SHIVAPPA & ORS. A

v.

STATE OF KARNATAKA

(Criminal Appeal No. 129 of 2006)

MARCH 31, 2008 B

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Penal Code, 1860 – ss. 302, 148 and 149 – Murder – Several armed accused causing 20 injuries to deceased resulting in his death – Acquittal order by trial court – However, set aside by High Court – On appeal, held: Variation between medical evidence and testimony of eye witnesses with regard to time of death not fatal – Testimonies of witnesses were wholly trustworthy – Delay in lodging FIR was sufficiently explained – No inference could be drawn that there existed a possibility of false implication – Motive having been established and also injuries being 20 in number, it was sufficient to infer that all accused formed a common object to commit the crime – Thus, interference with the judgment of High Court not called for. C D

Code of Criminal Procedure, 1973 – s 378 – Appeal against acquittal – Interference with – Scope of – Held: Generally acquittal order should not be interfered with as presumption of innocence of accused gets further strengthened by acquittal – However, there is no restriction on the appellate court to review the evidence on record and interfere with the findings of the trial judge despite existence of compelling reasons – Therefore, interference by appellate court depends upon the facts of each case. E F

According to the prosecution case, there was enmity between the appellant-accused persons and S and his family members. On the fateful day around 8.30 P.M., eleven accused persons armed with weapons came to the house of S and inflicted grievous injuries to him. S sustained as many as 20 injuries and succumbed to his G

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A injuries. The accused threatened the family members of S who came to rescue him and as a result two family members-PW 9 and 10, fled from the place of occurrence and did not return during the night. The next day around 10 AM, the informant-sister of S along with her elder sister B lodged FIR. The family members of the deceased witnessed the incident and were examined by the prosecution, however, six villagers who were examined by the prosecution did not support the prosecution case. The trial court acquitted the accused giving them benefit C of doubt. However, the High Court set aside the order of acquittal holding that the prosecution had proved its case beyond all reasonable doubts. Hence the present appeal.

Dismissing the appeal, the Court

D HELD: 1.1 Medical opinion is admissible in evidence like all other types of evidences. There is no hard and fast rule with regard to appreciation of medical evidence. It is not to be treated as sacrosanct. Indisputably, a large number of factors are responsible for drawing an inference with regard to digestion of food. It may be E difficult if not impossible to state exactly the time which would be taken for the purpose of digestion. (Paras 12 and 15) [753-C; 754-B]

1.2 PW-24-doctor, in his deposition, stated that he F received the dead body of deceased on 29.5.1994 for the purpose of conducting the post-mortem. The autopsy was conducted on the same day between 12.30 pm and 2.30 pm. He opined that the death had occurred within 24 hours of the post-mortem examination. According to him, G however, semi-digested food was found in the stomach which shows that the deceased might have taken food four to five hours prior to his death. The Sessions Judge as also the appellant, laid great stress thereupon as PW-12-sister-in-law of the deceased had deposed that food had been prepared at the time when the incident took H

place and the deceased had taken food at about 10.00 am. The High Court, however, opined that in view of the evidence of the doctor that the death occurred within 24 hours of the time of the post-mortem, the variation between the medical evidence and the testimony of the eye witnesses is not such which would lead to a conclusion that the prosecution case was not correct, is accepted. (Paras 10, 11 and 13) [752-E, F, G, H; 753-A, B, C, D]

Bhimappa Jinnappa Naganur v. State of Karnataka **1993 Supp. (3) SCC 449 – distinguished.**

Main Pal and Anr. v. State of Haryana and Ors. **2004 (10) SCC 692;** *Shambhoo Missir and Anr. v. State of Bihar* **1990 (4) SCC 17 – relied on.**

Modi's Medical Jurisprudence, p. 185 **– referred to.**

2.1 The Sessions Judge did not arrive at any specific finding as to why the conduct of the witnesses was such which would lead to a total distrust to the prosecution witnesses. All the members of the family were at one place. Two married daughters-PW-11 and PW-12, came to the village, as there was a festival. Accused persons who were 11 in number came variously armed. They not only killed the deceased but also threatened the two family members with death as a result whereof they fled to the jungle. They did not dare come back in the night. If having regard to the manner in which the occurrence took place, witnesses became dumbfounded and could not shout, the same by itself, would not lead to the conclusion that they were wholly untrustworthy. In fact, their conduct, having regard to the nature of the offence, appears to be more probable. (Para 17) [755-G; 756-A, B, C]

2.2 The parties are related. PW-21 stated the same in her evidence. All the witnesses in no uncertain terms described the manner in which the assault had taken place, the nature of the weapons used, the different parts

A of the body of the deceased whereupon injuries were inflicted and also the reaction of the deceased on receipt of the injuries. (Para 18) [756-C, D, E]

2.3 According to PW-11, she and PW-12 started for Police Station to lodge the complaint at about 8 am from
B the village. The fact that both the ladies went to the police station cannot be doubted as in the FIR itself, the fact that the informant had come with her sister was mentioned. Only because Investigating Officer in his evidence stated that PW-11 had come alone to the Police Station is not of
C much significance. It may be true that according to all the prosecution witnesses, about 100 villagers assembled. Admittedly, even then nobody came forward to help them. If the villagers who gathered in such a large number intended to render any help, they would have done so of
D their own. It was not necessary for the ladies to shout for help or ask the villagers to snatch the weapons of offence from them (Para 19) [756-E, F, G, H; 757-A]

2.4 No villager even informed the Police. At least some of them could have done so. PW-11 in her evidence stated
E that immediately after the occurrence, the electricity went off. The telephones were also not working. They also stated that no transport was available. Therefore, it would be too much to expect that those young ladies would walk 11 kilometers on foot in the dead of night to lodge the FIR.
F PW-21 made a statement that the Police came at about 8 am in the morning on the next day. Evidently, it was an inadvertent statement as in her examination in chief she stated that PW-11 and 12 left the village for lodging FIR at 8.00 am in the morning. This cannot be a ground for
G disbelieving them. Minor discrepancies or some improvements also would not justify rejection of the testimonies of eye-witnesses, if they are otherwise reliable. Some discrepancies are bound to occur because of the sociological background of witnesses as also the
H time gap between the date of occurrence and the date on

which they give their depositions in court. (Para 19) [757-B, C, D, E]

S. Sudershan Reddy & Ors. v. State of A.P. 2006 (10) SCC 163; *Sucha Singh & Anr. v. State of Punjab* 2003 (7) SCC 643 – referred to.

3.1 Delay in lodging the FIR has sufficiently been explained. If the accused persons were to be falsely implicated, PW-9, and PW-10, would have rushed to the Police Station on the same night. In any event, they would have themselves gone for lodging the FIR on the next date. They had fled away because of the threats given to them. They stayed out throughout the night. PW-9 came back only on the next day. One can very well visualize his mental condition. Therefore, if the married sisters of the deceased, in the aforementioned situation started from their village round about 8 o'clock on the next day to reach the Police Station at about 10.00 am, no exception can be taken thereto. Delay in lodging the FIR in a case of this nature is not such which would impel to infer that there existed a possibility of false implication. There cannot be any doubt whatsoever that lodging of the FIR within a short time after the occurrence would ordinarily lead to a conclusion that the statements made therein are correct but when the delay in lodging a FIR is sufficiently explained, the same would receive the evidentiary value it deserved. (Para 21) [758-B, C, D, E, F]

3.2 It is difficult to believe that the two married sisters would have some independent motive to falsely implicate so many persons. If that be so, it might not have been possible for them to give a detailed description of the manner in which the occurrence took place. Furthermore, the Police came to the place of occurrence soon after the lodging of the FIR. The dead body was immediately sent for post-mortem examination. Therefore, the approach of High Court cannot be said to be incorrect. Furthermore, in the FIR itself, three motives have been attributed, one

A of them being the involvement of the deceased in the murder of the younger brother of accused No.1. (Para 22) [758-G, 759-A, B]

4. The FIR as also the evidences of six eye-witnesses clearly revealed that all the eleven accused came in a B group. All of them were armed with deadly weapons although actual overt acts had been attributed to accused No.1, 2, 3, 5 and 11. In their depositions, the prosecution witnesses categorically stated that all of them took part therein. Even if entire reliance is not placed on the said C statements, the motive having been proved and the very fact that the deceased received as many as 20 injuries is itself sufficient to show that all the accused persons not only came to the place of occurrence upon forming unlawful assembly but also had the requisite common D object to kill the deceased. Formation of common object must be inferred upon taking into consideration the entire situation. (Paras 23) [759-C, D, E, F]

Munivel v. State of Tamil Nadu 2006 (9) SCC 394 – E referred to.

5.1 An order of acquittal should not ordinarily be interfered with as the presumption of innocence of the accused gets further strengthened by acquittal but the same by itself would not mean that the appellate court F cannot review the evidence on record and interfere with the findings of the trial judge despite existence of compelling reasons. Therefore, which case deserves interference at the hands of the appellate court would depend upon the fact situation obtaining therein. Legal G propositions must be applied having regard to the fact of each case. (Paras 27 and 31) [760-G; 761-A; 763-E]

5.2 The submission that one of the accused persons is a lawyer and another is a teacher is a matter which cannot distract a Court of Law from arriving at a finding H on the basis of materials on record and the law operating

in the field. Therefore, it is not possible to interfere with the well-reasoned judgment of the High Court. (Paras 26 and 27) [760-E, G] A

Mani Pal and Anr. v. State of Haryana and Ors. **2004 (10) SCC 692;** *Ram Swaroop and Ors. v. State of Rajasthan* **2004 (13) SCC 134;** *Budh Singh and Ors. v. State of U.P.* **2006 (9) SCC 731;** *Mahadeo Laxman Sarane and Anr. v. State of Maharashtra* **2007 (7) SCALE 137;** *Swami Prasad v. State of Madhya Pradesh* **2007 (4) SCALE 181 – referred to.** B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 129 of 2006. C

From the final Judgment and Order dated 28.10.2005 of the High Court of Karnataka at Banglore in Criminal Appeal No. 780 of 1999.

S.S. Javali, Sushil Kumar, Kirit S. Javali, Vikas Rajipura, F.C. Vidya Sagar, Sanjay Jain, Anmol Thakral, Meenakshi Singh, Mukesh Kumar and Sharanappa Mattur for the Appellants. D

Anil K. Mishra and Sanjay R. Hegde for the Respondent.

The Judgment of the Court was delivered by E

S.B. SINHA, J. 1. Appellants herein were tried under Section 302 of the Indian Penal Code for committing murder of one Shrishail Shivappa Jagadale.

2. The occurrence took place at about 8.30 pm on 28.5.1994. A First Information Report was lodged by Nimbewwa, sister of the deceased Shrishail Shivappa Jagadale at about 10.00 am on 29.5.1994, inter alia, alleging that the appellants were inimically disposed of towards her brother and his family. F G

It was furthermore alleged that on the fateful day, when she, her mother, Mannandevva, father Shivappa, younger brother Basappa, his wife, Gurubai, elder brother's wife Maadevi were sitting in front of their house and her elder brother (deceased H

A Shreeshaila) was sitting on a katte (platform) below a Neem tree, the accused persons, who were 11 in number, forming an unlawful assembly armed with axe and Jambiya in their hands came there. Accused No.1, Ningondeppa Master, shouted, "see that he is sitting there on the platform, son pull that Shreeshaila", B whereupon Accused No. 11, Malakaji, pulled him up from his feet and threw him on the ground. Accused No. 11, Malakaji who had been holding an axe then assaulted Shreeshaila on his head.

He fell down shouting "satteppo" (died) whereafter C Accused No. 11, Malakaji, and others assaulted the deceased with axe and jambiya on his neck, chest, etc.

The deceased sustained grievous injuries. When the family members of the deceased came to his rescue, the accused D allegedly threatened them. They also told Basappa, the younger brother, and Shivappa, the father of the deceased, that they would also finish them whereupon they ran away from the village to a jungle.

3. It was alleged that the informant and her sister being E women did not dare come to the Police Station in the night apprehending that the accused might also assault them. She came to the Police Station with her elder sister Shantavva and lodged the First Information Report.

4. Before the learned Trial Judge, a large number of F witnesses were examined on behalf of the prosecution.

PW-9 is the father, PW-10 is the brother, PW-11 is the complainant-informant, PW-1 is another sister, PW-13 is the wife and PW-21 is the niece of the deceased.

G Apart from the family members, eight others were cited as witnesses in the charge-sheet. CW-1 and CW-3 were not examined. Six villagers who were examined by the prosecution, however, did not support the prosecution case.

H It is not in dispute that Accused No.1 Ningondeppa,

Accused No.2, Shivashankar and Accused No.3, Shivappa, are dead. A

The learned Trial Judge by reason of his judgment and order dated 07.05.1999 gave benefit of doubt to the accused persons, inter alia, holding : B

(1) Having regard to the ocular evidence, vis-à-vis the medical evidence, it is doubtful as to whether the prosecution has come out with correct version in regard to the time of death;

(2) As the male eye-witnesses, who were members of C the same family namely PW-9 and PW-10, fled away from the place of occurrence and did not return during night and only PW-11 and PW-12 having come to the Police Station for lodging the First Information Report only at about 10 a.m. on the next day, they D cannot be relied upon.

(3) Prosecution witnesses made improvements in their statements in court, vis-à-vis these were statements made in terms of Section 161 of the Code of Criminal Procedure and on that ground too their testimonies E should not be relied upon.

5. All the witnesses who supported the prosecution case are related to the deceased. Specific overt acts have been attributed by the prosecution witnesses only against Accused F No.1, Ningondeppa, as against Accused No.2, Shivashankar, Accused No.3, Shivappa, Accused No.5 Shekappa and Accused No. 11, Malakaji, but they made general statements with regard to the purported overt acts having been committed by all the accused. G

6. The High Court, on the appeal preferred by the State against the judgment of acquittal, however, reversed the same opining that the prosecution has proved its case beyond all reasonable doubts. H

A Appellants are, thus, before us.

7. Mr. S.S. Javali, learned senior counsel appearing on behalf of the appellant Nos. 1 and 2, submitted that as the findings of fact arrived at by the learned Trial Judge cannot be said to be wholly perverse, no interference therewith by the High B Court was warranted. It was urged that as the learned Trial Judge took into consideration the evidence of all the relevant witnesses, the High Court committed a serious error in reversing the judgment as it had the benefit of looking at the demeanour of all the prosecution witnesses.

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8. Mr. Sushil Kumar, learned senior counsel appearing on behalf of the appellant Nos. 3 to 8, supplemented the submissions of Mr. Javali urging that as in the post-mortem report, semi-digested food was found in the stomach of the deceased, the same clearly established that the time of death of the deceased D as stated by the prosecution witnesses, namely, at about 8.30 p.m. was false as according to the prosecution witnesses, the deceased did not take any food after 10.00 a.m.

9. Mr. Anil K. Mishra, learned counsel appearing on behalf E of the State, would, however, support the impugned judgment.

10. The fact that the deceased met with a homicidal death is not in dispute. PW-24, Gurappa Yankappa, in his deposition, stated that he received the dead body of Shrishail on 29.5.1994 for the purpose of conducting the post-mortem. The autopsy F was conducted on the same day between 12.30 pm and 2.30 pm. The dead body bore as many as 20 injuries covering almost all parts of the body. Eight injuries were inflicted on upper parts of the body. He opined that the death was due to shock as a result of hemorrhage and the injuries to vital organs like brain, G liver and lungs as also large blood vessels. He opined that the death had occurred within 24 hours of the post-mortem examination. He identified the weapons of attack which had been recovered during investigation and marked as M.OS 1 to 8, as the possible weapons with which incised as also the lacerated H wounds could have been caused. According to him, however,

semi-digested food was found in the stomach which shows that the deceased might have taken food four to five hours prior to his death. A

11. The learned Sessions Judge, as also the learned counsel appearing on behalf of the appellant, have laid great stress thereupon as PW-12, Shantavva, sister-in-law of the deceased had deposed that food had been prepared at the time when the incident took place and the deceased had taken food at about 10.00 am. B

12. Medical opinion is admissible in evidence like all other types of evidences. There is no hard and fast rule with regard to appreciation of medical evidence. It is not to be treated as sacrosanct. C

13. The High Court, however, opined that in view of the evidence of the doctor that the death occurred within 24 hours of the time of the post-mortem, the variation between the medical evidence and the testimony of the eye witnesses is not such which would lead to a conclusion that the prosecution case was not correct. We agree with the said view. D

In Modi's Medical Jurisprudence, p. 185, it is stated that so far as the food contents are concerned, they remain for long hours in the stomach and duration thereof depends upon various factors. E

14. In *Main Pal & Anr. v. State of Haryana & Ors.* [(2004) 10 SCC 692], this Court held : F

> "If the eyewitnesses' version, even though of the relatives, is found to be truthful and credible after deep scrutiny the opinionative evidence of the doctor cannot wipe out the effect of eyewitnesses' evidence. The opinion of the doctor cannot have any binding force and cannot be said to be the last word on what he deposes or meant for implicit acceptance. On the other hand, his evidence is liable to be sifted, analysed and tested, in the same manner as that of any other witness, keeping in view only the fact that G H

A he has some experience and training in the nature of the functions discharged by him."

15. Indisputably, a large number of factors are responsible for drawing an inference with regard to digestion of food. It may be difficult if not impossible to state exactly the time which would B be taken for the purpose of digestion. Reliance, however, has been placed on *Shambhoo Missir & Anr. v. State of Bihar* [(1990) 4 SCC 17] wherein this Court keeping in view the fact situation obtaining in that case held :

C "**4.** The substance of the prosecution case is that the deceased Rajendra died as a result of the assault in question at about 3 p.m. on the very day of the incident. However, on the basis of the medical evidence, the defence has succeeded in establishing that he had died soon after D he left his house at 8 a.m. Dr Shambhoo Sharan (PW 13) who performed the post-mortem examination of the dead body, has stated both in his report as well as in his deposition, that there was 8 ounces of undigested food in the stomach of the deceased. If as alleged by the prosecution the death had occurred at 3 p.m., no such E undigested food would have been found in the stomach at that hour when the food was taken by the deceased before 8 a.m. If this is so, then the whole case of the prosecution must crumble. For this will establish beyond doubt that Rajendra had died very soon after 8 a.m. and none of the F so called eye-witnesses had seen the assault on Rajendra. The said fact will also demolish the entire version of the three dying declarations made by the deceased to various prosecution witnesses at three different places. The non-explanation by the prosecution of the undigested food G therefore casts serious adverse reflections on the entire investigation in the present case. Unfortunately, the High Court has failed to deal with this very important aspect of the evidence on record which has been highlighted by the trial court. It also strengthens the defence version that the H accused have been involved in the present case by the

obliging witnesses and unfair investigation. "

As is noticed from the factual matrix involved in the said case, the death occurred at 3.00 pm. Although the deceased had left his house at 8.00 a.m., it was found that he died soon after 8.00 a.m. Certain additional features as for example, no eye-witness having seen the assault on the deceased was also taken into consideration by the court. The dying declaration whereupon the High Court relied upon was also not found to be reliable. It was the cumulative effect of the said findings that a judgment of acquittal was recorded and not on the basis of the medical opinion with regard to the time of taking of food item alone.

16. Yet again, in *Bhimappa Jinnappa Naganur v. State of Karnataka* [1993 Supp. (3) SCC 449], on the same ground that the deceased died within a couple of minutes after coming out of his courtyard could not have consumed his lunch at the time stated by PW-1, namely, at about 1.00 pm, judgment of acquittal was rendered. In that case, the names of the witnesses were not disclosed in the First Information Report. Although there were more than 10 injuries on the head and face of the deceased, there was no trail of blood from the house of the deceased right till the gutter on the roadside from where the body was found which was at a distance of 400 feet. The fact that some semi-digested food was found in his stomach together with other facts led this Court to hold that the High Court did not meet with the reasonings of the trial court while rejecting the statement of the eye-witnesses. Such is not the position here.

17. We may notice the salient features of the prosecution case.

The learned Sessions Judge did not arrive at any specific finding as to why the conduct of the witnesses was such which would lead to a total distrust to the prosecution witnesses. All the members of the family were at one place. Two married daughters, namely, PW-11 Nimbevva, and PW-12, Shantavva came to the village, as there was a Jatra festival of the village

A Diety, Lakkavva.

Accused persons who were 11 in number came variously armed. They not only killed the deceased but also threatened the two family members with death as a result whereof they fled to the jungle.

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PW-9, Shivappa fled to his firm land. They did not dare come back in the night. If having regard to the manner in which the occurrence took place, the witnesses became dumbfounded and could not shout, the same by itself, in our opinion, would not C lead to the conclusion that they were wholly untrustworthy. In fact, their conduct, having regard to the nature of the offence, appears to be more probable.

18. The parties are related. PW-21, Gurubai, in her evidence categorically stated that both sides are related to her. D All the witnesses in no uncertain terms described the manner in which the assault had taken place. Not only the nature of the weapons which had been used had been disclosed, the different parts of the body of the deceased whereupon injuries were inflicted had also been stated. The reaction of the E deceased on receipt of the injuries has also been disclosed by almost all the material witnesses.

19. According to PW-11, Nimbewwa, she and PW-12 Shantavva started for Kolhar Police Station to lodge the complaint at about 8 am from the village. The fact that both the F ladies went to the police station cannot be doubted as in the First Information Report itself, the fact that the informant had come with her sister Shantavva was mentioned. Only because PW-23, Ramappa, the Investigating Officer, in his evidence stated that PW-11, Nimbewwa, had come alone to the Police G Station is not of much significance. It may be true that according to all the prosecution witnesses, about 100 villagers assembled. Admittedly, even then nobody came forward to help them.

It was not necessary for the ladies to shout for help or ask the villagers to snatch the weapons of offence from them as H

was suggested on behalf of the defence. If the villagers who gathered in such a large number intended to render any help, they would have done so of their own. Whether because of the village politics or otherwise, the fact remained that they had not only failed to come to help the informant family but also turned hostile to them speaks volume of their apathy. A B

No villager even informed the Police. At least some of them could have done so. PW-11, Nimbewwa, in her evidence categorically stated that immediately after the occurrence, the electricity went off. The telephones were also not working. They also stated that no transport was available. It would, therefore, be too much to expect that those young ladies would walk 11 kilometers on foot in the dead of night to lodge the First Information Report. PW-21, Gurubai, made a statement that the Police came at about 8 am in the morning on the next day. Evidently, it was an inadvertent statement as in her examination in chief, she categorically stated that PW-11, Nimbewwa and PW-12, Shantavva left the village for lodging a First Information Report at 8.00 am in the morning. This cannot be a ground for disbelieving them. Minor discrepancies or some improvements also, in our opinion, would not justify rejection of the testimonies of the eye-witnesses, if they are otherwise reliable. Some discrepancies are bound to occur because of the sociological background of the witnesses as also the time gap between the date of occurrence and the date on which they give their depositions in court. C D E F

20. In *S. Sudershan Reddy & Ors. v. State of A.P.* [(2006) 10 SCC 163], this Court held :

> **"12.** We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such G H

A cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

[See also *Sucha Singh & Anr. v. State of Punjab* [(2003 (7) SCC 643]

B

21. Delay in lodging the First Information Report, in our opinion, has sufficiently been explained. If the accused persons were to be falsely implicated, PW-9, Shivappa, and PW-10, Bassappa, would have rushed to the Police Station on the same C night. In any event, they would have themselves gone for lodging the First Information Report on the next date. They had fled away because of the threats given to them. They stayed out throughout the night. PW-9 Shivappa, came back only on the next day. One can very well visualize his mental condition. If the married sisters of the deceased, therefore, in the aforementioned situation D started from their village round about 8 o'clock on the next day to reach the Police Station at about 10.00 am, no exception can be taken thereto. Delay in lodging the First Information Report in a case of this nature is not such which would impel us to infer that there existed a possibility of false implication.

E

There cannot be any doubt whatsoever that lodging of the First Information Report within a short time after the occurrence would ordinarily lead to a conclusion that the statements made therein are correct but when the delay in lodging a First F Information Report is sufficiently explained, the same would receive the evidentiary value it deserved.

22. The very fact that two married sisters gathered the courage at the earliest possible opportunity to go to the Police Station itself eliminates false implication. They are married. They G came to spend some time with their family on the occasion of some festival. It is difficult to believe that they would have some independent motive to falsely implicate so many persons. If that be so, it might not have been possible for them to give a detailed description of the manner in which the occurrence took place. H Furthermore, the Police came to the place of occurrence soon

after the lodging of the First Information Report. The dead body was immediately sent for post-mortem examination. From the evidence of the doctor, as noticed hereinbefore, the post-mortem examination started at 12.30 pm. The approach of the High Court, therefore, cannot be said to be incorrect. Furthermore, in the First Information Report itself, three motives have been attributed, one of them being the involvement of the deceased in the murder of the younger brother of Accused No.1, Ningondeppa.

23. The submission of Mr. Javali that overt acts have been attributed only to five of the accused and all of them could not have been convicted invoking the provisions of Sections 148 and 149 of the Indian Penal Code may now be considered. The First Information Report, as also the evidences of as many as six eye-witnesses, clearly reveals that all the eleven accused came in a group. All of them were armed with deadly weapons although actual overt acts had been attributed to Accused No.1, Ningondeppa, Accused No.2, Shivashankar, Accused No.3, Shivappa, Accused No.5, Shekappa and Accused No.11 Malakji. In their depositions, the prosecution witnesses have categorically stated that all of them took part therein. Even if we do not put entire reliance on the said statements, the very fact that the deceased received as many as 20 injuries is itself sufficient to show that all the accused persons not only came to the place of occurrence upon forming an unlawful assembly but also had the requisite common object to kill the deceased. Formation of common object must be inferred upon taking into consideration the entire situation.

24. We may notice that in *Munivel v. State of Tamil Nadu* [(2006) 9 SCC 394], this Court held :

> "36. Section 149 of the Penal Code provides for vicarious liability. If an offence is committed by any member of an unlawful assembly in prosecution of a common object thereof or such as the members of that assembly knew that the offence to be likely to be committed in prosecution

A of that object, every person who at the time of committing that offence was member would be guilty of the offence committed. The common object may be commission of one offence while there may be likelihood of commission of yet another offence, the knowledge whereof is capable B of being safely attributable to the members of the unlawful assembly. Whether a member of such unlawful assembly was aware as regards likelihood of commission of another offence or not would depend upon the facts and circumstances of each case. Background of the incident, C the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before, at or after the actual commission of the crime would be relevant factors for drawing an inference in that D behalf. (See Rajendra Shantaram Todankar v. State of Maharashtra)"

25. The motive having been proved and the number of injuries being 20, in our opinion, leads to only one conclusion that all the accused persons formed a common object in E committing the crime.

26. The submission of Mr. Javali that one of the accused persons is a lawyer and another is a teacher is a matter which cannot distract a Court of Law from arriving at a finding on the basis of materials on record and the law operating in the field. If F a lawyer was falsely implicated and if he was not a member of the unlawful assembly, he could have examined defence witnesses to prove his purported alibi. He is presumed to know his rights. Presumably he knows as to how to establish a fact in a court of law.

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27. It is, therefore, not possible to interfere with the well-reasoned judgment of the High Court only on the aforementioned premise. There is no quarrel with the proposition that an order of acquittal should not ordinarily be interfered with as the presumption of innocence of the accused gets further H

strengthened by acquittal but the same by itself would not mean that the appellate court cannot review the evidence on record and interfere with the findings of the Trial Judge despite existence of compelling reasons. A

In *Mani Pal & Anr. v. State of Haryana & Ors.* [(2004) 10 SCC 692], it was held : B

> "12. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. As a matter of fact, in an appeal against acquittal, the High Court as the court of first appeal is obligated to go into greater detail of the evidence to see whether any miscarriage has resulted from the order of acquittal, though has to act with great circumspection and utmost care before ordering the reversal of an acquittal. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. [See *Bhagwan Singh and Ors. v. State of Madhya Pradesh* (2002 (2) SCC 567). The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant C D E F G H

A and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference."

Therein, the conclusion by the trial court upon objective analysis with regard to the acceptability or otherwise of the rival stands taken, it was found that the judgment of acquittal should B not have been interfered with.

28. Reliance has also been placed on *Ram Swaroop & Ors. v. State of Rajasthan* [(2004) 13 SCC 134] wherein this Court reiterated as under :

C "It is well settled that if two views are reasonably possible on the basis of the evidence on record, the view which favours the accused must be preferred."

Such an observation, however, was made after this Court D went through the evidences brought on record as also the findings recorded by the trial court vis-à-vis the High Court to arrive at the conclusion that the interference was not warranted. The same view has been taken in *Budh Singh & Ors. v. State of U.P.* [(2006) 9 SCC 731], wherein upon going through evidences on record, this Court opined that the High Court was E not correct in arriving at the conclusion that the view of the trial court was wholly perverse and could not be sustained by the materials brought on record.

29. Recently, however, in *Mahadeo Laxman Sarane & Anr.* F *v. State of Maharashtra* [2007 (7) SCALE 137], it was held:

"18. We have heard counsel for the parties at length. We are conscious of the settled legal position that in an appeal against acquittal the High Court ought not to interfere with the order of acquittal if on the basis of the some evidence G two views are reasonably possible - one in favour of the accused and the other against him. In such a case if the Trial Court takes a view in favour of the accused, the High Court ought not to interfere with the order of acquittal. *However, if the judgment of acquittal is perverse or highly* H *unreasonable or the Trial Court records a finding of*

acquittal on the basis of irrelevant or inadmissible evidence, the High Court, if it reaches a conclusion that on the evidence on record it is not reasonably possible to take another view, it may be justified in setting aside the order of acquittal. We are of the view that in this case the High Court was justified in setting aside the order of acquittal." A B

[Emphasis supplied]

30. In *Swami Prasad v. State of Madhya Pradesh* [2007 (4) SCALE 181], this Court opined:

"15. However, it is equally true that the High Court while entertaining an appeal against a judgment of acquittal would be entitled to consider the entire materials on records for the purpose of analyzing the evidence. There is a presumption that an accused is innocent, unless proved otherwise. When he is acquitted, the said presumption, becomes stronger. But it may not be correct to contend that despite overwhelming evidence available on records, the appellate court would not interfere with a judgment of acquittal. {See Chandrappa and Ors. v. State of Karnataka 2007 (3) SCALE 90.}" C D E

31. Which case, therefore, deserves interference at the hands of the appellate court would depend upon the fact situation obtaining therein. Legal propositions must be applied having regard to the fact of each case. F

32. In view of our findings aforementioned, there is no merit in this appeal. It is dismissed accordingly.

N.J. Appeal dismissed.