

Pattad Amarappa and Others

Vs

State of Karnataka

Criminal Appeal No. 612 of 1982

(S. Natarajan, A. M. Ahmadi JJ)

25.07.1989

JUDGMENT

NATARAJAN, J. –

1. An orgy of violence between the hours of 2 to 5 p.m. on the afternoon of January 28, 1979 in village Kawaloor, Taluk Yadgir, in the limits of Yadgir Police Station in Karnataka State, resulted in the death of five persons (four on the same day and one on February 4, 1979), several persons injured and some houses burnt. In connection with the incidents, 33 persons were sought to be prosecuted under relevant sections of the Indian Penal Code for the Offences of rioting, murder, attempt to commit murder, causing of simple and grievous hurt and mischief by fire, attended with conspiracy and abetment, and under the Indian Arms Act for unlawful possession and use of a gun and revolver. A-30 to A-33 were, however, discharged under Section 227 CrPC by the Sessions Judge. The remaining 29 persons were tried in Sessions Case No. 23 of 1979 in the Court of the Sessions Judge, Gulbarga. After trial, the Sessions Judge acquitted 13 persons, viz., A-3, A-4, A-8, A-11, A-13, A-14, A-19, A-22, A-23 and A-26 to A-29 of all the charges framed against them. The remaining 16 accused were convicted under Sections 147/148 IPC, Section 302 read with Section 149 IPC, and Section 323 or 324 IPC, as the case may be, for causing the death of four of the five deceased and for causing injuries to some of the witnesses and sentenced to imprisonment for life for the offence of murder and for lesser terms of imprisonment for the other offences. Fifteen of the convicted accused alone preferred an appeal to the High Court as by then A-1 died. The High Court allowed the appeal insofar as one of the accused, viz., A-17 was concerned and acquitted him of all the charges. Hence the present appeal by special leave is confined only to the conviction and sentence of the remaining 14 accused, viz., A-2, A-5 to A-7, A-9, A-10, A-12, A-15, A-16, A-18, A-20, A-21, A-24 and A-25.

2. The five dead persons, the injured persons and the witnesses, except the officials, belong to different sets of families of Kawaloor village. Three of the deceased persons, viz., Gunjalappa (D-1), V. Mallappa (D-2) and Basappa (D-3) and PW 6 Sai Banna are the sons and PW 1. Narasingamma is the daughter of one Meenad Venkappa (not examined though injured). PW 2 Mahadevamma and PW 3 Gunjalamma are respectively the wife and daughter D-3 Basappa. PW 4 Adamma is the wife of PW 6 Sai Banna. PW 5 Mallamma is the daughter of PW 1 Narasingamma and she was given in marriage to her own maternal uncle, viz. D-2 V. Mallappa.

3. The abovesaid Meenad Venkappa has three brothers, viz., Malliah (father of PW 30 Siddappa), A-19 Mallappa and PW 29 Chandra Reddy. D-4 Rayappa was the son-in-law of the abovesaid A-19 Mallappa.

4. D-5 T. Mallappa, had three sons viz. late Hayalappa (husband of PW 1 Narasingamma), PW 10 Saibanna (village Dalapathi) and Ningappa (husband of PW 7 Marilingamma). D-5 T. Mallappa had also a brother by name Basappa. Basappa's son is PW 9 Hanumantha.

5. Various factors, set out below, had made the accused and the deceased bitter enemies of each other. Firstly, in 1966, one Sidharamareddy (husband of discharged accused A-33, and brother of discharged accused A-30) (A-30 to A-33 were charged for conspiracy) was murdered by PW 6 and two of his brothers, viz., D-1 and D-3. They were duly convicted for murder and sentenced to imprisonment for life. After undergoing about 12 years of imprisonment, they were released from jail in February 1978. After their return to the village, the three brothers began to extort money from the villagers on the pretext that they had got rid of Sidharamareddy and done the villagers a good turn and hence they should be compensated. This was resented by A-30 to A-33 as well as the rest of the accused. Secondly, a quarrel had ensued between PW 6 and A-15 over the repayment of a loan and the quarrel led to the police filing a case under Section 107 CrPC against PW 6 and his supporters on the one hand and A-15 and his supporters on the other. The filing of the case was resented by A-15 to A-18 who belong to the Chappali family. Thirdly, after release from jail, PW 6 took forcible possession of a mortgage land from A-7 on the ground that he had tenancy rights over the land. This resulted in A-5 to A-9, who are all of the Gaddesugur family entertaining ill-will towards PW 6 and his brothers. Fourthly, during the time PW 6 and his brother were in jail, A-19 had driven out his son-in-law (D-4) from the house and thereafter A-6 began to live in illicit intimacy with the wife of D-4. After PW 6 came out of jail, he severed the illicit relationship between A-6 and D-4's wife and made D-4's wife to join her husband. This was another reason for A-5 to A-9 to bear illwill towards PW 6 and his brothers. Lastly, it is stated that after the release of PW 6 and his brothers from jail, D-1 married the daughter of one Sanna Kariyappa and, since then Sanna Kariyappa and his relations became close to PW 6 and his brothers (D-1 to D-3). This led A-1 to A-4 belonging to the Pattad family feeling unhappy. All these factors are said to have cumulatively constituted the motive for the accused launching an attack on the deceased and their relations on the day of occurrence.

6. The events which are said to have taken place on the fateful day of January 28, 1979, may be briefly summarised as under :

On that day PW 6 had gone to Raichur. Since it was a New Moon day, a feast was arranged and a special preparation, viz. 'Holagis' had been made in the house of PW 6. His father, Meenad Venkappa (not examined) sister (PW 1) and brothers (D-1 to D-3) assembled at the house at noon time to enjoy the feast. Besides the inmates (PWs 2 to 5), PWs 29 and 30 and D-4 were also there to have the festive meal. After they had eaten the midday meal, they sat in the house and were chatting. Some time thereafter, PW 8 Sanna Bhimaraya and his cousin Dod Bhimaraya came there and they also joined the group of chatters. A little later, PW 14 Dod Kariyappa (father of PW 8) came there and told PW 8 and Dod Bhimaraya that A-1 was accusing them of having threatened to assault him and was demanding an explanation and hence they should go to the house of A-1 to sort out the matters. Thereupon, PW 8 and Dod Bhimaraya went along with PW 14 to the house of A-1. Out of curiosity, PW 1 went to the house of A-1, a little later to see what the matter was. At A-1's house she saw A-1 to A-4 as well as PWs 8, 14 and Dod Bhimaraya quarrelling among themselves. When A-3 and A-4 began to pelt stones at PW 8, she felt afraid to remain there and ran back home.

7. The noise of commotion in A-1's house was heard by PW 10 Sai Banna (the village Dalapathi and son of D-5) at about 1.30 p.m. When he and his brother Venkappa went towards A-1's house, he saw PW 8 coming running with bleeding injuries on his person, followed by PW 14 and Dod Bhimaraya. He noticed A-1, A-3, A-4, A-25 and A-26 chasing them and pelting stones at them. He appealed to the accused to desist from pelting stones, but they pelted stones at him also. He therefore ran to his house, but as the door was closed, he ran to the house of Dod Kariyappa, but that house was also closed. A-5, A-7, A-11, A-19 and A-27 who came chasing him, pelted stones at him and A-5 also fired at him with his gun. He sustained a gunshot injury on the right side of his chest and fainted, but after about five or ten minutes he managed to reach his house. This time the door was open and he went inside the house and lay there till about 1 a.m.

8. Soon after PW 1 had reached her house from the house of A-1, PW 8 came there with bleeding injuries on his person. He told PW 1 and the others in the house that his life was in danger and that D-1 to D-3 and others in the house may safeguard themselves. Taking note of his warning, PW 1 and the other lady members viz. PWs 2 to 5, came and stood outside the house in order to safeguard the male members inside the house and PW 1 advised them not to come out. Soon after A-1 to A-29 came there in a body carrying with them sticks, stones, axes, a gun and a revolver. After they came near the house of PW 6, some of accused began to pelt stones at the house and the womenfolk standing outside sustained injuries due to the stone pelting. A-5 then got on top of the roof of the house and set fire to the chapper portion. Seeing all this, PWs 4 and 5 felt afraid to remain there and ran in different directions. PW 4 who was having her two months old child with her ran towards Kurbar Geri, PW 5 ran towards the house of Dongi Sai Banna. PWs 1 to 3 and Meenad Venkappa however continued to remain standing there.

9. Coming to realise that the chapper portion of the roof had been set fire to, some of the persons inside PW 6's house began running out of the house for their safety. The first to come out of the house was D-1 Gunjalappa. He ran towards the house of one Sharnappa Sahukar. Seeing him running, A-1 and A-21 who were armed with axes, A-2 who was armed with a sword and A-20 who was armed with a stick, ran in pursuit of him. On reaching the house of Sahukar Sharnappa, D-1 tried to enter the house, but could not, as the door was locked. A-1, A-2, A-20 and A-21 attacked him in front of the house with their respective weapons and D-1 died instantaneously. The attack was witnessed by PW 4 who had run towards Kurburgeri for her safety. The second person to come out of PW 6's house was D-2 V. Mallapa. He ran towards the house of one Mallawwa Harijan. A-6 and A-7, who were armed with sticks, gave chase to him and beat him with their sticks. On receipt of the stick blows D-2 fell down near a neem tree and the two assailants went away thinking he was dead.

10. The third person to come out of PW 6's house was D-3 Basappa. When he reached the poultry yard, a stone pelted by A-15 hit him and he fell down. Thereafter, A-5 fired a shot at him with his gun. A-10, A-12, A-16, A-18, A-24 and A-25 brought dried toor sticks kept nearby and placed them on D-3 and A-12 set fire to the toor sticks. D-3 was burnt to death and his body became charred except for some portions like the left shoulder joint and backside of the head.

11. The last person to come running out of the house of PW 6 was D-4 Rayappa. He was chased by A-6, A-7 and A-9. D-4 tried to save himself by entering the house of A-19. Since there was no love lost between D-4 and A-19, the latter told the chasers that they could set fire to the house. Thereupon, the house was set on fire and D-4 was forced to come out of the house. He ran to the place where D-3's body was lying and at that place, A-6 and A-9 attacked him with axes and killed him. The others inside the house, viz., PWs 29 and 30 felt afraid to come out and remained inside

the house till the occurrence was over.

12. After killing D-1, A-1, A-2, A-20 and A-21 came back near the house of PW 6 and told the accused present there that they had finished off D-1 and wanted to know the fate of the other enemies.

13. Alarmed by their statement, PW 1 and her father Venkappa ran to the house of Sharnappa Sahukar and found D-1 lying dead there. They then went to the neem tree near the house of Mallawwa Harijan and found D-2 lying injured on the ground. At once, PW 1 sat near D-2 and placed his head on her lap and gave him water. At that point of time, A-56, A-16 to A-18 and A-22 came there and, finding that D-2 was still alive, A-5 aimed his pistol at him and asked PW 1 to move aside. When she did not do so, A-18 dragged her aside and thereafter, A-17 placed his feet on the hands of D-2 and incited A-16 to cut him. A-16 cut him with his axe and killed him. Thereafter, all the accused left the scene and went away towards their houses.

14. As far as the attack on D-5 T. Mallappa is concerned, no one had actually witnessed it. According to the prosecution, D-5 was found lying injured near the Venkataramana temple at about 3 or 3.30 p.m. by PW 9 Hanumantha and his wife and mother. They carried him to his house and left him in the care of his daughter-in-law, PW 7 Marilingamma. When PW 7 asked D-5 as to what had happened, he told her that A-2, A-5 and A-6 had attacked him with stones and hands near Venkataramana temple about 30 ft. away from their house. He was later sent to the hospital, and treated, but he died on February 4, 1979. PW 10, the son of D-5, who had earlier been attacked near A-1's house with stones and firearm, came to know about the attack on his father, D-5, only at about 1 a.m. on January 29, 1979.

15. Some time after 6 p.m. on January 28, 1979, PW 35 the Inspector of Police, Yadgir, heard a rumour that violence had erupted at Kawaloor village. He therefore took some constables and went to Kawaloor in two jeeps and reached the place at 8 p.m. The village, which was not electrified, was in utter darkness and was completely deserted. PW 35 went round the place with the petromax and torchlights brought by him and came to notice the dead bodies of D-3 and D-4. At that time, PWs 1 to 5, 29 and 30 and Meenad Venkappa came out of their places of hiding and revealed that the dead body of D-1 was lying near the house of Sahukar Sharnappa and the dead body of D-2 was lying near the house Mallawwa Harijan. The witnesses also disclosed that they had also sustained injuries. Thereupon, PW 35 posted police guards at the village and took the injuries witnesses to Yadgir and reached the police station at about 11.45 p.m. At the police station, he recorded a statement (Ex. P-1) from PW 1 and registered a case and sent express reports to the concerned authorities. The express report reached the Judicial Magistrate at Yadgir at 3.30 a.m. on January 29, 1979. PW 35 recorded the statements of some of the injured witnesses and sent them to the hospital. On the next morning, PW 8 and PW 10 came to the police station, and they were also sent to the hospital as they had injuries on their person. PW 35 then went to the scene village Kawaloor and held inquests and then sent the dead bodies of D-1 to D-4 for post-mortem examination. He recovered from the scenes of occurrence various items like blood-stained earth and stones, burnt toor sticks, ashes from the burnt houses, etc. etc. The investigation of PW 35 was later verified by PW 36, the Deputy Superintendent of Police, Yadgir. After the death of D-5 on February 4, 1979, PW 35 held an inquest and sent his dead body also for autopsy.

16. Search was made for the accused and they were apprehended on different dates and remanded to custody.

17. On April 14, 1979 PW 10 was sent to the hospital for extraction of a pellet imbedded in his body. Since the pellet could not be extracted, he was again sent to the hospital on May 29, 1979 and this time, a pellet (MO 47) was successfully extracted.

18. After completion of investigation, a charge-sheet was laid against A-1 to A-33.

19. The plea of all the accused who were tried was one of denial. In their statements under Section 313 CrPC, A-1 to A-4, A-12, A-23, A-26 and A-27 pleaded alibi and stated that they were not at Kawaloor village on the afternoon of January 28, 1979. Their version was that at about 1 p.m. on January 28, 1979 their relation San Hanumantha was assaulted and they had taken him to the hospital at Yadgir at about 3 p.m. and admitted him there, and for about 24 hours thereafter, they remained at Yadgir itself. Their further statement was that they have been falsely implicated in the case by PW 6 on account of enmity.

20. As already stated, the Sessions Judge discharged four accused under Section 227 CrPC and acquitted 13 accused after trial. The remaining 16 accused were convicted and sentenced as under for the murder of D-1 to D-4 and for offences of rioting and causing hurt. The prosecution case as regards the murder of D-5 was not accepted.

#A-1, A-2, A-20 u/s 302 read with Imprisonment for life for and A-21 Section 149 IPC murder of D-1 Gunjalappa. A-5, A-6 and A-7 u/s 302 read with Imprisonment for life for Section 149 IPC murder of D-2 V. Mallappa. A-5, A-10, A-12, A-16 u/s 302 read with Imprisonment for life for A-18, A-24 and A-25 Section 149 IPC murder of D-3, Basappa. A-6 and A-9 u/s 302 read with Imprisonment for life for Section 149 IPC murder of D-4 Rayappa. A-5 u/s 324 IPC u/s RI for one year. RI for 436 IPC three years and to pay fine of Rs. 1000, i/d RI for six months. A-18 u/s 323 IPC RI for one year. A-1, A-2, A-5, A-6, u/s 148 IPC RI for one year. A-7, A-9, A-12, A-15, A-16, A-17, A-18, A-20, A-21, A-24 and A-25##

21. Mr. Javali, learned counsel for the appellants, took us through relevant portions of the evidence and the judgments of the Sessions Court and the High Court and put forth several arguments to contend that the prosecution case is not a true one and that the evidence is artificial, interested and discrepant, and hence the appellants are also entitled to an acquittal in the same manner the other accused have been acquitted.

22. Before we deal with the arguments of Mr. Javali, we may refer to some aspects of the case which do not admit of any doubt. First and foremost among them is that the death of D-1 to D-4 on January 28, 1979 and D-5 on February 4, 1979 was on account of homicidal violence. Likewise, several prosecution witnesses had sustained injuries and the house of PW 6 had been burnt on account of the violent acts indulged in by certain miscreants of the afternoon of January 28, 1979. The second factor is the prevalence of enmity between PW 6 and his brother and followers on the one hand and the appellants and their group of people on the other. Admittedly, PW 6 and his brothers had been convicted for committing the murder of Sidharamareddy. They had served out their sentences and were released from jail some months before the occurrence. With their return to the village, the bickerings and quarrels had resumed and the rival groups were trying to assert their supremacy over the other. Apart from what PW 6 and other witnesses have stated about these matters, we have independent material to show that both sides were itching for a show-down. PW 6 and his brothers were harassing the villagers to pay them money for having got the village rid of Sidharamareddy. Besides, PW 6 and A-6 quarrelled with each other to such an extent that the police

had to institute proceedings against them under Section 107 CrPC to keep them under check. Furthermore, PW 6 had forcibly recovered possession of a mortgage land from A-7 and started cultivating it. It was, therefore, no wonder that the accused party were waiting for an opportunity to take revenge upon PW 6 and his brothers at an opportune moment.

23. Mr. Javali, as already stated, per forth various contentions to assail the convictions of the appellants by the Sessions Judge and the High Court under the charges mentioned above. To start with, he contended that even if there was enmity between the appellants and the deceased person, there was no immediate provocation for the appellants to have launched an attack on D-1 to D-4 on the day in question. It was urged that according to the prosecution, A-1 to A-4 had summoned only PW 2, 8, 14 and Dod Bhimaraya to offer an explanation for their alleged threat of attack on him, and such being the case, there was no reason why A-1 to A-29 should have come in a body to attack D-1 to D-4. It was pointed out that inasmuch as PW 1 had seen only A-1 to A-4 in the house of A-1, the prosecution should explain as to wherefrom A-5 to A-29 had come and as to when and where they joined hands with A-1 to A-4 to launch an attack on the deceased persons. It was further stated that even PW 10, the village Dalapathi, who claimed to have been attacked by some of the accused near A-1's house, had not stated that he saw all the 29 accused near A-1's house. Yet another submission made was that when persons more aggrieved than the appellants, viz. the members of Sidharamareddy's family, i.e. A-30 to A-33 and the members of the Pattad family, i.e. A-3, A-23, A-24 and A-26 to A-29, have been acquitted, the appellants too should have been acquitted, because it is highly unlikely that they would have taken the initiative to launch an attack on the deceased. Reference was made by learned counsel to *State of Bihar v. Mohd. Khursheed* ((1971) 3 SCC 423 : 1971 SCC (Cri) 671 : AIR 1971 SC 2268) in support of these contentions. In that case, this Court declined to interfere with the alteration of the conviction of the accused from Section 302 to Section 304, Part I, IPC on the ground that the prosecution was unable to explain the origin and manner of the fight which led to the death and, besides, there were materials in the case to warrant a finding that a clash should have occurred before the accused had inflicted fatal injuries on the deceased. We have bestowed our thought over these criticisms, and we find them to be devoid of merit. We have already observed that PW 6 and his brothers, by their high-handed and provocative acts, had incurred the wrath and displeasure of several sections of people in the village. The very fact that three of the brothers of PW 6, viz. D-1, D-2 and D-3, had been brutally murdered and the house of PW 6 had been set on fire, is proof positive of the hatred of the villagers towards them. Likewise, the fact that as many as five persons were fatally attacked with different kinds of weapons (even though the prosecution case as regards the assailants of D-5 has not been accepted), would by itself show that several persons must have jointed together to commit the attacks on the deceased persons. It is, therefore, futile for the appellants to contend that they should also have been acquitted of the charges framed against them merely because the members of the Pattad family and Sidharamareddy's family were acquitted and the prosecution has not thrown light about the genesis of the occurrence.

24. As regards the other accused persons joining A-1 to A-4 and coming in a body to attack the deceased, it is true that PW 1 and PW 10 had not seen all of them in or near the house of A-1 at the respective times they went there but that would not mean that all the others could not have come or joined hands with A-1 to A-4 to participate in the attack. In the duration time that had elapsed after the visits of PW 1 and PW 10 to the house of A-1, the other accused could have received information about the plan to attack D-1 to D-4 and come and joined A-1 to A-4.

25. The argument that as there was no immediate cause for provocation, the accused would not have attacked the deceased would have some weight only if the accused and the deceased had been on

friendly and cordial terms all through and a sudden conflagration had taken place. In this case, far from the parties being on cordial terms, they were at logger-heads for long and were bitterly opposed to each other. Obviously, therefore, the appellants must have been waiting for an opportunity to do away with the deceased and should have launched the attack on the day in question since PW 6 was absent from the village and D-1 to D-4 had made easy target of themselves by congregating at the house of PW 6. We do not, therefore, find any improbability in the prosecution case that the appellants had joined hands and come in a body to attack the deceased assembled in PW 6's house.

26. The further argument of Mr. Javali was that the prosecution had chosen to examine only the close relations of the deceased, viz. PWs 1 to 5, and not any of the neighbours or independent witnesses, to speak about the attack on D-1 to D-4, and therefore, on this ground alone, the prosecution case should be rejected. It is true that PWs 1 to 5 are closely related to D-1 to D-3 and that no one residing near PW 6's house had been examined in the case. It must, however, be noticed that PWs 1 to 5 are natural witnesses and not chance witnesses. They were all residing with PW 6 and his brothers. As the occurrence had taken place near the house of PW 6, they must have necessarily witnessed the occurrence. It is not as if they were residing elsewhere and had come upon the scene of occurrence by chance. Such being the case, their evidence cannot be stigmatised as interested testimony. As regards the non-examination of other residents of the locality, we have no evidence that any of them was present at the time of occurrence and had witnessed the attack on the deceased. In fact, the evidence is to the contrary, viz. the house of Sharnappa Sahukar where D-1 was murdered was locked and, likewise, the house of Mallawwa Harijan where D-3 had run, was also closed. Therefore, merely because certain persons were owning houses near the scene of occurrence, it cannot be presumed were all present in their houses and had witnessed the attack on the deceased persons, but for motivated reasons, the prosecution has failed to examine them. In this connection, we may usefully refer to the observations of this Court in *Sarwan Singh v. State of Punjab* ((1976) 4 SCC 369 : 1976 SCC (Cri) 646). It was observed therein that the evidence of an interested witness does not per se suffer from any infirmity and all that is required, as a rule of prudence, is for the court to satisfy itself that the evidence is reliable and truthful. It was further held in that case that the onus of proving the prosecution case rests entirely on the prosecution, that therefore, the prosecution cannot be compelled to examine one witness or the other and if a material witness is withheld, the utmost that would follow would be to draw an adverse inference against the prosecution. But, before such adverse inference can be drawn, it must be proved to the court that material witnesses had actually seen the occurrence, but had been deliberately withheld from the witness box by the prosecution. It may be mentioned here that when PW 35 reached the scene village on that night, he found the village deserted and only PWs 1 to 5, 29, 30 and Venkappa appeared before him in a panic-stricken condition. It is, therefore, not possible to hold that the neighbours had witnessed the occurrence, but the prosecution had deliberately failed to examine them.

27. Closely linked with the criticism that the evidence of PWs 1 to 5 is of an interested nature, it was urged that it is most unlikely that PW 4 would have run in one direction and PW 5 would have run in another direction when the appellants began pelting stones at the house of PW 6 and A-5 had climbed over the roof and set fire to the chapper portion. We find nothing strange in the conduct of PWs 4 and 5 in running away in different directions and in PWs 1 to 3 choosing to stand near the house itself, because different people react in different ways in situations of emergency and crisis. It is not as if PWs 4 and 5 went running in different directions and PWs 1 to 3 stayed at the same place pursuant to any plan of action formulated by them. PW 4 could have thought that safety lay in running away in one direction and PW 5 may have thought differently of the matter. It cannot,

therefore, be said that the running away of PW 4 towards the house of Sharnappa Sahukar has been introduced only to make it appear that she had actually seen the attack on D-1.

28. Learned counsel for the appellants commented adversely upon certain minor variations in the evidence of PWs 1 to 5 vis-a-vis the statements made by them during investigation, and also between their respective versions about the occurrence. The so-called variations have been pointed out the Sessions Judge and the High Court also by the counsel appearing for the accused and they have been considered in a very detailed manner by the two courts. After such consideration, the Sessions Judge and the High Court have held that the alleged variations are inconsequential and are not of a serious nature as to affect the credibility of the witnesses and the veracity of their testimony. We have also considered the matter and find that the variations are not of a serious or vital nature and hence we are unable to attach any importance to them.

29. Another angle chosen by the appellant's counsel to attack the prosecution case was with reference to the first information report, Ex. P-1, given by PW 1. The foremost criticism levelled was that Ex. P-1 is hit by Section 162 CrPC, because PWs 1 to 5 have stated in their evidence that they told PW 35 at the village itself the manner in which the occurrence had taken place and that their statements were reduced to writing. However, PW 35, has categorically denied having questioned the witnesses or recording their statements at the village on that night. On the other hand, he has emphatically stated that he recorded the statements of PW 1 only at Yadgir Police Station at about 11.45 p.m. and recorded the statements of the other witnesses thereafter. The Sessions Judge and the High Court had accepted the evidence of PW 35 on this aspect of the matter and we find ourselves in full agreement with that view. PW 35 had gone to Kawaloor village on that night only on the basis of some vague information about violence having broken out in the village. He could not, therefore, have gone prepared to the village to record any statement or to do any investigation. Moreover, there were no electric lights in the village and this would have hampered PW 35 in recording any statement even if he had wanted to do so. There is also the fact that several witnesses had sustained injuries and were in need of treatment. The anxiety of PW 35 would, therefore, have been to take the injured persons to the hospital forthwith and have them treated. Moreover, in their panic-stricken state PW 1 to 5 would not have been able to give cogent and comprehensive statements to PW 35 about the attack launched on them and the deceased by the assailants. For all these reasons, it cannot be said that Ex. P-1 was not the earliest statements to be recorded and hence it is hit by Section 162 CrPC.

30. It was also contended that Ex. P-1 should have been written under the guidance of PW 6 after his return from Raichur and such an inference is warranted because the express report had reached the Judicial Magistrate only at 3.30 p.m. on January 29, 1979. The contention is clearly fallacious because the express report has reached the Magistrate at 3.30 a.m. itself and not at 3.30 p.m. on the next day, and a clear finding has been rendered in this regard by the Sessions Judge and the High Court. The duration of two hours time taken for the report (despatched at 1.30 a.m.) reaching the Magistrate at 3.30 a.m. cannot be said to be inordinate or giving room for suspicion. Mr. Javali referred to *G. D. Patel v. State of Maharashtra* ((1978) 4 SCC 371 : 1979 SCC (Cri) 1 : (1979) 2 SCR 94) and *Awadhesh v. State of M. P.* ((1988) 2 SCC 557 : 1988 SCC (Cri) 36 : AIR 1988 SC 1158), to support his argument that unexplained delay in the recording of the first information report or a copy of the report reaching the Magistrate would have the effect of destroying the truth of the prosecution case. The Sessions Judge and the High Court have thoroughly gone into the question as to whether there was any delay in the recording of the first information report or a copy of it being set to the Magistrate, and have found that there has been no delay at all. We therefore, do not find any merit in any of the contentions put forth by the appellants' counsel to assail the admissibility of

Ex. P-1 or the truth of its contents.

31. The prosecution case that D-1 to D-4 came out of PW 6's house one after the other and ran in different directions and were chased by different sets of accused and attacked, and that PWs 29 and 30 continued to remain in the house till the last, was decried by the appellants' counsel as being an artificial and improbable version. This argument overlooks the fact that D-1 to D-4 who were inside the house would have felt afraid to come out in a body lest they become easy targets for attack by the accused. They may have thought that they would have better chances of escape if they came out of the house one by one instead of all of them coming out together. For the same reason they should also have run different directions. In the case of PWs 29 and 30, they may have thought that since the fire had not spread beyond the chapper portion, they could safely remain inside the house rather than go out and face an attack. The fact that four dead bodies were found lying at different places lends credence to the evidence of PWs 1 and 3 that D-1 to D-4 came out of the house one after another and ran in different directions and they were chased by the respective sets of accused and attacked at different places.

32. With reference to the attack on D-4, it was argued that it is inconceivable that A-19 would have asked D-4's pursuers to set fire to his own house and that too to kill D-4 who was his son-in-law. The argument, seemingly appealing, overlooks the fact that there was no love lost between A-19 and D-4. A-19 had driven out D-4 from the house and allowed his daughter to live in illicit intimacy with A-6, and it was only after PW 6's return from jail that the illicit relationship was put an end to and the conjugal ties between D-4 and his wife were restored. Such being the case, there is nothing improbable in A-19 having told A-6 and A-9 the D-4 had taken cover inside the house and he can be forced to come out by setting the house on fire.

33. In the course of the arguments, Mr. Javali laid great stress upon the plea of alibi set up by A-1 to A-4, A-12, A-23, A-26 and A-27 and raised a grievance that the counter case by San Hanmantha had not been duly investigated. It may be recalled that the defence case was that one San Hanmantha had been attacked at or about 1.30 p.m. on January 28, 1979 and he was taken by the abovesaid accused in a tractor driven by DW 1 to Yadgir and all of them were at Yadgir till the afternoon of the next day. In support of this version, the accused had examined DW 1, a tractor driver. The Sessions Judge and the High Court have considered the defence version in great detail and rejected the same as being utterly unbelievable. Considering several aspects of the matter, we find ourselves to be in full agreement with the view taken by the Sessions Judge and the High Court. In the first place, DW 1 is none other than the employee of one of the accused, viz. A-30. DW 1 was cited as a prosecution witness (PW 51), but his evidence was dispensed with and thereafter the accused have examined him as a defence witness. The Sessions Judge has noticed several discrepancies in the evidence of DW 1. These apart, there is no evidence to show that the injured person, viz. San Hanmantha, or any of the accused claiming to have accompanied him had made any report at Yadgir Police Station on that afternoon. There is no record to show that the injured had even been admitted in the hospital on the afternoon of January 28, 1979. In fact, the records go to show that he was admitted in the hospital only at about 7 p.m. and he had reported about the occurrence to the police only at 2.25 p.m. on the next day, i.e. January 29, 1979. As such, the story that he was attacked at about 1.30 p.m. and that some of the accused took him to Yadgir in DW 1's tractor in the afternoon itself cannot be a truthful version. The plea of alibi, therefore, set up by the abovesaid accused was nothing but a desperate attempt to get over the evidence of the eye-witnesses. The case registered on San Hanmantha's report cannot be considered a counter case, because he was not arrayed as an accused in the present case.

34. Learned counsel for the appellants lastly contended that since the evidence of PW 10 regarding the attack on him has not been accepted, and likewise the prosecution case regarding the attack on D-5 has not been believed and even the evidence of PWs 1 to 5 has not been fully accepted, the Sessions Judge and the High Court ought not to have convicted the appellants and instead they should have been acquitted in the same manner the other accused have been acquitted. We do not find any merit in these contentions because the Sessions Judge and the High Court have scrutinised the evidence of the witnesses very carefully and found the evidence of PWs 1 to 5 to be fully truthful. At the same time, the Sessions Judge and the High Court have given the benefit of doubt to the accused to the maximum extent possible, whenever it was found that mutual collaboration in the testimony of PWs 1 to 5 was wanting. The Sessions Judge and the High Court have sifted the evidence of PWs 1 to 5 with great care before acting upon it, and merely because the benefit of doubt has been given wherever it was felt prudent, it would not mean that the evidence of PWs 1 to 5 should be discarded in its entirety and all the accused should be acquitted. An attempt was made by counsel to draw comparison with the decision in *Patori Devi v. Amar Nath* ((1988) 1 SCC 610 : 1988 SCC (Cri) 206 : AIR 1988 SC 560) to contend that when the version of eye-witnesses was not fully acceptable on account of the prosecution suppressing the fact of injuries being caused to the accused, the acquittal of all the accused was called for. We find the facts in *Patori Devi* case ((1988) 1 SCC 610 : 1988 SCC (Cri) 206 : AIR 1988 SC 560) to be entirely different. That was a case where the High Court set aside the convictions awarded by the Sessions Judge and acquitted the accused, because the High Court found that "the prosecution had advanced a false story that the appellants had assaulted the deceased persons" and that "the version given by the defence that they were attacked first and were given various injuries indiscriminately, appears to be reasonably true". When the State came in appeal against the acquittal of the accused by the High Court, this Court declined to interfere stating that the prosecution had failed to reveal the entire story and therefore, the Court is not able to find the nugget of truth. Since such is not the state of things in this case, the argument of the appellants' counsel in this behalf must fail.

35. In the light of our conclusions, we do not find any grounds to interfere with the conviction and sentences, awarded to the appellants. The appeal is, therefore, dismissed. If any of the appellants is on bail, his bail bond will stand cancelled and he must surrender himself to custody for serving out the sentence awarded to him.

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