6-9-1983. It is only if DW-2 is held to be a reliable witness that this fact would be proved. But the evidence of DW-2 has no support from any other quarter. His conduct in not contacting the CPI even though he had all the intention to do so shows that he had his information within himself till a late stage that is till he entered the witness box. Therefore we are not inclined to rely on his evidence. Apart from these reasons the Learned State Public Prosecutor argued that Ex.D.18, 19 and 20 are legally inadmissible in evidence. Ex. D. 18 is a letter from the Inspector General of Police to the S.P. Gulbarga reminding the S.P to send his report regarding the representation of Shri K. Rudragouda, Advocate. Ex. D. 19 is seen to be the report in response to Ex. D.18. On perusing these documents we have noticed that there is really nothing in them that can be in favour of A. 9. Hence there is no need to go into the legal aspect of admissibility in evidence. Ex. D. 20 is dated 20-9-1983. It is styled as grave crime Report sent by the S.P. Gulbarga. It refers to a confidential report said to have been made by PW-16 to the effect that A. 9 and Bhimanaguda Desai were not involved in this offence. The report actual is not on record. We wonder how the Learned Sessions Judge has admitted this document in evidence. Sri Naik argued that it is, part of the Case Diary written by PW-16 during investigation by him. PW-16 has not stated that he ever investigated in this case earlier to 21-10-1983. Hence, it is not possible to accept this argument. Even if it is part of case diary it cannot in law be substantive evidence. Moreover PW. 16 has in evidence denied having made any such report. Hence even as contradiction it is not proved. We, therefore, conclude that Ex. D. 20 is to be left out of consideration. In the result, the reasoning of the Sessions Judge built on Ex. D. 20, though it is against the defence has to be ignored.

40. This takes us back to the evidence of P.Ws. 1 to 4 and 7. We have held that the evidence of PW-7 is reliable. It is clear therefrom that all the accused appellants came in group from the direction of the shop of A.8, shouting and some of them were armed with axes and the others with sticks and after the brutal attack on the deceased all of them went away in a group taking their weapons with them. Therefore, it is proved that the group was in fact an assembly and the object of the assembly was to attack the deceased murderously to cause his death. Hence the

facts and circumstances of this case are different from the facts and circumstances of the case in Pandurang v. State of Hyderabad. While commenting on the evidence of the eye witnesses, Sri Naik argued that their evidence is directly conflicting with the medical evidence, particularly in Ex. P. 14 because two stab like injuries are described and no lacerated injuries have been observed. His further argument is that if assault by sticks had been made, lacerated wound would have been caused and absence of lacerated wounds falsifies the evidence of PW-7 and the other witnesses also. The other part of the argument is that stab like injuries described by P.W. 8 show that a weapon like dagger or sickle might have been used, while the evidence of the eye witnesses is assault with axes. The injuries referred to by Sri Naik are described by PW-8 as follows :

'3. A transverse incised wound situated on the right-shoulder measuring 7' x 3/4' x 1/2' of stab type. Direction of the wound from left to right. Clotted blood was present infiltrating the edges.'

PW-8 has stated that this type of injuries also could be caused by weapons like axes. He has not described the injuries as stab injuries. What he simply means is that they were stab like. Therefore, this argument fails.

41. The evidence of PWs. 1 to 4 is in no way different from the evidence of P.W. 7 in all material particulars. Therefore, it is safe to be relied upon though P.Ws. 1 to 4 are partisan witnesses.

42. We have perused the reasoning of the Sessions Judge, regarding, the arrest, recording of voluntary statements of the accused and recovery of weapons at their instance. We find no good reasons to differ with that reasoning.

In view of the foregoing reasons we agree with the conclusions of the Learned Additional Sessions Judge and hold that the Prosecution has satisfactorily established the charges against all the accused appellants. We are unable to agree that the sentence of fine of Rs. 500/- is also to be imposed on each of the accused for the offence under Section 302 r/w 149 I.P.C. We dismiss the appeal but set aside the sentence of fine. We direct that the fine amount if already recovered, be refunded to the accused.

As A.9 is on bail, his bail bonds are hereby cancelled. We direct him to surrender and undergo sentences.

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