SUPREME COURT OF INDIA

Chikkarangaiah

Vs.

State of Karnataka

Crl.A.No.634 of 2002

(Dalveer Bhandari J.)

02.09.2009

JUDGEMENT

Dr. MUKUNDAKAM SHARMA, J.

1. These appeals by special leave are filed against the judgment and order passed by the High Court of Karnataka at Bangalore in Criminal Appeal No. 594 of 1996; wherein the High Court partly allowed the appeal filed by the State by convicting accused Chikkarangaiah (A-1), Gopala (A- 3), Gavisiddaiah (A-9), Ramakrishna @Ramachandra (A-10), Nanjundiah (A-11), Javaraiah (A-12), Shivalingaiah (A-13) and Puttaswamy (A-21) for an offence under Section 326 of the Indian Penal Code (for short "the IPC") read with Section 149 of IPC and sentencing them to undergo imprisonment for a period of three years and to pay a fine of Rs. 5,000/- each, in default, to undergo simple imprisonment for three months while maintaining the order of acquittal under section 302 IPC. Earlier the trial court acquitted all the accused persons by judgment and order dated 22.04.1996 in S.C. No. 13 of 1990. Since these appeals arise out of the same facts and common judgment, we heard the appeals together and propose to dispose of the same by this common judgment.

2. In order to appreciate the rival contentions advanced by the parties and issues involved, it is necessary to set out brief facts of the case which gave rise to the present criminal appeals.

The prosecution case in brief is that A-1 to A-6, A-9 to A-13 and A- 16 to A-21 were residents of Jodihosahalli, Kunigal Taluk whereas Kodakana Boraiah (A-7) was a resident of Seeyepalya, which was hardly one kilometer from Jodihosahalli. Kodakana Boralingaiah (A-8) was a resident of Puranipalya, which was about 1 1/2 kilometers from Jodihosahalli whereas Veerabhadraiah (A-14) and Shivanna (A-15) were residents of Hanumanapalya, which was about 1 1/2 kilometres from Jodihosahalli.

3. The deceased H. B. Boralingaiah was a resident of Jodihosahalli. He was a School Teacher. H. B. Boraiah (PW-1 as well as the complainant) was the younger brother of the deceased and was living in Jodihosahalli with his wife and children. The residential houses of PW-1 and the deceased were situated facing each other with a street in the middle running East to West.

H. B. Lingaiah (A-5) was living in a house situated adjacent to the house of PW-1 on the western side.

4. The deceased Boralingaiah and his brother (PW-1) on one side and H. B. Lingaiah (A-5) and some villagers including A-1, A-2 and A-11 on the other side were having a land dispute since 1974. Even though there was a decree in favour of PW-1, A-5 with the support and aid of other accused persons were interfering with the peaceful possession and enjoyment of the said land namely Sy. No. 108 re-survey No. 152. A-21, a Zilla Parishad Member obviously having political influence was bringing pressure on PW- 1 and his brother deceased to give up their rights to the said land in favour of A-5. A-1 also had joined hands with A-21 to coerce PW-1 and the deceased to give up their rights in respect of said land. It was also the case of the prosecution that there were many cases involving theft, mischief, assault, concerning the property pending between PW-1 and his brother on one side and A-5 and A-21 on the other side and a number of criminal cases were also pending in this connection.

5. On 15-9-1989 at about 9.00 a.m. deceased Boralingaiah was proceeding from his house towards the house of Bettaswamy (PW-7), when he was waylaid by all the accused persons by surrounding him from three sides armed with clubs and chopper and they brutally assaulted the deceased indiscriminately. The injured Boralingaiah was shifted to his residence by his wife Chikkamma (PW-5), Ningamma (PW-3) wife of PW-1 and other two witnesses Narasamma (PW-4) and Kambaiah (PW-6).

6. In the meanwhile PW-1 being scared to go near the scene of occurrence went to a nearby village

Santhepete after walking the distance and from there he got into a lorry and traveled to Kunigal and lodged his complaint at about 12.45 p.m. in Crime No. 253/89 for offences under Section 307 of IPC.

7. At about 11.00 a.m. on the same day, at the request of PW-3 and PW- 5 to send a message to the son of the deceased, PW-6 was proceeding towards the bus-stop to go to Bangalore, at that time A-1, A-21, A-9, A-3, A-12, A-11, A-13 and A-10 armed with clubs chased him and assaulted him with clubs and stones with a view to prevent him from informing about the incident with respect to the assault on the deceased to his son at Bangalore and thereby caused injuries to PW-6.

8. Thereafter the deceased and PW-6 were shifted to Kunigal Hospital by a Police Constable Lakshmanappa (PW-21) in a car which was provided for by the complainant (PW-1). At Kunigal Hospital on the advice of Dr. Doddathimmaiah (PW-14) the deceased was shifted to Victoria Hospital, Bangalore, but the deceased expired on the way to Bangalore. Subsequently, on receiving the death report as per Ex. P-51 the second FIR for the offence under Section 302 was submitted to the Court as per Ex. P-52.

9. PW-1 got down at the bus stand at Kunigal and went to the Police Station to lodge a complaint. At the Police Station the Circle Inspector and the Sub-Inspector were not available. Only the Head Constable was there.

The Head Constable (PW-23) asked PW-1 to give a written complaint. PW- 1 went to the bus stop and got a typed complaint and signed the complaint.

However, it would be relevant to mention at this stage that PW-23, however, said in his evidence that a written complaint was brought by PW-1 and that PW-23 did not ask PW-1 to bring a prepared complaint as stated by PW-1.

10. Then the PW-23 registered a case in crime No. 253/1989 for the offences under sections 143, 147, 148, 149, 341, 324, 326, 506 and 307 read with section 114 of the IPC and submitted the FIR to the court.

11. The Investigating Officer T. C. M. Shariff (PW-29) after completing the investigation filed the charge sheet against the accused A-1 to 21 on 01.01.1990. Thereafter, he received the serologist report as per Ex. P-80 and Chemical Examiner's report as per Ex. P-81 and other reports. The prosecution filed the charge sheet against A-1 to A-21 for the offences under sections 143, 147, 148,

149, 341, 324, 326, 506, 307 and 302 read with 120 IPC. A-1 to A-21 pleaded not guilty and claimed to be tried and accordingly the case was posted for trial.

12. During trial, the prosecution in support of its case examined as many as 30 witnesses and exhibited 89 documents. Thereafter, the accused were examined under Section 313 of the Code of Criminal Procedure, 1973 for the purposes of enabling them to explain the circumstances existing against them. The defence of the accused A-1 to 21 was one of total denial.

13. On completion of the trial, the trial court passed a Judgment and order acquitting all the accused. Aggrieved by the aforesaid judgment and order passed by the trial court, the State of Karnataka filed an appeal in the High Court of Karnataka, which was registered as Criminal Appeal No. 594 of 1996.

14. After screening the evidence on record and hearing the rival contentions of the parties the High Court partly allowed the appeal by convicting A-1, A-3, A-9, A-10, A-11, A-12, A-13 and A-21 for an offence under Section 326 read with 149 IPC and sentenced the accused for a period of three years and also sentenced them to pay a fine of Rs. 5,000/- each in default to undergo simple imprisonment for three months. The High Court further directed that on payment of fine, the trial court shall disburse the amount to PW-6 as compensation.

15. State of Karnataka and A-1, A-3, A-9, A-10, A-12, A-13 and A-21 being aggrieved by the judgment and order of the High Court of Karnataka preferred two special leave petitions on which notice was issued and leave was granted by this Court. The Criminal Appeal No. 634 of 2002 has been filed by the accused challenging their conviction under Section 326 read with 149 IPC; whereas Criminal Appeal 635 of 2002 has been preferred by the State of Karnataka challenging the order of acquittal under Section 302 IPC. On 8th July, 2002 this Court granted bail to the accused persons to the satisfaction of the trial Judge. We have heard learned counsel appearing for the parties when the appeals were listed for final hearing, who had painstakingly taken us through the evidence on record.

16. The learned senior counsel appearing for the accused very forcefully submitted that the view taken by the trial court was just and proper and the High Court should not have interfered with an order of acquittal. Learned counsel also submitted that the trial court in its judgment has given plausible and cogent reasons for disbelieving the story of PW-6 and the prosecution for acquitting the accused/appellants of the charge under Section 326 read with 149 IPC with regard to the alleged assault on PW-6. It was contended that the High Court disagreed with the view of the trial court and gave its own reasons for convicting the accused under Section 326 IPC and that those reasons cannot be sustained because admittedly PW- 6 knew all the names on the day of assault yet he failed to give all the names at the earliest opportunity and that since PW-6 did not give the names of all the assailants, the doctor quite rightly did not record details, as the same were not narrated to him. He

also submitted that the reasons given by the trial court for acquitting the appellant/accused are very cogent and acceptable on the facts of the case and the reasons given by the High Court to discard the reasoning of the trial court cannot be 8 sustained. It was further submitted that the High Court didn't appreciate that the prosecution failed to record the statement of PW-6 when he was at Kunigal Hospital and it was a glaring omission on the part of prosecution and therefore assault on PW-6 cannot be relied to sustain the conviction of the appellants/accused. Learned counsel for the accused further submitted that if this Court approves the view taken by the High Court, in that case the accused should be awarded sentence to the period already undergone by them. In support of aforesaid contentions, he has relied upon the decision of this Court in K. Ramakrishnan Unnithan v. State of Kerala, (1999) 3 SCC 309;

Hari Ram v. State of Rajasthan, (2000) 9 SCC 136; State of U.P. v. Nahar Singh, (1998) 3 SCC 561; and Rajender Singh v. State of Bihar, (2000) 4 SCC 298.

17. The learned counsel appearing for the State on the other hand submitted before us that the judgment of the High Court in confirming the order of acquittal of all the accused for the charges under Section 302 read with 149 IPC, 120-B and 148 IPC was not proper as there are number of circumstances, which prove the guilt of the accused under the aforesaid provisions. It was submitted that the High Court found fault with PW-1 in preparing a typed FIR for the purpose of convicting the accused for offence under Section 302 IPC while the same FIR was held to be good for the purpose of convicting the accused who assaulted PW-6 who assisted in shifting the deceased from the spot to his house. It was further submitted that the two offences are so proximately connected that they have been committed during the course of same transaction. It was further submitted that the courts below failed to take into consideration the recovery evidence and the Serological report produced to the Court.

18. In the backdrop of aforesaid arguments advanced by the parties, we will now examine the case in terms of well established legal position.

First, we will examine the contentions advanced by the parties with regard to the concurrent finding of acquittal for the offence under Section 302 IPC. Then, we will examine the order of conviction recorded by the High Court for the offences under Section 326 read with Section 149 IPC.

19. With regard to the concurrent finding of acquittal recorded by the trial Court as well as the High Court for the offence under Section 302 IPC is concerned, it is well settled that while hearing an appeal under Article 136 of the Constitution, this Court will normally not enter into reappraisal or review of evidence unless the trial court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse. The Court may interfere where on proved facts wrong inference of law is shown to have been drawn.

20. In the case of State of U.P. v. Nahar Singh, (1998) 3 SCC 561, at page 568, this Court observed as follows :

"21. The principle with regard to interference in the appeal against acquittal under Section 378 CrPC are well established. While dealing with the power of the High Court to reverse an order of acquittal on a matter of fact, Lord Russell of Killowen, speaking for the Privy Council, in Sheo Swarup v. King Emperor3 observed thus:

"There is in their opinion no foundation for the view, apparently supported by the judgments of some Courts in India, that the High Court has no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court has `obstinately blundered', or has `through incompetence, stupidity or perversity' reached such `distorted conclusions as to produce a positive miscarriage of justice', or has in some other way so conducted itself as to produce a glaring miscarriage of justice, or has been tricked by the defence so as to produce a similar result.

Sections 417, 418 and 423 of the Code give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code.

But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this however is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

These principles have been approved and followed in numerous decisions of the Supreme Court. To mention a few, see Prandas v. State4; Sanwat Singh v. State of Rajasthan5.

22. In State of U.P. v. Krishna Gopal6 M.N. Venkatachaliah, J. (as he then was) summarised the principle as follows: (SCC Headnote) "The plenitude of the power of the appellate court to review and reappreciate the evidence cannot be limited under the supposed rule that unless there are

`substantial' or `compelling' reasons or `very substantial reasons' or `strong reasons', the findings in a judgment of acquittal should not be interfered with. There is thus no immunity to an erroneous order from a strict appellate scrutiny. But the appellate court wherever it finds justification to reverse an acquittal must record reasons why it finds the lower court wrong."

In Ajit Savant Majagvai v. State of Karnataka7 the abovenoted principles have been approved and restated.

23. If on reassessment of the evidence, the appellate court comes to the conclusion that the guilt of the accused is established, the fact that the appeal is against the acquittal will be immaterial. However, if two views are possible, the court, having regard to the basic principle that presumption of innocence of the accused gets strengthened by the fact of his acquittal by court, should take the view that supports the acquittal of the accused."

21. Further, in the case of K. Ramakrishnan Unnithan v. State of Kerala, (1999) 3 SCC 309, at page 314, this Court observed:

"5. The plenitude of power available to the court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction. But however the court will not interfere solely because a different plausible view may arise on the evidence. In a case of murder, if the reasons given by the trial court for discarding the testimony of the eyewitnesses are not sound, then there should be no hesitation on the part of the High Court in interfering with an order of acquittal. If the judgment of the trial Judge was absolutely perverse, legally erroneous and based on wrong testimony, it would be proper for the High Court to interfere and reverse an order of acquittal. Having examined the judgment of acquittal passed by the learned Sessions Judge and the impugned judgment of the High Court, reversing the said judgment of acquittal and on scrutinizing the evidence of the three eyewitnesses, though we find some substance in the grievance of Mr Lalit, appearing for the appellant that the High Court has not adverted to all the reasons given by the trial Judge for recording an order of acquittal, but it is difficult for us to come to hold that the High Court exceeded its jurisdiction and the parameters fixed for interference with an order of acquittal. We find the approach of the learned Sessions Judge in recording an order of acquittal was not proper and the conclusion arrived at by the Sessions Judge on several aspects is unsustainable. Even though the eyewitnesses appear to have exaggerated their version and improved upon their version in giving a role to Accused 2 for which an order of acquittal passed by the Sessions Judge has been affirmed by the High Court, but to bring home the charge of murder against the appellant on the ground that he gave a stabbing blow on the deceased on a vital part by means of a knife while he came out of his house has been consistently narrated by the three eyewitnesses. There has been no embellishment or exaggeration by these eyewitnesses so far as the role ascribed to the appellant from their previous version to the police is concerned. Thus the basic prosecution case as unfolded through the testimony of the aforesaid three witnesses is fully corroborated by the medical evidence of the two doctors and, therefore, the learned Sessions Judge was not justified in discarding this part of the

prosecution case and in acquitting the appellant and the High Court, therefore, was fully entitled to reappreciate the evidence of these witnesses and record its own conclusion on the question whether the evidence of the eyewitnesses that the appellant gave the stabbing blow on the deceased can at all be sustained or not. We have ourselves scrutinized the evidence of the three eyewitnesses and we are of the considered opinion that the reasons adduced by the trial court for discarding their testimony were not at all sound. On the other hand, the evaluation of the evidence made by the trial court was manifestly erroneous and, therefore, it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge. In this view of the matter, we are unable to accept the ultimate submission of Mr Lalit that the High Court exceeded its limit in interfering with an order or acquittal passed by the learned Sessions Judge."

22.One of us (Dalveer Bhandari J.) in Ghurey Lal v. State of U.P.,(2008) 10 SCC 450, at page 476 has after an elaborate discussion of the case law on the subject succinctly observed as follows:

"69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty.

The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very

substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached--one that leads to acquittal, the other to conviction--the High Courts/appellate courts must rule in favour of the accused."

23.Though the legal position is quite clear still we have gone through the evidence on record in order to examine whether the findings with regard to the order of acquittal by the Courts below suffer from any infirmity.

24. The deceased was examined at the Kunigal hospital at 2.10 p.m. PW- 14 in his cross-examination had clearly stated that the deceased was in a position to talk and was talking when he first examined him. He said till the deceased left the hospital to go to Bangalore he was in the same condition.

PW-14 did not record the statement of the deceased because he was under the impression that the police recorded the statement of the deceased before he was brought to the hospital as the deceased was accompanied by the police. According to PW-23 who was the Head Constable at Kunigal police, PW-1 came at about 12.45 p.m. and gave a prepared complaint. On the basis of the aforesaid complaint PW-23 registered a case under Section 307 read with Section 114, IPC and other offences. He deputed Police Constable (PW-21) to bring the deceased. He went to the Kunigal hospital and saw the deceased bandaged and the deceased was advised by the doctor to be shifted to Bangalore. PW-23 did not record any statement from the deceased although the doctor stated that the deceased was in a position to talk and was talking. He instead sent the deceased to Bangalore for treatment. PW-23 also stated that the Inspector of Police (PW-

29) did not appear to have perused the complaint given by PW-1 nor did he take a statement from the deceased who was conscious according to the doctor (PW-14). He didn't take up further investigation. On perusal of PW-23's evidence it appears that the initial investigation was done by the Head Constable (PW-23). PW-23 visited the scene of occurrence, seized the incriminating articles, recorded the statements from the witnesses and after the initial investigation returned to the police station at about 9.30 or 10 p.m. Then he found that the FIR was not dispatched to the Magistrate. These are all steps taken in and also in furtherance of investigation.

25. PW-23 also categorically stated that the FIR was dispatched from the police station at about 1.45 p.m. through the Writer Nagaraj (not examined).

After PW-23 came back, according to PW-23, he realised that Nagaraj had not dispatched the FIR to the Magistrate. Nagaraj searched for the FIR and it was still on the desk till 10.00 p.m. The reason given by PW-23 was that Nagaraj accompanied PW-23 for the purpose of examining witnesses and therefore he was not in a position to hand over the FIR to the Magistrate.

26. In his cross-examination, PW-23 stated that on his way to the village where the occurrence took place, he had to pass through the JMFC Court, Kunigal. He also stated that he was in a great hurry and therefore neither he nor Nagaraj handed over the FIR to the Magistrate. He also stated that he was with the deceased for about 20 minutes but he did not record the statement from the deceased. He volunteered and stated that the deceased was not in position to talk. This is quite contrary to the evidence of the Doctor (PW-14). PW-14 clearly stated that the deceased was in a position to talk and was talking when he was examined. PW-14 also stated that the deceased was in a fit condition when he left the hospital to go to Bangalore.

Further, PW-14 clearly stated that he did not record any statement from the deceased because he was under the impression that the Police had already recorded the statement from the deceased. This is particularly so since the deceased was brought to the Hospital from his place to Kunigal Hospital by PW-21.

27. In his evidence PW-29 stated that he received information at 1 p.m. from the Police Station. He visited the Police Station and rushed to the scene of occurrence. By the time he went and reached the scene, the deceased and PW-6 were shifted in a car to the Hospital to Kunigal by PW-21. He further stated in his evidence that the deceased was in an unconscious state. He also claimed to be busy in search of the accused. On receiving the intimation of death he went to Bangalore and held inquest over the dead body of the deceased. He examined PW-3 at the inquest. Subsequently at Victoria Hospital at Bangalore, he recorded the statement of PW-6. As stated earlier PW-6 was injured in a different incident. He stated that he did not record any statement from PW-1 till 05-10-1989 nearly 20 days after the occurrence. He also stated that he did not record the statement of the deceased since he was in an unconscious state, contrary to the statement of the doctor (PW-14). He further stated that the FIR reached the jurisdiction Magistrate only at 10 am.

The reason given by PW-29 was that the offence did not constitute a serious offence.

28. On the questions whether there was delay in transmitting the FIR and its reaching the Magistrate belatedly we find no reason to take a different view than what has been concurrently taken by the trial Court as well as the High Court. The explanation given by the prosecution that the complaint was left on the table by mistake cannot be accepted in absence of the evidence of Nagaraj and Shetter. It is true that in all cases the delay in transmitting the FIR and its reaching the Magistrate late is not fatal to the prosecution. However, when there is some doubt with respect to the genesis of the complaint, the surest safeguard would be for the complaint to be received by the Magistrate expeditiously especially in a case as grave as this.

When there is considerable doubt on the whereabouts of PW-1 during a stay at Kunigal, the delay in the FIR reaching the Magistrate would have bearing on the veracity of the prosecution case.

29. In view of the aforesaid discussion, we find no reason to interfere with the concurring order of acquittal recorded by the trial Court as affirmed by the High Court for the offence under Section 302 IPC.

30. With regard to the conviction of accused persons under Section 326 read with Section 149 IPC

is concerned, before dwelling into the evidences, we would like to reiterate the well established legal position. In our criminal law jurisprudence which is based on the adversarial model, an accused is presumed to be innocent unless such a presumption is rebutted by the prosecution by establishing guilt of the accused beyond reasonable doubt by producing the evidence to show him to be guilty of the offence with which he is charged. Further if two views are possible on the evidence produced in the case, one indicating to the guilt of the accused and the other to his innocence, the view favourable to the accused is to be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused the benefit of such doubt should go in favour of the accused.

However, at the same time, the court must not reject the evidence of the prosecution taking it as false, untrustworthy or unreliable on fanciful or purely imaginary grounds or on the basis of conjectures and surmises. The case of the prosecution must be judged as a whole having regard to the totality of the evidence. In reaching a conclusion about the guilt of the accused, the court has to appreciate, analyse and assess the evidence placed before it by the yardstick of probabilities, its intrinsic value and the animus of witnesses. It must be noted that ultimately and finally the decision in every case depends upon the facts of each case.

31. We now proceed to deal with the factual position of the present case.

With regard to the second incident i.e. attack on PW-6, PW-6 who is the injured witness has clearly stated in his evidence that he had gone to Jodihosahalli on the night of 13-09-1989 for the purpose of agricultural work. He had gone to his garden and was getting his work done by his servants. It was at about 9 or 9.30 a.m. that the son of the deceased came to him stating that his father was injured and that he wanted some money.

Since PW-6 had no money at that time he came to his house and asked his mother to give him some money to be given to the son of the deceased. Then he went to the scene of occurrence and he saw PWs. 3, 5 and 4 sitting and weeping in front of the padasala of the shop. The deceased was also in the same padasala. He saw the deceased with injuries. PW-5 (wife of the deceased) asked him to shift the deceased to his house. He along with others shifted the deceased to his house. He was asked to inform the children of the deceased about the incident at Bangalore. PW-6 left the scene of occurrence and went to the bus stop. Near the bus stop about 15 people were standing armed with clubs. He was over taken by the accused. The accused were angry that he was going to Bangalore to inform the son of the deceased about the assault. At that time A-3 and A-12 assaulted him and threw stones, which fell on his legs. Thereafter clubs were used. The persons who assaulted him by clubs were A-11 and his son A-12 and others are A-13, A- 10, A-1 and A-3 and he was also chased by A-9 and A-21. PW-6 fell down and he was not able to identify the other accused. PW-2 witnessed this occurrence. With great difficulty PW-6 reached his house with bleeding injuries on his head. He suffered fracture on the right hand and there was also a fracture on the left leg.

32. The Police came to his house at 1 p.m. He was taken along with the deceased and PW-3 to the Kunigal Government Hospital. He reached the hospital at about 1.30 or 2 p.m. He was in Kunigal Hospital till the evening and after that he left to Bangalore for further treatment. He was in Bangalore at about 9 p.m. He was admitted at Victoria Hospital and was in-patient for about 15 days. He learnt at the Bangalore hospital that the deceased was dead. The Police on 16-9-1989 recorded his statement. He fairly admits that he was able to identify only 8 accused and they were A-3, A-12, A-11, A-13, A-10, A-1, A-9 and A-21. He clearly implicates the following accused as having chased and assaulted him i. e. A-1, A-3, A-9, A-11, A-12, A-13 and A-21. PW- 6 was an Assistant Marketing Officer and was an educated person. If PW-6 wanted to implicate the accused with respect to the attack on the deceased, he could have stated falsely that he witnessed the occurrence with respect to the deceased. Being an injured person his evidence would have been a great value with respect to the attack on the deceased to the prosecution. He truthfully says that he came to the scene immediately after the occurrence and on his way to the bus stop he was chased and assaulted by the aforesaid 8 accused.

33. PW-6 was examined at Kunigal Hospital for his injuries by PW-14 (Doctor) at about 2.30 p.m. PW-6 was discharged in the evening to enable him to get better treatment at Bangalore. Injury Nos. 1 and 2 according to the Doctor could have been caused by sticks and Injury Nos. 3 to 7 could have been caused by throwing stones. He was also treated at Bangalore by PW-13 (Doctor). PW-13 in his evidence stated that the patient gave the history of assault said to have taken place on 15-9-1989 at 11.00 a.m. his village Hosahalli with sticks and stones by A-3, A-13 and others. PW-13 has also stated that injury Nos. 1 and 2 are grievous in nature and injuries Nos. 3 to 6 are simple in nature. According to Pw-13, these injuries could have been caused by blunt object. PW-13 further stated that the act of throwing stones could have caused some injuries to PW-6.

34. It is quite clear that when PW-6 was first seen at Kunigal Hospital at 2.30 p.m. almost immediately after the occurrence as stated earlier, PW-14 who examined PW-6 states that PW-6 gave him the history of assault. He was again examined by the Doctor (PW-13) at Victoria Hospital on 15.09.1989 at 8.15 pm in which PW-6 gave the history of assault with sticks and also by throwing stones by A-3, A-13 and others. Therefore, even at the earliest point of time PW-6 did mention about the accused who assaulted him by the words "A-3, A-13 and others."

35. It is to be noted that PW-6 had no opportunity to give a complaint to the Police, since the earlier complaint by PW-1 had covered the second incident as well. PW-6 is an injured witness who had suffered grievous injuries and was examined by the Police though not at the time of inquest but immediately after the inquest on the next day of the occurrence. He could not have been examined at the time of inquest since he was bed ridden at Victoria hospital. No contradictions or omissions have been elicited from PW-6 in his evidence by the defence with respect to the identification of the accused.

36. That being the position, we find no reason why an injured witness instead of giving the name of

real assailants would unnecessarily implicate other people falsely who was not the real assailants. There is no reason to disbelieve and discard the evidence of PW-6 who though did not speak about the main incident with respect to the assault on the deceased but clearly stated that while he was going to the bus stop he was assaulted by 8 accused namely A-3, A-12, A-11, A-13, A-10, A-1, A-9 and A-21.

37. The trial Court acquitted these 8 accused on the ground that the presence of PW-6 at the scene of occurrence immediately after the occurrence is doubtful. The trial Court gave the benefit of doubt to the accused, since PW-6 did not give the names of each of the accused individually before the Doctors (PW-13 and PW-14). However, it failed to consider the fact that it was not possible for PW-6 to give the name of the each of the accused individually since he had clearly mentioned A-3, A-13 and "others". The word "others" clearly indicate that he knew their identity that is why when he was examined by the Police after the occurrence on the very next day he gave the names of all the 8 accused which was supported by his evidence in the Court.

38. The reasoning of the trial Court that the implication of the accused was an afterthought at Victoria Hospital does not stand to reason, since he implicated 8 accused, who assaulted him, at the earliest opportunity when he made a statement to the Police on the very next day and testified in Court to that effect. The trial Court found fault with PW-6 for not filing a separate complaint with reference to the occurrence. The trial Court also found fault with the prosecution for not recording the statement of PW-6 when he was at Kunigal Hospital. However, in our view that reasoning of the trial Court is legally untenable. The High Court was right in setting aside the judgment and order of the trial Court which acquitted the 8 accused who assaulted PW-6 since PW-6 had clearly mentioned the name of A-3, A-13 and others.

It is neither the job nor can it be expected from a Doctor to record a detailed statement. The Doctor can only relate in brief what the witness said with respect to the alleged timings of the assault and the alleged assailants. We agree with the reasoning of the High Court that the trial Court proceeded on the erroneous assumption that all the names of the accused should have been mentioned before the Doctor.

39. Another reason given by the trial Court for acquitting the accused with respect to the assault on PW-6 was that PW-6 did not mention about throwing of the stones at the earliest available opportunity. However, the High Court took the view that this is a frivolous point for the reason that PW-6 mentioned before the Doctor (PW-14) that he was assaulted by sticks and clubs. The mere fact that PW-6 omitted the word "Stones" before PW- 14 cannot in any manner affect the testimony of PW-6. It is the case of the accused that the trial Court was right in recording the finding that PW-6 improved his case at every stage. However, after careful perusal of the evidence of PW-6 we do not find any such case of improvement which has been established by the defence to show that the testimony of PW-6 cannot be relied upon. The High Court was right and justified in rejecting the aforesaid submission. Further, one can not lose sight of the fact that the evidence of PW-2 also

corroborates the evidence of PW-6. In his evidence PW-2 has clearly mentioned that the 8 accused assaulted PW-6 while PW-6 was about to take a bus to Bangalore.

40. The aforesaid discussion reveals that the manner in which all the 8 accused chased and attacked PW-6 would clearly make out a case for an offence under Section 326 read with 149 IPC. The common object of all the accused was to cause grievous injury to PW-6. The end result of the attack was that PW-6 was grievously injured with fractures and was bed-ridden for 15 days at Victoria Hospital.

41. In view of the aforesaid discussion and also in view of entire facts and circumstances of the case, we order that - (i) The appeal filed by the State i.e. Criminal Appeal No. 635 of 2002 against the acquittal of accused is hereby dismissed by upholding the grounds given by the High Court in its judgment;

(ii) So far as appeal filed by the accused i.e. Criminal Appeal No. 634 of 2002 is concerned, we uphold the conviction of the accused under Section 326 read with 149 IPC, but we feel the ends of justice would be met by reducing the punishment of 3 years granted by the High Court to 2 years. We maintain the order of fine imposed by the High Court and that on deposit of payment of fine, the trial court shall disburse the amount to PW-6 as compensation;

(iii) Bail bonds of the accused shall be cancelled;

(iv) All the accused are directed to surrender before the trial Court to undergo the remaining period of sentence, if any. If they do not surrender, the trial Court is directed to take appropriate action in the matter in accordance with law.

42. The appeals are disposed of in terms of aforesaid order.