

Ravulappalli Kondaiah and Others

Vs

State of Andhra Pradesh

Criminal Appeal No. 46 of 1971

(Y. V. Chndrachud, R. S. Sarkaria JJ)

20.11.1974

JUDGMENT

SARKARIA, J. -

1. The appellants were tried and acquitted by the Additional Sessions Judge, Nellore of offences under Sections 302/149, 148 and 324, Penal Code for causing the death of Vengaiah and injuries to PWs 2 and 3. On appeal by the State, the High Court reversed the acquittal and convicted all the six accused under Section 302 read with Section 149 and sentenced each of them to suffer imprisonment for life. They were further convicted under Sections 326/149, Penal Code and under Sections 324/149 Penal Code for the injuries caused to PW 3 and PW 2, and sentenced to rigorous imprisonment. Hence this appeal.

2. The facts of the prosecution case were these.

3. In village Kurrappalli, there are four Kamma ryot families which are divided into two warring factions. The appellants belong to one faction. They are all inter-related. Accused No. 6 is the mother A-1 and A-2 are her sons. A-4 is A-6's brother-in-law's grandson. A-4 is her son-in-law. A-3 is the first cousin of A-1 and A-2. Excepting A-3, all the appellants live together. PWs 1 to 5 are also inter-related. They belong to the rival faction. The house of PWs 1 to 5 and the deceased are separated by a narrow lane from the house of the appellants. Estrangement between the two factions commenced about four years before the occurrence, when the appellants purchased a field known as Mangalavani Chenu. Convenient passage to the hay rickyards of the PWs and other members of their faction lay through this field. The appellants denied that passage. As a counter-blast, the faction of the complainant did not allow the appellants to go across their southern lane to fetch water from the well. There was also criminal litigation between the two factions.

4. On January 28, 1969, PWs 1 and 4 were bringing earth in their bullock-cart to their house. When the cart reached near the house of A-1, A-2 and A-6 obstructed its passage and forced PWs 1 and 4 to unload the cart there. PWs 1 and 4 complained to Vengaiah, deceased. He advised them to avoid a clash and to bring the earth in head-loads by breaking open a passage through the wall of Ramilla Lakshamma belonging to their own faction.

5. On the following day, there was a quarrel, over the making of the passage, between A-6 and her sister Chennamma on one side, and PW 1's mother on the other. During that quarrel, Chennamma sustained an injury.

6. At this juncture, Vengaiah came on the scene. He rebuked the parties. Chennamma made a

complaint to the Truine Officer alleging that she had been assaulted by PW 1 with a crowbar. The officer forwarded that complaint to the Police Station, Udayagiri. The head-Constable (PW 12) who was then in-charge of the Police Station, called PW 1, through a constable, to the police Station. After interrogation, he allowed PW 1 to go at about 8 p.m. After making inquiries from Chennamma, the Head-Constable informed her that the case was non-cognizable, and that she could, if she so desired, seek redress by a private complaint made in court.

7. On January 30, 1969, PWs 1 and 4 brought two cart-loads of earth by another route known as Vaddevedhi. Leaving the cart in the open place near the house of A-1, PWs 1 and 4 went into their house to take breakfast. In the meanwhile, the bullocks dragged the unattended cart into the open space in front of the house of A-1. The appellants were sorely annoyed. PWs 1, 4 and 5 and R. Lakshamma pleaded that they were not to be blamed for that mischief committed by the animals. The appellants were in rage. They spurned (Sic spurned) the explanation offered by the PWs and unyoked the bullocks. PWs 1 and 5 tried to re-yoke the animals in order to take away the cart. All the appellants, who were then present in the compound, abused and stored the PWs. At this juncture, Vengaiah deceased arrived there. He interceded and advised the appellants to settle their dispute amicably and to refrain from violence. The appellants pounced upon the deceased and dragged him further into the compound. A-1 hit the deceased with a rice-pounder on the head, felling him to the ground. A-3 gave an axe blow on the back of the deceased, while A-2 stabbed him on the left side with a spear, A-4 also struck the deceased with a rice-pounder. Simultaneously, A-5 and A-6 gave stick-blows on the arm of the deceased. PW 2, wife of the deceased, rushed in shouting to the assailants to desist from the assault. A-3 hit her with an axe on the head, A-2 struck a spear blow on her right ear and temple. A-6 and A-4 hit her with sticks. PW 3, came to the rescue of the victims. But the appellants gave him a beating with their respective weapons. Chased by the appellants, PW 1 took to his heels and hid himself. The appellants then ran away leaving Vengaiah dead and PWs 2 and 3 injured at the scene.

8. After the departure of the assailants, PW 1 returned to the scene. Leaving the dead-body at the spot, PW 1 arranged the removal of the injured to the house of PW 3. Thereafter, PW 1 went to village Sakunalapalli to inform the Truine Officer (PW 10). The latter was away in his fields. PW 1 waited there. At about 2 p.m., the Officer returned home. PW 1 then apprised him of the occurrence, PW 10 recorded the report (Exh. P-1), read it over to PW 1 and obtained his signature thereunder. PWs 1 and 10 then came to Kurrupalli. There, after seeing the dead and the injured, PW 10 prepared the printed reports (P-14 and P-15) and sent them to the Police Station, Udayagiri through a messenger. On receiving the reports at 6 p.m., in the Police Station, PW 13, the Sub-Inspector registered the F.I.R., and then at 7 p.m. proceeded to the place of occurrence. On reaching the village at about 8-30 p.m., the Sub-Inspector found the dead body of Vengaiah lying in the compound of A-1. He then went to the house of PW 10. He examined the injured, PWs 2 and 3, and sent them to the Government Hospital, Udayagiri. He then recorded the statements of PW 1 and 5. On the following morning he prepared the inquest report and sent the same alongwith the dead-body to Udayagiri for post-mortem examination.

9. PW 8, Dr. Rama Rao conducted the autopsy. He found five injuries on the dead-body. Injury No. 1 was a contusion, 3 1/2" x 2 1/2" x 1" on the right temple. Injury No. 2 was an incised wound on the left scapular region extending transversely upto the middle on the back, 4" x 1" x 2". Injury No. 3, also, was an incised wound on the left lateral aspect of abdomen. Its dimensions were : 4" x 1/4" x 1". Injury No. 4 was a contusion on the occipital bone of the skull, 2" x 1/2" x 1/2". Injury No. 5 consisted of two parallel contusions on the lateral aspect of left upper arm, one admeasuring 3" x 1/2" x 1/6" and the other, 2" x 1/2" x 1/6". Injuries Nos. 1 and 4 were sufficient to cause death in the

ordinary course of nature. Dr. Rao, examined PW 3 also. He found 16 injuries on his person. Injuries Nos. 1 and 2 which were lacerated injuries located on the head, could have been caused, in his opinion with the blunt edge of an axe; injuries Nos. 3, 4 and 6, located on the right ear and right elbow joint, could have been caused with a spear and the rest of the injuries with a blunt object.

10. The doctor found 5 injuries on the person of PW 2. Of them, Injury No. 1 could have been caused with an axe and injuries Nos. 2, 3 and 5 with a spear and the rest with a stick.

11. The plea of the appellants, was on the denial of the prosecution case. A-2 and A-3 pleaded alibi. They stated that at the material time they were in the Government Hospital, Nellore, attending on Chennamma, and knew nothing about the incident in question. A-1 pleaded that on January 29, following an altercation, PW 1 had beaten Chennamma with a crowbar. A-2 and A-3 took Chennamma to the hospital at Udayagiri and stayed there. On January 30, in the morning, Vengaiah deceased drove his loaded cart through their yard. A-1 objected and unyoked the bullocks. The deceased and PWs 2, 3, 4 and 5, who were armed with sticks and spears, pounced upon A-1. The latter, however, dashed into his house and bolted the door from inside. The deceased proclaimed that they would burn the house and shouted to his companions to fetch kerosene. Apprehending that they might be burned inside, A-4, A-5 and A-6 opened the door and came out armed with some weapon. The deceased charged towards them with a spear. In self-defence, A-4, A-5 and A-6 assaulted the deceased. Some villagers came and rescued them. For fear of being beaten, A-1, A-4, A-5 and A-6 ran away. A-4, A-5 and A-6 adopted this version of A-1 which he had given in the committal court.

12. The Sessions Judge accepted the alibi set up by A-2 and A-3 on - what he called - a "consideration of probabilities", even though it was not, in his opinion, a "fool-proof alibi". The Judge further held that A-1, A-4, A-5 and A-6 had made out the plea of private-defence. He also found that there was huge delay in reporting the matter to the Truine Officer. He disbelieved the presence of PW 1 at the scene of occurrence. He discounted the entire evidence of the eye-witnesses on the ground that they were partisan witnesses, and the account given by them was not fully consistent with regard to weapons carried by the accused, and the precise place where Vengaiah fell. In the result, he acquitted all the accused.

13. The High Court found that these findings of the learned trial Judge were perverse. It, therefore, reversed them and convicted all the appellants.

14. Learned Counsel for the appellants contends that the High Court was in error in setting aside the well-considered judgment of the trial Court. It is submitted that the F.I.R in this case was registered after an inordinate delay which had not been satisfactorily explained and there was every reason to suspect that it had been prepared at the spot after deliberation with the help of the Truine Officer. The finding of the trial Court, proceeds the argument, that PW 1 was not an eye-witness of the occurrence, was founded on unassailable grounds. Once it was shown says the Counsel, that PW 1 was not an eye-witness and the F.I.R was not a true and spontaneous account given by an eye-witness, the entire case of the prosecution, as rightly observed by the trial Court, was bound to collapse "like a house of cards". It is maintained that the partisan and inimical evidence of the alleged eye-witnesses was so replete with discrepancies and contradictions that it could not be safely acted upon. The point sought to be made out is that since the view of the evidence taken by the trial Court was also reasonably possible, the High Court was not justified in reversing the acquittal, irrespective of whether the accused had made out the special defences set up by them, or not.

15. We have carefully gone through the material portions of the record with the aid of the Counsel. So far as the acquittal of A-1, A-2 and A-3 is concerned, we are in agreement with the High Court, that the order of acquittal recorded by the trial Court, was utterly unsustainable. But the same, as we shall presently discuss, cannot be said but the acquittal of A-4, A-5 and A-6.

16. The occurrence took place at about 10 a.m., in village Kurrupalli. The report Exh. P-I, about it was given by PW 1 to the Truine Officer at village Sakunalapalli at 2 p.m. PW 1 explained that when he reached the house of Truine Officer, the later was not there. He had, therefore, to wait there for some time before he could report to the Officer on his return. Even the Truine Officer, PW 10, who had turned hostile to the prosecution, corroborated PW 1 inasmuch as he (PW 10) stated in examination-in-chief that when he returned home from the fields at 2 p.m. PW 1 was waiting for him at his house. Because of the preceding day's incident in which Chennamma received an injury, the appellants must have been vindictively disposed towards PW 1, also. That was why when Vengaiyah was being beaten inside the compound of A-1, PW 1, as stated by him, remained outside raising an alarm. He did not go inside to rescue the deceased, even when the wife, PW 2, and the father-in-law, PW 3, went ahead imploring the assailants to desist from the assault. He saw that even the entreating woman and the old man had not been spared by the assailants. He heard A-2 and A-3 yelling; "Where is Pende Malkendiah (PW 1) ?" Frightened, PW 1, ran and escaped through the southern entrance and hid himself. He says, he did not come out of the hiding till the accused had all gone away towards the north carrying their weapons with them. With Vengaiyah the strong man of the faction dead and two others lying injured at the scene, PW 1, an illiterate raw youth of 20 was left alone terror-stricken and confused. Naturally in that state of mind, the first thing he did was to arrange the removal of the injured to the house of PW 2. Next he must have taken some time to collect his wits before proceeding to village Sakunalapalli for informing the Truine Officer. There was nothing unusual, therefore, if PW 1 departed for village Sakunalapalli about two or three hours after the occurrence. Further time was taken in going to Sakunalapalli and then in awaiting the return of the Truine Officer from the fields. Thus sufficient explanation of the delay in making the report was available.

17. In cross-examination, the defence had suggested to PW 1 that throughout the night between January 29 and 30, the witness was in the police lock-up at Udayagiri and further, he was not present at the scene of offence. The suggestion was denied by the witness. The trial Court, however, appears to have accepted this suggestion, mainly because in cross-examination, the witness was unable to tell, with precision, the bus by which he returned to his village and the route taken by that bus. In our opinion, much capital could not be made out of it. The witness was an illiterate rustic. The point of substance was whether on the morning of January 30, his presence in village Kurrupalli was probable. There was reliable, independent evidence to show that PW 1 was allowed to go from the Police station at 8 p.m. on the 29th. Dr. Rao, PW 8, testified that the injury received by Chennamma was a simple injury. The Head-constable (PW 12) stated that he had allowed PW 1 to go after giving him a warning as the offence was non-cognizable. The Head-constable contemporaneously at 8 p.m., on the 29th, made an entry to that effect in the General Diary of the Police Station. After being permitted to go at 8 p.m. PW 1 was not likely to stay overnight at Udayagiri. He had no place of residence or other piece of business at Udayagiri. His village was hardly six miles away. He could easily cover that distance on foot in one and a half hours. Moreover, Udayagiri was the seat of Taluka and several buses were plying on that route. PW 1 stated that the last bus left Udayagiri at 9 or 9-30 p.m. The Sub-Inspector (PW 13) however, stated in cross-examination that the last bus used to leave Udayagiri at 6 or 6-30 p.m. It was merely on the basis of this statement of PW 13, that the trial Court held that the version of PW 1 about the time of departure of the bus was false. This finding was not well-founded. Nor could it be logically deduced

therefrom that PW 1 must have stayed overnight at Udayagiri.

18. Assuming for argument's sake that PW 1 had stayed for the night at Udayagiri, then also his natural conduct would be to return home early next morning, he having nothing to do at Udayagiri on the 30th. On cycle he could easily cover that distance within an hour. Form whatever angle the matter may be looked at, the presence of PW 1 at about 10 a.m. of the 30th on the scene of occurrence was highly probable.

19. Besides PW 1, there were four eye-witnesses namely, PW 2, PW 3, PW 4 and PW 5 who had fully supported the prosecution story at the trial. PWs 2 and 3 were injured witnesses. Their presence at the place of the incident could not be doubted. PWs 4 and 5 were also residents of the vicinity. Their presence at the scene of occurrence was highly probable. Moreover their presence was admitted by A-1, A-4 to A-6. The witnesses were undoubtedly relations or partisans of the deceased. That, by itself, does not make their evidence unreliable. It only puts the Court on guard to scrutinise their evidence with more than ordinary care. The over-all question before us being whether the High Court was justified in reversing the acquittal of all the accused, the evidence of these witnesses is to be tested from that standpoint in the light of the other evidence on record.

20. We will revert to a discussion of their evidence later. Suffice it to say now, that the story narrated by them is not intrinsically incredible or inherently improbable in the main.

21. At this stage, it will be appropriate to dispose of the alibi pleaded by A-2 and A-3.

22. In support of this plea, A-2 and A-3 chiefly relied upon the evidence of PW 10 and DW 1. PW 10 stated that he had seen A-2 and A-3 attending on Chennamma in the Hospital at Udayagiri at 8-30 a.m. on January 30, 1969. They said that they were waiting for the wound certificate of Chennamma to file a private complaint. After talking to them for ten minutes, the witness came to the bus-stand and proceeded to his village by bus at but 9 a.m. After going home he went to his land. When he returned to his house at 2 p.m., PW 1 was there waiting for him. PW 10 then scribed the report made to him by PW 1.

23. PW 10 was present when the inquest report, Exh. P-16 was prepared. He was examined by the Investigating Officer under Section 161, Cr. P.C. Cross-examined, PW 10, at first took up the position that excepting PW 1, whom he questioned about it at the time of scribing the report Exh. P-1, he did not tell anyone else that he had seen A-2 and A-3 at Udayagiri at about 8.30 a.m. on the 30th. Nor did he note this fact in Exh. P-1, Exh. P-4 and Exh. P-5. He then shifted his position and said that at the inquest he had told the Sub-Inspector (PW 13) about the presence of A-3 and A-4 at the hospital. On this point, his evidence was falsified by PW 13, who stated that nothing of this kind was mentioned to him either at the inquest or subsequently, by PW 10. In his police statement PW 10 has stated that on January 30, 1969, at about 7 a.m., he had gone to his fields and returned home from there at 2 p.m. Confronted with his police statement, witness disowned it blatantly. The witness was declared hostile to the prosecution and was cross-examined by the Prosecutor. It was evident that the witness had come out with that version for the first time in an attempt to help the defence. The High Court was therefore, right in holding that "PW 10 is giving false evidence to support the plea of alibi set up by A-2 and A-3".

24. The star witness of the defence with regard to this plea of alibi was DW 1, a "Cycle-runner" of the postal department. His evidence was that on January 30, 1969 at 9-30 a.m., had come to Kurrappalli Post Office from Sakunalapalli on his bicycle. The witness inquired from the Post

Master about a disturbance that was taking place at the house of A-1. The Post Master told the witness that Vengaiah, deceased, armed with a spear, had pursued A-1 and A-6 into A-1's house. The Post Master, however, advised the witness to mind his own business. DW 1 then proceeded to Udayagiri Post Office. When he was cycling past the hospital at Udayagiri at about 10-30 a.m. he saw A-2 and A-3 sitting at the main gate.

25. DW 1 was a native of village Kurrappalli although he was, at that time, residing at Sakunalapalli owing to the exigencies of service. His conduct in asking the Post Master as to what was happening, was not the natural conduct of a person who sees an occurrence of this type in his own village. The Post Master was not examined. The evidence of DW 1 therefore, in so far as it purported to be derived from the Post Master, was no better than mere hearsay. Furthermore, DW 1 wanted to have it believed, that when he met A-2 and A-3 at the hospital, they were totally unaware of the occurrence in question, and the witness was the first to inform them how Vengaiah and others had entered the house of A-1 to assault the inmates. A-2 and A-3 in their statement under Section 342, Cr. P.C., while pleading alibi, did not say that they had learnt about his occurrence from DW 1. Thus the witness had tried to be more royalist than the king. The evidence of DW 1 was too flimsy to inspire confidence.

26. Assuming for a moment that A-2 and A-3 were seen at the hospital at 10-30 a.m. on the 30th, then also, that by itself would not discount their participation in the assault on the deceased 30 or 40 minutes earlier. Kurrappalli was hardly six miles from the hospital and was connected by metalled road on which buses and other vehicles plied. If DW 1 could in the ordinary course, cover this distance in about one hour, surely A-3 and A-2 who had a motive to get away faster could do the same in 30 to 40 minutes.

27. The evidence of DWs 2 and 3 was of negative character. They stated that they had not seen A-2 and A-3 at the scene of occurrence. These two witnesses were examined primarily to substantiate the plea of private defence. They came forward with the story that the deceased armed with a spear and accompanied by PW 4 and PW 5, chased A-1 and A-4 into the hayrick-yard of A-1. A-1 and A-6 bolted the door from inside. The deceased and his companions pounded at the door. The deceased threatened to burn the house alongwith the inmates. At his instance, PW 4 brought a bottle of kerosene. The door was then opened. Vengaiah entered in a charging position. The inmates and those out-side beat Vengaiah; PW 2 and PW 3 also dropped. The every body fled away, including A-1, A-4, A-5 and A-6.

28. DW 2 is an attesting witness of the inquest report. In cross-examination, after some prevarication, he stated that he did not tell the Investigating Officer about these facts which he had for the first time disclosed in Court. While admitting his signature on the inquest report, the witness said that he had signed a blank form. This was contradicted by PW 10 who stated that he signed the report, Exh. P-16, after it had entirely written out in his presence. The Sessions Judge also did not believe the version of DW 2, that his signature was obtained on a blank paper by the Investigating Officer. In spite of this glaring falsehood going to the root of the matter, it is surprising that the Sessions Judge accepted his evidence to hold that the plea of alibi was 'probably true'. The High Court's assessment that the statement of this witness was "a bare-faced lie" was thus not unjustified.

29. Equally worthless was the evidence of DW 3. He was a school teacher. He also did not come forward and tell the Investigating Officer what he had along after stated in Court. His omission to do so condemns his testimony as an after-thought.

30. For these reasons, we are at one with the High Court that A-2 and A-3 had miserably failed to substantiate the alibi set up by them.

31. We will now consider the plea of self-defence set up by the appellants, and in that context, examine the evidence of PWs further.

32. The very story that the deceased and PWs, 2, 3, 4, and 5, armed with sticks and spears, went to the house of A-1, to belabour the appellants appear to be highly improbable. If five persons armed with deadly weapons had raided the house of A-1, to assault the inmates it is inconceivable that they would namely take all the beating, without causing even a scratch to their adversaries. The absence of any inquiry whatever on the side of the appellants, was itself eloquent enough to discount the plea of private defence. As rightly pointed out by the High Court, the very fact that PW 2, the wife, and PW 3, the father-in-law of the deceased, received injuries, and not PWs 4 and 5, indicates that only PWs 2 and 3 went inside, and that, too, for rescuing the deceased. PWs 4 and 5 (whose presence at the scene was admitted by A-1 and A-4 to A-6) never entered the compound of A-1.

33. We could therefore, endorse the view taken by the High Court, that the defence version about the prosecution party being the aggressor was not true.

34. One of the reasons given by the Sessions Judge for rejecting the prosecution case was that there 'vital contradictions' in the evidence regarding the weapons used by the accused. He noticed that on some points the medical evidence was in conflict with the ocular account of the eye-witnesses. Without going into details, the High Court held that, in the first place, only one contradiction had been pointed out to them; secondly, the contradictions were "both natural and trivial" and did not "lead to any inference which can possibly touch upon the veracity of the eye-witnesses".

35. We are unable to agree with the High Court that these contradictions were "trivial" and of no consequence whatever. We cannot overlook the fact that all the eye-witnesses were highly interested in the prosecution, and, at least two of them, namely, PW 1 and PW 4 were inimically disposed towards the appellants. While such witnesses never fail to denounce the real culprits, they cannot be said to be absolutely immune from the tendency of roping in some innocent persons along with the guilty. In the present case, where the assailants did not spare even a woman and an old man who had interceded merely to save the deceased, the temptation to implicate, in addition to the actual assailants, their women and other relations would be real. It is in this context that these contradictions assume importance. As a matter of caution, therefore, the Court should seek some assurance of this interested evidence from independent source qua each of the accused. Here, medical evidence was the chief source which could furnish such assurance.

36. We may recall that A-6 is the mother of A-1 and A-2. She is an old woman of 70 years. A-1 and A-5 are her grand-son and son-in-law, respectively.

37. In the report Exh. P-1, PW 1 had not particularised the part played by each of these three accused (A-4, A-5 and A-6) in the assault on the deceased. After stating that A-1, A-2 and A-3 gave blows to the deceased with a pestle, axe and spear on the head (temple) back and left flank, respectively, PW 1 said "The remaining three beat with sticks". In variance with the report Exh. P-1, at the trial PW 1, after referring to the dragging, stated :

Then A-1 beat the deceased with a rice pounder. Deceased fell on his right side with face down saying Amma. A-3 hacked him on the left side on the back with the axe. A-2 with a spear, stabbed

Vengaiyah on the left side. Then A-4 beat Vengaiyah on the head with a rice pounder. Then A-5 with a stick hit him on the left upper arm. At the same place A-6 also beat him with a stick.

PW 1 was duly confronted with his previous statements. It will be seen that PW 1 had made significant 'improvements' upon his earlier statement (viz., the report, Exh. P-1, and his statement under Sections 161/162, Cr. P.C.) regarding the weapon carried by A-4 and the precise part attributed to A-4, A-5 and A-6 each, in belabouring the deceased. On these points, the version of PW 3, also, in his police statement was more or less the same as that of PW 1 in the report, Exh. P-1. At the trial, PW 3 also changed the 'stick' at A-4 into a "pounder", and specified the individual acts of A-4, A-5 and A-6 in the attack on the deceased, exactly in the same manner in which PW 1 had done.

38. It is significant, that at the trial, the account given by all the five eye-witnesses was almost identical in regard to the sequence and number of blows, the weapons, and the specific parts of the body of the deceased hit by the individual accused.

39. We will now consider as to how far the medical evidence confirms the ocular evidence regarding the injuries of the deceased. Only injuries Nos. 1, 4 and 5, as noted Dr. Rama Rao, were contusions. Injury No. 1 was located on the right temple and injury No. 4 on the occipital region. This means, both these injuries were head injuries. Injury No. 5 consisted of two parallel contusions which, in the Doctor's opinion, could be the result of two separate stick-blows. The doctor was not questioned as to whether these twin contusions could be caused by a single blow given by a bludgeon or pestle having raised edges. Therefore, the possibility of injury No. 5 having been caused by a single blow with such a pounder could not be ruled out. Dr. Rao while opining about the nature of the inflicting weapons appears to have kept in mind the distinction between a contusion caused by a stick-blow and the one caused by a pestle-blow. In this context, he opined that the head-injuries Nos. 1 and 4 had been caused with a rice-pounder (pestle) and injury No. 5 with a stick. If the prosecution are kept to their original version and the subsequent 'improvements' are ignored, and if the doctor's opinion is correct, as it appears to be so, then injury No. 2 was not caused by A-4, he being, according to the original version, armed with a stick and not with a rice-pounder. A rice-pounder is a far heavier weapon than an ordinary stick. It will bear repetition that originally, no specific injury of the deceased was assigned by PW 1 to A-4, A-5 and A-6. It was therefore, not improbable that both the head injuries of the deceased were caused by A-1 with a rice-pounder. Difficulty also arises in apportioning the twin contusions of injury No. 5 between the old woman (A-6) and her son-in-law (A-5). Although it cannot be doubted that all the six appellants were present inside the house of occurrence, the actual participation of A-4, A-5 and A-6 in the beating of the deceased is not free from reasonable doubt.

40. Regarding the part played by each of A-1, A-2 and A-3, in the fatal assault, the prosecution story has been consistent and constant throughout. No subsequent improvements or changes were made qua them by the eye-witnesses.

41. The medical evidence, also, lends full assurance to the ocular evidence regarding the nature of the weapons used by these three accused in belabouring the deceased. The medical evidence shows that the injuries on PW 2 and PW 3 could be caused with the weapons carried by A-1, A-2 and A-3. In the doctor's opinion on PW 3, injuries Nos. 3, 4 and 7 had been caused with a spear, injuries Nos. 1 and 2 with the blunt edge of an axe, and the rest of the injuries with a blunt weapon or object. Similarly, on PW 2, according to the doctor, injury No. 1 had been caused with an axe, injuries Nos. 2, 3 and 5 with a spear and the rest of the injuries with a blunt weapon.

42. In the light of the above discussion, the conclusion is inescapable that while it was proved to the hit that A-1, A-2 and A-3 had, in furtherance of their common intention murdered Vengaiah and caused injuries of PW 2 and PW 3, the charges against A-4, A-5 and A-6 had not been established beyond all manner of doubt.

43. In the result we would set aside the conviction of A-4, A-5 and A-6, acquit them of all the charges and allow their appeal. We would further dismiss the appeal of A-1, A-2 and A-3 but alter their conviction to one under Sections 302, 326, 324, reads with Sections 34, instead of Section 149, Penal Code on each of the three counts, respectively. Their sentences on all the three counts are maintained.

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