

In Re: Mettu Pentayya and ors.

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Court : Andhra Pradesh

Decided On : Apr-01-1959

Reported in : AIR1960AP545; 1960CriLJ1402

Judge : Bhimasankaram and ;Basi Reddy, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 161(3), 174 and 175;
[Evidence Act, 1872](#) - Sections 9 and 114

Appeal No. : Criminal Appeal Nos. 236 to 244 and 316 of 1958

Appellant : In Re: Mettu Pentayya and ors.

Advocate for Def. : N. Subba Reddy, Adv.

Advocate for Pet/Ap. : C. Krishna Reddy, ;S. Krishna and ;A. Venkataramana, Adv.;Public Prosecutor

Judgement :

Basi Reddy, J.

1. The case out of which these appeals arise, has had a long and chequered career. Two persons, father and son, by names Mettu Danayya and Rajeswar, were done to death on the night of the 14th, November, 1954, in the village of Venkatapur by a large number of Bhois of that village. After investigation, the Police laid a charge-sheet against 25 persons out of whom two persons, Kalchetti

Danayya and Gaddam Muttayya, were shown as absconding. Three out of the 23 were discharged by the Committing Magistrate and the remaining 20 persons stood their trial before the Court of Session, Hyderabad District.

The then learned Sessions Judge convicted 9 persons and acquitted the remaining 11. The convicted persons appealed to the erstwhile High Court of Hyderabad, while the State appealed against the acquittal of the 11 persons. The High Court ordered a retrial of the case on the ground of non-compliance with the provisions of Section 309 Cr. P. C. which as it stood then, dealt with the form in which the opinion of the assessors had to be taken. The High Court, however, maintained the Order of acquittal concerning three of the accused. The result was that the 17 persons were tried again by the learned Sessions Judge of Hyderabad District in Sessions Case No. 8/8 of 1957. The learned Sessions Judge has convicted the same 9 accused as were convicted at the previous trial and has acquitted the same 8 accused. The consequence has been that the 9 convicted accused have been in jail for over 4 years without their guilt being finally adjudicated upon.

The convicted accused are; Mettu Pentayya (A-5); Gaddam Lachmayya (A-6); Kuntam Narsayya (A-8); Mettu Jangayya (A-9); Mettu Balayya (A-11); Pill Sattayya (A-12); Pilli Sukkayya (A-13); Pallela Balayya (A-15); and Yelugula Pedda Balayya (A-16); and their appeals are respectively Criminal Appeals Nos. 236, 237, 238, 239, 240, 241, 242, 243 and 244 of 1958. As against the acquittal of the remaining 8 accused viz. A-1,2,3,4,7, 10, 14 and 17, the State Government has preferred Criminal Appeal No. 316 of 1958.

2. At the trial, a charge which had been framed by the Committal Court in the following terms as against each of the 17 accused, was adopted and the accused were tried on that charge. The charge reads :

'That you having criminally conspired with other accused persons and abetting each other and prosecuting the common object of the assembly formed by you and invited through a letter dated November, 1954 one Mettu Danayya son of Savanna, his son Rajeswar, residents of Bhoiguda, Hyderabad, to your own village Venkatapur having a deep-rooted grudge against him in connection with

the Fisheries Contracts of Himayat Sagar Tank secured by Danayya against your will and wish. Thus they were called to the village on 14th November 1954 and made them stay at a vacant house in the village belonging to Thimmayya and at about 9-10 p.m., had intentionally inflicted various injuries on both of them through lathis, a bayonet and dropped a heavy stone on the head of Danayya and murdered them in the same house and thus committed offences under Sections 148, 120B, 302, 149 and 427 I. P. C. cognizable by me and triable by the Court of Sessions and do hereby further direct that you be tried for the above stated offence before that Court.'

It will be seen at once that this is a good example of a bad charge. Apart from the clumsy language, it is an amalgam of several allegations and several offences, and could not have given the accused clear notice of the accusations they had to meet; and from the averments in the charge, it is difficult to see how an offence under Section 427 I. P. C. (Mischief) at all arises. The learned Advocate for the appellants has not, however, complained about the frame of the charge apparently for the reason that the accused have not been prejudiced thereby, and also perhaps by the realisation that in any event another retrial would not be in the interests of the accused.

3. Further, as pointed out by the learned Public Prosecutor, a mass of inadmissible documentary evidence has been brought on record, as for example, former statements of witnesses not called at the trial; written communications not duly proved; proceedings of identification parades held by the Police; and statements of a confessional nature not falling within the ambit of Section 27 of the Evidence Act. In judging this case, we have scrupulously eschewed from our consideration all such inadmissible documents.

4. At the Sessions trial, 19 witnesses were examined on behalf of the prosecution and two on behalf of the defence. Of the 19 witnesses examined by the prosecution four are eye-witnesses and they are Ramaswamy (P. W. 11); Sankarayya (P. W. 13); Nagayya (P. W. 14) and Bon Bon Lachmayya (P. W. 15).

5. The case for the prosecution may now be set out: The deceased Danayya was a resident of Bhoiguda in Hyderabad City. He was a man of means and had taken

contracts from the Government for fishing in Himayat Sagar, Osman Sagar and other tanks. It was his practice generally to give permits to the Bhois of surrounding villages to catch fish for a whole year at a fixed rate and the permit-holders were allowed to sell fish in the open market. But so far as the Bhois of Venkatapur village were concerned, Danayya had insisted on their selling the fish to him at his own price.

The fishermen of Venkatapur were naturally disgruntled and so some of their representatives requested Danayya to relax the said condition and permit them to sell their catch on the same terms at the Bhois of other villages. After some negotiations, Danayya agreed to the suggestion and it was arranged that Danayya should visit Venkatapuram, apprise the villagers about his decision and issue permits. About ten days prior to the occurrence it was arranged that Danayya should visit the village on 4-11-1954. On the previous day, however, he received intimation that that date would not be suitable to the villagers and 14th would be more convenient.

6. So on the 14th November, Danayya procured a car from a friend of his and left Hyderabad at about 11 A. M., accompanied by five companions Ramaswamy (P. W. 11); Sankerayya (P. W. 13); Nagayya (P. W. 14); Bon Bon Lachmayya (P. W. 15) and one Jaganath. The car was driven by Sheik Mahboob (P. W. 12). The party reached Venkatapur at about 3 p.m., covering a distance of about 28 miles. Danayya and his friends went to the 'Chawdi' and stayed there for some time. At about 4 p.m., Kuntam Narasayya (A-8), Pallela Balayya (A-15) and Gaddam Mutayya came to the 'Chawdi' and told Danayya and others that the 'Chawadi' was meant for Government Officials and that they should move into the vacant house of Thimmayya.

This Thimmayya is a relation of Danayya. The party agreed to the proposal and they all went to the house of Thimmayya. About half an hour later Rajeswar, the son of Danayya, who had left Hyderabad earlier on a bicycle, also arrived. The car was brought by the driver and parked in front of Thimmayya's house. They then started making arrangements for cooking food. At about 5 or 5-30 p.m., five persons came to Thimmayya's house and they were Kuntam Jangayya (A-1);

Kuntam Narsayya. (A-8); Pallela Balayya (A-15); Yelgula Peda Balayya. (A-16); and Gaddam Muttayya. They all sat inside the house and A-1 broached the topic of allowing the Bhois of Venkatapur to sell fish in the open market. The deceased Dauayya told them that he had already decided to do so and that he would issue permits to the Bhois of Venkatapur as he was doing to the Bhois of other villages. The party of five were apparently pleased with the outcome of the talks and they all left Thimmayya's house saying 'Acha' 'Acha'.

7. At about 6 or 6-30 p.m., Thimmayya, the owner of the house, came, lighted a lantern and hung it up in the verandah and lighted a 'pit-piti' and placed it in the niche in the room adjoining the verandah. Between 8 and 8-30 p.m., Danayya and the others had their food and Danayya went inside the room to sleep. The others sat round the 'Chula' wanning themselves. While they were thus seated, Kuntam Narsayya (A-8) and Gaddam Muttayya came in and asked them if they had had their meal, and then sat down near the fire. A little while before the arrival of these two, Jagannatk had gone out to answer calls of nature. Nagayya (P. W. 14) wanted to go out to relieve himself but Kuntam Narasayya (A-8) told him that he could relieve himself in the drain inside the house. P. W. 14 however went out.

As soon as P. W. 14 stepped out, he saw a number of persons standing with their backs pressed against the wall. So P. W. 14 went in immediately apparently suspecting foul play. Close on his heels, seven persons entered the house with lathis in their hands and they were Accused Nos. 3, 5, 6, 9, 11, 12 and 13. One of them asked for a 'beedi' but P. W. 13 gave all of them cigarettes and they lighted their cigarettes and were smoking them. Within two or three minutes thereafter, Pallela Balayya (A-15) and Lalchetti Danayya (absconding accused) came in armed with a bayonet and an axe respectively and they were followed by 20 or 25 persons armed with lathis. A-15 and Kalchetti Danayya shouted, 'What are you waiting for? Maro, Maro'. Thereupon the seven persons who had come in earlier, rained blows on Rajeswar, the son of Danayya.

The assailants paid no heed to the piteous cries of the victim. A-8 then snatched the bayonet from the hands of A-15 and plunged it in the back of Rajeswar. On receipt of this injury Rajeswar fell down and all the intruders numbering about 30

or 35, surrounded him and belaboured him indiscriminately with lathis. At that stage, P. Ws. 11, 13 and 15 ran into the room where Danayya was sleeping, bolted the door from inside and stood pressing their bodies against the door to prevent the ingress of the assailants. All that was of no avail. The assailants broke open the door and rushed in. They were after the blood of Danayya. The four who entered the room were: A-8, A-15 and the two absconding accused Kalchetti Danayya and Gaddam Muttayya. The latter struck the deceased Danayya with a lathi and Kalchetti Danayya struck him with an axe. The deceased Danayya collapsed and then A-8 dragged him out of the room by his legs and laid him by the other victim Rajeswar. Thereupon lathi blows were showered on him from all sides and finally A-15 picked up one of the 'chula' stones and dropped it on Danayya's head.

8. Some of the rioters then caused damage to the car which was standing outside. P. Ws. 11, 13, 14 and 15 who had stood by and witnessed the entire incident, were then taken by A-8, A-15 and Gaddam Muttayya and confined in the house of Kalchetti Jangayya, which is next to the scene of occurrence. After some time, P. Ws. 11, 13, 14 and 15 escaped from the house and ran for their lives. P. W. 15 hid himself in a temple at the outskirts of the village and early the next morning borrowed a bicycle and rode back to Hyderabad which he reached by 11 or 11-30 a.m., on the 15th. At about 1 p.m., P. W. 15 went to the Police Station at Asifnagar and gave a report of the occurrence to the Sub-Inspector of Police (P. W. 17). The report is Ex. P. 5 and is in the following terms:

'Lachayya son of Narsimlu, caste, Bhoi (Fisherman) age 50 years, occupation Contractor, resident of Prakash Nagar, Bhoiguda, City area states :

Four days ago Atoor Balayya brought and 'gave me a letter from Pallela Balayya and Kalchetti Danayya, residents of Venkatapur in which it was written that I and the deceased Mettu Danayya and his son Rajeswar should come to Venkatapur village on the 14th November, 1954 for the purpose of settling the matter of the fish contract of Himayat Sagar Tank. On this I and the deceased persons, and Nagayya, Shankerayya and Ramaswamy, residents of Bhoiguda reached Venkatapur by Motor Car No. HYX/6595, yesterday the 14th November 1954 at 2

p.m. met and talked with the Head Chaudhri Pallela Balayya. He said that the matter would be settled in the evening when all the people that is, the Bhois came. I said it would be better if the permission after the settlement were to be given that evening only.

At their insisting on our staying for the night we had seated ourselves at about 9 p.m., In the house of one Thimmayya son of Lachmayya, when Pallela Balayya, Kalchetti Danayya, Kuntala Nars-ayya, Mettoo Lachayya, Sattayya, Gaddam Jangayya, Pilli Sukkayya, Pilli Jangayya and Chukkayya and others being armed with sticks, spears and axes and accompanied by other 15 to 20 persons entered the house, attacked Danayya and Rajeswar and inflicted injuries. They also inflicted injuries with the stones of the oven which had been kept in the courtyard and killed them both then and there (on the spot). The corpses of both the deceased persons are lying there at the place of occurrence. It is prayed dtv action may be taken according to law. The deponent heard the statement and admitted it to be correct. (Hamawamy was also injured).

Sd/--15-11-1954'.

9. This was a statement given by P. W. 15 when the events were fresh in his memory and he gave the names of nine persons as having participated in the crime. The names were; Pallela Balayya, Kalchetti Danayya, Kuntala Narsayya, Mettu Lachayya, Sattayya, Gaddam Jangayya, Pilli Sukkayya, Pilli Jangayya and Chukkayya.

10. It will be convenient here to refer to the answers given by P. W, 15 in cross-examination with regard to the names given by him in Ex. P. 5. This is what he states at page 95 of the paper-book :

'Neither K. Danayya nor Gaddam Muttayya are present amongst the accused in this court. Mettu Lachmayya is the name of a brother of deceased Danayya. There is no one of the name Mettu Lachmayya present amongst the accused before the Court or of the name of Kuntala Narasayya. Those names were however mentioned in the report. I had given the name of Mettu Lachayya because I did not know then that it was Gaddam Lachmayya. I did not object to any of the names

entered in my report when it was read over to me and before or after I affixed my signature. The names of Pilli Jangayya and Chukkayya as mentioned in the report are not the names of any of the accused present in this Court. I have known Pilli Sattayya accused for 4 or 5 years before the incident. I had not given the name of Pilli Sattayya in the report Ex. P-5'.

Thus out of the nine names mentioned in Ex. P-5, two alone are clearly and unmistakably identifiable with the names of A-13 and A-15 -- Pilli Sukkayya and Pallela Balayya respectively. It is worthy of note that in that statement P. W. 15 did not say that he knew the names of the other culprits; nor did he say that he could identify them if shown. The significance of this will be noticed when we come to assess the evidence of this witness.

11. Now the movements of the other three companions of P. W. 15 may be referred to. P. Ws. 11, 13 and 14 ran from Kalchetti Jangayya's house, swam the river which flows by the village of Venkatapur and P. W. 11 went his own way and reached his house at Bhoiguda in Hyderabad at about 9 a.m., the next morning. He just kept quiet without informing any one of what he had seen. P. Ws. 13 and 14 roamed through the jungle all the night, not knowing the way and ultimately reached Thimma-pur Railway Station on the morning of the 15th at about 9 a.m. Half an hour later they caught a train, got off at Shadnagar, went to the Police Station at 12-30 p.m., and there the Sub-Inspector of Police took down a report of the incident from P. W. 14. In the evening P. Ws. 13 and 14 returned by a lorry to their houses in Hyderabad. Ex. P-9 is the statement of P. W. 14 which was recorded by the Sub-Inspector of Police, Shadnagar, and it is as follows :

'On 15-11-1954 at 12-30 p.m., one Negayya son of Rajannah Bhoi, 55 years, of Prakashanagar, Bhoiguda, Hyderabad-Deccan, came to the Police Station and gave a verbal report to the following effect:

'On 14-11-1954 at about 3 p.m., myself and Shankarayya, Lachayya, Ramaswamy and Danayya Contractor of Bhoiguda, went to the village of Venkatapur in order to issue licences' for fishing to the Bhois of Venkatapur. We all stayed in Chawdi of the village. But Narasayya Bhoi, came to the Chawdi at 3-30 p.m., and took us to the house of Thimmayya where we stayed, At about 9 p.m. with the conspiracy of

Kuchella Danayya, Narsayya and Alludu Balayya came to us and engaged us in a talk. Rajeswar was lying in the dallan and Danayya was in the room.

Within fifteen minutes a group of persons equipped with lathis and torch light approached us and sat near us. There was a hurricane lantern lit and hanging in the verandah. They asked us about our welfare and said that they were going to hunt down rabbits.

After fifteen minutes to that again a group of ten to twelve persons equipped with lathis came to us led by Chawduri Balayya.

Chawduri Balayya instigated the party of five persons and other two to assault and beat us whereupon the other group also joined the party led by Chawduri Balayya and assaulted us with lathis.

Muttayya and a fair tall man whom I can recognise assaulted and beat Rajeswar with lathis. After beating, they dragged him also into house-yard and killed him by heating him with lathis. Some of the looters broke door and dragged out Uanayya, beat him to death with lathis. We were threatened to keep quiet and after the commission of the murders of Rajeswar and Danayya we were confined forcibly in the house of the brother of Thimmayya.

I request you to take necessary action,

(signed in Telugu)

Nagayya'.'

It will be seen that in this report the names of A-8, (Narsayya) and A-15 (Chowclari Balayya) are mentioned and they along with A-16, who is referred to as Alludu Balayya and one Kunchela Danayya, are implicated in the conspiracy which preceded the attack. With regard to the actual attack on the two deceased, A-15 is said to have instigated the others, while Mutayya and a fair tall man whom the informant could recognise, had beaten Rajeswar. But as regards the attack on Danayya the names of the assailants are not mentioned. Just as in the case of Ex. P-5, it is not stated in Ex. P-9 that the informant P. W. 14, knew the names of the

other assailants or that he could identify them. All that he stated was that he could identify the fair tall man who had assaulted Rajeswar. It must also be noted that P. W. 13 was also present when Ex. P-9 was given by P. W. 14 and it was read over to both of them by the Sub-Inspector of Police, Shadnagar.

12. We shall now refer to the investigation conducted by the Sub-Inspector of police, Asirnagar (P. W. 17) and the Circle Inspector of Police (P. W. 19). After having recorded Ex. P-5, the Sub-Inspector proceeded to Venkatapuram and held inquests over the dead bodies of Danayya and Rajeswar. At the time of the inquests P. Ws. 11, 12, 13 and 15 were present. At the inquests, however, only three persons were examined and they were Lachmayya (P. W. 15), Sheik Mahboob, the driver (P. W. 12) and Thimmayya, the owner of the house in which the occurrence took place. Thereafter the Sub-Inspector sent the dead bodies for post-mortem examination. The Sub-Inspector also noticed a car parked outside the house of Thimmayya and it was in a damaged condition. At the scene he seized a broken door-frame and blood-stained earth.

13. The autopsy on the dead bodies was held on 16th Nov. 1954 by Dr. Deshpande (P. W. 18), the Medical Officer at the Sultan Bazaar Hospital, Hyderabad. On the body of Danayya, the following 16 injuries were found;

1. Lacerated wound 3' x 1' x 1/4' on the right and front of the head. This caused fracture of the right parietal of frontal bone. This was grievous in nature.
2. Bruised wound 1 1/2' x 3/4' x 1' just below the right eye. This was simple.
3. Another incised wound 1 1/2' x 3/4' x 1' just below the left eye. Simple.
4. Lacerated wound 2' x 2' x 1' on the right posterior side of the head. At this side the occipital bone was fractured. Grievous,
5. Abrasion 2' x 2' on the right Side of the abdomen. Simple.
6. Incised wound 2' x 3/4' x 1' on the chin. Simple.
7. Contusion 4' x 2' on the right side of the abdomen. Simple.

8. Contusion 5' x 2' on the centre of the abdomen. Simple.
 9. Contusion 6' x 2' just to the left of the middle abdominal line. Simple.
 10. Contusion 3' x 1 1/2' on the left side of the abdomen. Simple.
 11. Contusion 4' x 1 1/2' on the left of the abdomen. Simple.
 12. Contusion 5' x 2' on the left thigh. Simple.
 13. Contusion 4' x 2' on the middle of the right thigh. Simple.
 14. Contusion 4' x 2' on the right side of the back. Simple.
 15. Contusion 5' x 2' on the left side of the back. Simple.
 16. Lower jaw fractured at the centre. Grievous. Internal examination revealed laceration of the brain and the fracture of the right 2nd, 3rd and 4th and the left 4th & 5th ribs. The brain matter was lacerated and exposed through the fractured bones. The cause of death was laceration of the brain and shock as a result of the injuries on the head.
14. On the body of Rajeswar, the Doctor found the following 12 injuries:
1. Lacerated wound 2' x 1' x 1' just above the left eye. At this side there was fracture of the frontal bone. Grievous.
 2. Incised wound 1 1/2' x 1 1/2' on the left side of the forehead. Simple.
 3. Incised wound 1' x 1/2' x 1/2' on the left upper side of the forehead. Simple.
 4. Incised wound 1 1/2' x 1/2' x 1/2' in the centre of the forehead. Simple.
 5. Incised wound 1' x 1/2' x 1/2' on the right side of the forehead. Simple.
 6. Incised wound 1' x 1/2' x 1/2' on the right side of the chin. Simple.
 7. Lacerated wound 2' x 1' x 1' on the left side of the chin -- here the mandible bone was fractured. Grievous.

8. Incised wound 1' x 1/2' x 1/2' on the left cheek. Simple.

9. Incised wound 1 1/2' x 1/2' x 1/2' on the left side of the nose. Simple.

10. Stabbed wound 2 1/2 x 3/4' x 8' on the right middle of the back. Grievous.

11. Contusion 4' x 2' on the right shoulder. Simple.

12. Abrasion 1' x 1' on the left shoulder. Simple. On dissection he found the right ventricle of the heart pierced and the lower right lung lacerated. Both these injuries were the result of the external injury No, 10. In his opinion death was due to shock and haemorrhage as a result of the Stab wound in the right lung and heart.

15. Thus, having regard to the number and nature of the injuries caused to the deceased persons, there can be no doubt that the common object of the assailants was to cause their death, and death did result then and there.

16. The Circle Inspector of Police, giving evidence as P. W. 19, after giving a narrative of the facts of the case as though he were an eye-witness, speaks to the further investigation into the case. He sent for the four eye-witnesses P. Ws. 11, 13, 14 and 15 to Asifnagar Police Station on the morning of the 17th November and examined them. He recorded the statement of Lachmayya (P. W. 15) but did not make a separate record of the statements of the other three as he found their statements to follow the pattern of P. W. 15's statement; so he merely noted that all the other eye-witnesses gave statements identical with the statement of Lachmayya.

17. In our view this was a deplorable step to have been taken by the Investigating Officer in a case of this gravity. Although there were only four eye-witnesses and the whole prosecution case rested on them, the officer did not think it necessary to record the statements of three of the eye-witnesses. The statement of p. W. 15 ran into several pages and the assertion of the Circle Inspector that the statements of the other three were of the same pattern as and exactly similar to the statement of P. W. 15 appears to us to be disingenuous.

The result has been that we are left in the dark as to what exactly these three persons had stated shortly after the occurrence and how many of the accused they had implicated. It is true Section 161(3) Cr. P. C. gives the Investigating Officer a discretion in the matter of recording the statements of witnesses but that discretion has to be exercised soundly and not arbitrarily or capriciously and certainly not in such a manner as to handicap the accused in their defence or deprive the Court of valuable material for ascertaining the truth.

18. To continue with the course of the investigation, the Circle Inspector arrested 23 accused on various dates from the 17th November to the 8th December and recovered lathis from the houses of some of the accused and a bayonet (M. O. 22) from the house of A-8. He held three identification parades -- one on the 19th, the second on the 21st November at Asifnagar Police Station and the third on the 8th December at Keshavgiri Police Station. All those parades were held, according to the Circle Inspector, for his 'personal satisfaction.'

But none of the four eye-witnesses deposed at the trial as to which of the 23 accused they had identified at the parades; indeed one of them, P. W. 13, stated that he did not remember whom he had identified at the first or the second parade at Asifnagar. Although it must have been obvious even to a tyro that the eye-witnesses could not have known the names of all the culprits, nor could have been certain of their identity, the Circle Inspector made no attempt to get a Magistrate to hold a test identification. This again was a grievous error of judgment on the part of the Investigating Officer.

A proper identification parade held by a Magistrate would have dispelled many of the doubts and difficulties that beset this case, and would have been of great assistance to the Court in punishing the real offenders. A conviction in a capital case cannot be based on the subjective satisfaction of the Investigating Officer but on evidence which satisfies certain well-recognised objective tests.

19. After completing the investigation, the Circle Inspector filed a charge-sheet on 13-12-1954 against 23 persons, and two others -- Kalchetti Danayya and Gaddam Muttayya--were shown as absconding.

20. The pleas of the accused were ones of denial and all of them stated that they were not in the village on the night of occurrence. A-8 added:

'Bon Bon Lachmayya, Nagayya and Shankerayya have enmity against me. They wanted me to supply fish which I refused and so they entertained ill-feelings against me.'

Similarly A-15 stated:

'Bon Bon Lachamyya, Nagayya, Shankerayya and Ramaswamy have enmity with me regarding the supply of fish.'

A-15 examined D. W. 1 to prove his alibi while A-8 and A-16 examined D. W. 2 to prove theirs. The evidence of these witnesses has only to be read to be disbelieved and the learned Sessions Judge was perfectly right in rejecting it. Even the learned Advocate for the accused has not placed any reliance on it.

21. The learned Sessions Judge found that the accused had no motive to do away with the deceased; that the recovery of various weapons was shrouded in suspicion; that the charges of conspiracy and mischief had not been substantiated and that Accused 1 to 4, 7, 10, 14 and 17 were not guilty of any of the charges. The learned Judge, however, accepted the direct evidence of P. Ws. 11, 13, 14 and 15 in so far as it implicated the nine appellants--Accused 5,6,8,9,11,12,13,15, and 16; convicted them of offences under Sections 148, 302 and 149 and sentenced each of them to imprisonment for life. With regard to the conflict between Ex. P-9 and the evidence given by P. W-14 in Court, the learned Judge observes:

'Now the above statement (meaning P. W. 14's deposition) tallies in material particulars with the contents of Ex. P-9 No doubt the contents of F. I, R. show differences in the names of the accused and the type of weapons employed by them but these variations can hardly affect the tatum of the presence of this witness at the spot in company with other eye-witnesses or the deceased or of the commission of the crime.'

Again the learned Judge says :

'It may be conceded that there are several discrepancies and inconsistencies in the contents of the F. I. R. and the testimony of the witness before the Court but these inconsistencies are not very material and as such cannot be regarded as fatal to the prosecution case.'

With regard to the other three eye-witnesses namely P. Ws. 11, 13 and 15, the learned Judge remarks;

'Moreover, it becomes quite clear from a perusal of the testimony of the other three eye-witnesses, which need not be quoted in extenso, so that the story as narrated by P. W. 14 (Nagayya) has become fully corroborated in important details of murderous assault. This should not be taken to mean that no inconsistencies or discrepancies have crept into the stories narrated by the other eye-witnesses but these variations are again of a minor type and are bound to occur not only on account of individual temperament of the witness narrating the story but also due to the long interval which has occurred between the date of the incident and the narration of the details of the incident by these eye-witnesses before the Court

These inconsistencies in the statements of the other eye-witnesses as have come to light and which were sought to be made capital of by the learned Advocate for the accused cannot, therefore, be deemed to have much effect against the prosecution case, particularly as they cannot be deemed to materially affect the important aspects of the incident on the point of the two deceased persons having gone to Venkatapur along with the eye-witnesses or of the party staying at the house of Thimmayya and being done to death there. It is also not the case of the accused that any of the other eye-witnesses are inimically disposed towards them and as such there appears to be no reason for disbelieving their stories.'

It will thus be seen that the learned Sessions Judge has contented himself with sweeping generalisations and vague dicta without making any attempt at sifting and weighing the evidence in the light of the discrepancies and contradictions elicited in cross-examination; nor has he made any attempt to consider the case of each of the accused. He has not referred to Ex. P-5 and its impact on the testimony of P. W. 15. He has failed to see that the vital issue in the case was not whether the crime had been committed but whether there is clinching proof that

the accused had committed it, Moreover he has not given any reason why on the same evidence he convicted 9 of the accused and acquitted the remaining 8.

22. Before going into the merits of the case, we may advert to the contentions of the learned Advocate for the defence with regard to certain alleged irregularities in the investigation and in the conduct of the prosecution. It is argued that the inquest reports Ex. P-33 and P-34 contain only a condensed and consolidated statement of P. W. 12, the driver, of P. W. 15, one of the eye-witnesses and of one Thimmayya, who was not called at the trial; and it is said that the failure to record separate statements of these three persons examined at the inquest, involves a contravention of the provisions of Section 161(3) of the Code of Criminal Procedure.

In our opinion this argument is based on a misconception as to the true purpose of an investigation under Section 174 Cr. P. C. which is in the nature of an inquest. Such an investigation is limited in scope and is confined to the ascertainment of the apparent cause of death. It is concerned with discovering whether in a given case, the death was accidental, suicidal, homicidal or caused by an animal, and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. It is for this limited purpose that persons acquainted with the facts of the case are summoned and examined under Section 175 Cr, P. C. That being the true scope of an inquest, in our opinion, it is neither necessary that all eye-witnesses should be examined at an inquest nor is it incumbent on the police officer to record verbatim and Separate statements of the persons examined by him under Section 175, Cr. P. C. An investigation under Section 174 Cr. P. C. should not be confounded or equated with an investigation into a cognizable offence which is governed by the provisions of Sections 160 and 161 Cr. F. C.

23. We should like to point out in this connection that the Police Standing Orders (Orders 555 and 567) give detailed instructions to Police Officers as to how an investigation under Sec, 174 Cr. P. C. should be conducted; and they are in conformity with the view we have expressed. Investigating Officers should acquaint themselves with these Orders and follow faithfully the directions contained therein.

24. In the present case the inquest reports were made available to the defence and P. W. 15 was elaborately cross-examined with reference to his statement at the inquest. The defence cannot therefore have any legitimate grievance.

25. Another point made by the learned Advocate for the defence is that the non-examination by the prosecution of certain material witnesses has caused prejudice to the accused. Those persons are stated to be the Police Patel of Venkatapur, the Sub-Inspector of Police of Shadnagar and Thimmayya, who had witnessed the occurrence. The true rule as to the duty of the prosecution to call material witnesses is the one enunciated by the Judicial Committee of the Privy Council in *Stephen Seneviratne v. The King*, AIR 1936 P. C. 289 and it is as follows:

'It is said that the state of things above described arose because of a supposed obligation on the prosecution to call every available witness on the principle laid down in such a case as *Ram Ranjan Rojn v. Emperor*, AIR 1915 Cal 545, to the effect that all available eye-witnesses should be called by the prosecution even though, as in the case cited, their names were in the list of 'defence witnesses'. Their Lordships do not desire to lay down any rules to fetter discretion on a matter such as this which is so dependent on the particular circumstances of each case.

Still less do they desire to discourage the utmost candour and fairness on the part of those conducting prosecutions; but at the same time they cannot, speaking generally, approve of an idea that a prosecution must call witnesses irrespective of considerations of number and or reliability, or that a prosecution ought to discharge the functions both of prosecution and defence. If it does so, confusion is very apt to result, and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross-examination. Witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution whether in the result the effect of their testimony is for or against the case for the prosecution.'

Applying the above criteria, we fail to see how the Police Patel and the Sub-Inspector were witnesses essential to the unfolding of the case for the prosecution. The former had done nothing more than record the statement of Thimmayya a few hours after the occurrence. Thimmayya himself was not examined by the

prosecution and we will presently show that no adverse inference can be drawn therefrom. It was however strenuously argued that the Police Patel might have given some useful information which might have thrown doubts on the truth of the story told by the eye-witnesses.

In our opinion this contention is wholly untenable. We do not consider it any part of the duty of the prosecution to supply ammunition to the defence for the purpose of blowing up the prosecution's case. In this connection the observations of the Supreme Court in a recent case, *Narain v. State of Punjab*, : 1959 CriLJ537 are apposite. In repelling the contention that one Raghbir should have been called by the prosecution, their Lordships said:

'The question then is, was Raghbir a material witness? It is an accepted rule as stated by the Judicial Committee in AIR 1936 PC 289 that 'witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution.' It will be seen that the test whether a witness is material for the present purpose is not whether he would have given evidence in support of the defence. The test is whether he is a witness 'essential to the unfolding of the narrative on which the prosecution is based'. Whether a witness is so essential or not would depend on whether he could speak to any part of the prosecution case or whether the evidence led disclosed that he was so situated that he would have been able to give evidence on the facts on which the prosecution relied. It is not however that the prosecution is bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call all material witnesses.

Was Raghbir then a witness, essential to the unfolding of the prosecution case? That clearly Raghbir was not. The prosecution case, as we have seen, was concerned with the injuries caused to Mani Ram and his abduction. According to the prosecution case, Raghbir arrived after those offences had been committed after Mani Ram had been assaulted and shot at and after he had been put on a horse and had been carried some distance, The prosecution no doubt admits that Raghbir shot Sahi Ram but says that he did so in self-defence. This incident is an entirely separate incident. It is not necessary to prove it in order to prove the

offences with which the appellants were charged. Raghbir therefore was not a witness whom the prosecution was bound to call to establish its case. The fact, assuming it to have been so, that Raghbir would have said in his evidence that the incidents did not happen as the prosecution stated, may no doubt have established a good defence. But if it was so, then he would have been only a witness material for the defence and not a witness essential to the unfolding of the narrative on which the prosecution case is based. The prosecution is not bound to call witnesses to establish the defence but only witnesses who are material for proving its own case'.

The same considerations apply with regard to the Sub-Inspector of Shadnagar. He had merely recorded the report Ex. P. 9 given by P. W. 14 but had not taken part in the investigation of the case. Ex. P. 9 was proved at the trial by P. W. 14 and the defence made full use of it for cross-examining the witness.

26. As regards Thimmayya, he was no doubt an eye-witness but it would appear he was not called by the prosecution as the prosecution had already examined four eye-witnesses. The prosecution need not multiply witnesses and pile up evidence. Here the defence cannot possibly complain of prejudice by reason of the non-examination of Thimmayya and no oblique motive has been suggested for withholding him. In fact before the Magistrate under Section 164 Cr. P. C. Thimmayya had given a statement which was most damaging to the accused. Had he stuck to it, the accused whom he had implicated, would have been in a most unenviable position as he was a man of the locality and must have known the accused well. If, on the other hand, he had been examined as a prosecution witness and had gone back on his previous statement made on oath, he would have been treated as hostile and discredited. Indeed, if anything, it is the prosecution that has suffered by not producing Thimmayya and not the defence.

27. We now come to the merits of the case. The eye-witnesses P. Ws. 11, 13, 14 and 15 are the mainstay of the prosecution case. At the outset it must be stated that there are certain facts which in our opinion admit of no doubt whatever and they are: that P. Ws. 11, 13, 14 and 15 were present at the scene of the crime and had witnessed the incident, and that Danayya and his son Rajeshwar were

murdered through an act of treachery by a large number of Bhois of Venkatapur.

28. The crucial question then is one of identification of the culprits by the eye-witnesses. In-evaluating the evidence of P. Ws. 11, 13, 14 and 15, the following circumstances have to be borne in mind:

(a) Despite their protestations to the contrary, it is manifest that these witnesses had not known the names of all the accused before the date of the occurrence. This is patent from the contents of Exs. P-5 and P-9 and from what P. W. 15 had stated at the inquest as also from what was elicited in cross-examination from the four eye-witness.

(b) The statements of three out of the four eye-witnesses had not been recorded by the Investigating Officer and we are left in the dark as to what they had stated then and how many of the present accused they had implicated.

(c) We do not know whom the witnesses had identified at the three identification parades held by the Circle Inspector of Police.

(d) No identification parade had been held by a Magistrate.

(e) By the time the witnesses gave evidence at the present trial, they had had several opportunities of seeing the accused and knowing their names. In fact they had gone through a series of rehearsals.

(f) At the time the murders were committed, great panic and pandemonium must have prevailed and the witnesses must have apprehended danger to themselves at any stage.

29. Before examining the evidence of these witnesses, it is necessary to mention that according to the Circle Inspector, the population of Venkatapur is 1000 to 1200, and the vast majority of the inhabitants are Bhois, So it is more than likely that one or more of the Bhois bear the same name. It is to be noted that in the array of accused there are as many as six Balayyas and four Janguyyas while two of the discharged accused bear the name Lach-mayya which is also the name of A-G, and one of the accused who was acquitted in the earlier trial is known as

Jangayya. Such being the case when a name is given with a wrong house-name, the identity of that person cannot be said to have been established beyond doubt.

30. On a careful appraisal of the evidence of the four direct witnesses P. Ws. 11, 13, 14 and 15, we have reached the conclusion that it would not be safe to accept the evidence given by them in Court at its face value because there are clear indications that they have improved upon their earlier versions and made conflicting statements on material particulars. Their evidence implicating individual accused can be safely acted upon only in so far as it is corroborated by the earliest versions given by these witnesses, where such are available, and where the part attributed to a particular accused is specific and precise and not merely of a vague and general character.

31. We shall now refer to the evidence of these witnesses in some detail noticing the points elicited in cross-examination. All these witnesses give substantially the same account of the incident in their examination-in-chief and implicate the seventeen accused who stood their trial in the Sessions Court besides two others who are stated to be absconding; all of them ascribe leading parts from the beginning to the end in that tragic episode to A-8 and A-15. P. W. 11 asserted in chief-examination that 'he knew all the 17 accused who were in the dock. In cross-examination the witness stated that the five persons who had come at 5 or 5-30 p. m. had a talk with Danayya and had gone out saying 'Acha, Acha' were not among the 7 persons who came at 9 or 9-30 p. m. just before the attack, It follows from this that A-1 and A-16 were not among these who took part in the attack on the two deceased. The witness further stated that a little before the incident about 40 persons were present inside Thimmayya's house excluding the witnesses and the deceased. The witness added;

'Apart from the seventeen persons present in Court and the two absconding, I cannot say that I know the remaining 21 persons either by faces or by names'.

He then gave a series of prevaricating answers which are as follows:

'Two or three days after the incident the Police had taken my statement at the Police Station House, Asifnagar. I had stated everything before the Police. The

Circle Inspector merely listened to what I said but wrote down nothing and then asked me to go away. He also did not take down my statement. I had stated before this Court previously, 'I had given the full details to the Circle Inspector. I told the names. I know Kuntam Narsayya, Pilli Sattayya; Yelgula Jangayya and Yelgula Balayya'. I had given out, 'I remembered the names I gave only today. I had described the features of the various persons gathered at the house to the Police. I had told before the Court previously:' I had not given the facial description of any of the accused'.

Later in the course of the cross-examination, the witness admitted:

'I have no relations now at Venkatapur, and have not visited the place for the last 25 years. Because of the lapse of such a long time, I do not know all the Bhois of Venkatapur'.

32. It is clear therefore that this witness had given only four names when he was examined by the Circle Inspector of Police in the course of the investigation. But at the present trial he has given 17 names and, as on his own showing he had not visited Venkatapur for the last 25 years, it is difficult to accept his version that he had known all the 17 accused prior to the occurrence.

33. The same infirmity with regard to the previous acquaintance with the accused, is noticeable in the testimony of P. W. 13 also. While in chief examination he claimed that he knew all the 17 accused very well before the date of the incident, the following answers were elicited from him in cross-examination:

'I had never been before to Venkatapur. Before the incident I know all the Bhois of Venkatapur either by names or by faces. My statement was recorded by the Committal Court, I had stated before the Committal Court 'Those who usually come to Danayya's house are known to me' and also There were 35 persons who had taken part in the commission of these crimes. I cannot tell the names, of all the 35 persons'.'

With regard to Ex. P. 9 the witness stated :

'Nagayya had given the first report at the Police Station House, Shadnagar, in my presence. The Sub-Inspector had read over the report to me but I do not remember if I signed the statement as well.'

We have already pointed out how in Ex. P. 9 only the names of A-8, A-15 and A-16 are mentioned besides the names of two others who are absconding.

34. As regards P. W. 14 we have already noticed how in Ex. P. 9 the witness had mentioned the names of only three of the present accused namely, those of A-8, A-15 and A-16, whereas in his deposition before the Sessions Court he mentioned the names of the 17 accused and swore that he had known all those persons for 14 or 15-years. In cross-examination he tried to explain away the non-mention of the names of all the accused whom he had named in Court by saying ;

'I had not stated before the Shadnagar Police what all I had told before the Court so far but only a little of it, as directed by the Police.'

After identifying his signature on Ex. P-9 the witness added :

'But before signing, my statement was not read over or explained to me. So I do not know what the Police Sub-Inspector has written in it of his own accord.'

Finally the witness stated:

'After, the incident I have never been to Venkatapur with the Police, nor before it'.

Turning to the evidence of P. W. 15, we have already pointed out how in Ex. P-5 he had included the names of several persons who are not accused and how the names of only two of the accused i.e., A-13 and A-15 are clearly identifiable. P. W. 15 made a mistake in identification even before the Sessions Court. After having asserted that he knew all the accused present in the dock he started reeling off the names of the accused but with regard to two of them namely, A-4 and A-14, he identified the wrong persons. He asserted that he had known all the accused for more than 10 or 12 years prior to the occurrence. But in cross-examination, he admitted;

'At the time of giving the report Ex. P-5, I had given the particulars of the facial characteristics of such of the accused persons whose names I did not know'.

That assertion was shown to be false by the very next answer which was to the following effect:

'I had stated before this Court previously: 'I was not asked the facial description of others nor did I state', and this is the truth'. The witness had also-made a mistake in the Committing Court in identifying A-6 and A-12 and he tried to explain it away by saying that because they were hand-cuffed together he had made a mistake. In the next sentence he added that at the time of the occurrence he knew 10 or 12 persons by names. This was again proved to be untrue when the witness was questioned with reference to what he had stated at the inquest and he said 'I had given four names only and I had stated that if others are shown, I will identify them'.

35. In this state of the record we find it difficult to hold that all the nine accused whom the learned Sessions Judge has convicted, have been satisfactorily proved to have taken part in the occurrence. In the circumstances of this case, the earliest statements Exs. P-5 and P-9 are of great assistance in fixing the guilt of the accused. Measured by that yard-stick, the guilt of A-5, A-6, A-9, A-11 and A-12 has not been established beyond reasonable doubt. Their names are not mentioned in Ex. P-5 or P-9 and there is only an omnibus allegation against them that they all beat the victims along with others. As regards A-13 it is true that his name finds a place in Ex. P-5, but in the evidence given by the eye-witnesses in Court, there is only an omnibus allegation that he along with others had attacked Rajeswar and later Danayya. His name is not mentioned in Ex. P-9. We therefore feel that there is an element of reasonable doubt with regard ' to his participation in the crime.

36. As regards A-16, although his name is mentioned in Ex. P-9, in the evidence given in Court, he is not stated to have taken part in the attack on either of the deceased. According to the prosecution case, he was one of the five persons who had come at 5 or 5-30 p. in., had a talk with Danayya and had gone away. None of the witnesses says that he came back to Thimmayya's house. It is true that in

cross-examination, P. W. 14 stated that at the time of the beating Rajeswar was saying 'Do not beat me Mama and Kaka. Yelgula Peda Balayya is the. Kaka of Rajeswar'. In chief-examination, however, this witness had not ascribed any part to A-16 in the attack of Rajeshwar and none of the other three eye-witnesses said that A-16 had come back and taken part in the attack. There is thus a reasonable doubt with regard to the guilt of A-16 as well.

37. The case of A-8 and A-15, however, stands on a different footing and we are satisfied that their guilt has been established beyond a shadow of doubt. That these two accused were no strangers to the eye-witnesses is apparent from their own statements given under Section 342 Cr. P. C. in which they stated that the eye-witnesses were inimical to them because of the differences over the supply of fish. The names of A-8 and A-15 find a place in Ex. P-9 and the name of A-15 is mentioned in Ex. P-5. The evidence of all the eye-witnesses is uniform as to the leading role taken by those two accused in the tragic incident.

They were the persons who persuaded Danayya to move from the Chawdi into Thimmayya's house.

They took part in the talks between 5 or 5-30 p.m., and then went away. A-8 came back and made-kind inquiries about Danayya and his companions. A-15 was the person who instigated the attack on Rajeshwar by shouting 'Maro, Maro'. He was armed-with a bayonet at the time, It was A-8 who had snatched the bayonet from A-15 and stabbed Rajesh-war in the back. After Rajeshwar had been beaten down, A-8 and A-15 were two of the four persons who had forced their way into the room in which Danayya had been sleeping and which had been bolted from inside by P. Ws. 11, 13 and 15 and after Danayya had been struck down, it was A-8 who had dragged him out by catching hold of his feet and laid him by the side of Rajeshwar. Then it was A-15 who had dropped the 'chula' stone and smashed the head of Danayya.

Again after the two unfortunate men had been done to death, it was A-8 and A-15 who had taken the four eye-witnesses and confined them in the house of Kalchetti Jangayya. We have therefore no hesitation in holding that the evidence of the eyewitnesses can be safely accepted in so far as it implicates A-8 and A-15. The

fact that the specific overt acts now attributed to A-8 and A-15 were not mentioned in the earliest statements Exs. P-5 and P-9, is in our opinion of no significance since it is not to be expected that all the particulars of the prosecution case would be enumerated in the first information. We accordingly find that there is clinching evidence which establishes that A-8 and A-15 were members of an unlawful assembly consisting of not less than five persons, the common object of which was to cause the death of Danayya and his son Rajeshwar; and in prosecution of that common object, the two persons had been mercilessly done to death, and A-8 and A-15 had taken a leading part in the murderous attacks.

We accordingly confirm the conviction of A-8 and A-15 for offences under Ss. 148 and 302 read with Section 149 I. P. C., as also the sentence of imprisonment for life passed on each of them under the joint count. Their appeals (Criminal Appeals Nos. 238 and 243 of 1958) are dismissed.

38. The appeals of A-5, 6, 9, 11, 12, 13 and 16 (Criminal Appeals Nos. 236, 237, 239, 240, 241, 242 and 244 of 1958) are allowed. Their convictions and sentences are set aside and they will be set at liberty forthwith.

39. Now turning to the appeal filed by the State Government (Criminal Appeal No. 316 of 1958), the appeal is against the acquittal of the 8 accused who figured as Accused 1 to 4, 7, 10, 14 and 17 before the trial Court. The learned Public Prosecutor, however, has pressed the appeal only with regard to A-1 and A-3. The names of neither of these accused is mentioned in Ex. P-5 or Ex. P-9. According to the evidence of the eye-witnesses, A-1 did not take part in the attack on either of the two deceased and there is no satisfactory evidence to bring home the charge of conspiracy or the charge of mischief with regard to the damage done to the car. As regards A-3, the part played by him has not been specified by the direct witnesses with any degree of particularity. On the whole we do not find substantial and compelling reasons to reverse the order of acquittal with regard to these two accused. In the result Criminal Appeal No. 316 of 1958 is dismissed.