

A SHANKAR

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v.

STATE OF KARNATAKA

(Criminal Appeal No. 1006 of 2007)

JUNE 9, 2011

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[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Penal Code, 1860: ss.302 and 307, 324 – Charge-sheet filed u/ss.302, 307 against appellant-accused – Acquittal by trial court on the ground that prosecution failed to prove beyond reasonable doubt that the appellant had committed murder of the brother of the complainant or made an attempt to kill the complainant – Appeal against acquittal – Conviction by High Court u/ss.302 and 324 – Justification of – Held: Not justified – Contradiction between the statement of the complainant made in the court as compared to his statement before the police regarding the weapon of crime demolished the prosecution version – Delay in lodging FIR was not explained – Non-production of the FSL report in the court by the prosecution was fatal as in absence thereof it was difficult for the court to reach to the conclusion as to whether the offence was committed with scissors or knife – More so, after the incident, the I.O. was busy in searching the brother of the appellant and he made no attempt to search the appellant – These factors clearly indicated that investigation was not conducted fairly – High Court committed an error in recording the finding of fact that prosecution succeeded in proving case beyond reasonable doubt – Conviction set aside – FIR – Evidence – Investigation.

Evidence: Contradiction/discrepancies in the evidence – Effect of – Held: In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock

A *and horror at the time of occurrence – Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness, such evidence cannot be safe to rely upon – Penal Code, 1860.*

B *Appeal: Appeal against acquittal – Acquittal by trial court – Scope of interference by the appellate court – Held: The appellate court while reversing the judgment of acquittal must bear in mind the presumption of innocence of the accused.*

C *FIR: Delay in lodging FIR – Effect of – Held: In the instant case, the alleged occurrence took place at 2.00 p.m. and the police station was hardly at a distance of 1 K.M. from the place of the occurrence and complainant had never deposed that he had become unconscious – The delay was, therefore, not explained and was fatal to the prosecution case – Penal Code, 1860.*

E **The prosecution case was that the victim-deceased was the elder brother of the complainant-PW-8. On the fateful day, the accused-appellant came to the barber saloon of the deceased and demanded Rs.150/- from the deceased. Since the deceased did not give the money demanded, the appellant got angry and threatened to see him later. The appellant came back at 9.30 p.m. to the shop of the deceased, sought shelter therein, had food, and slept there with the deceased and the complainant-PW-8. At about 2 a.m., PW-8 heard sounds and woke up. He saw that the appellant was hitting the deceased with a knife on the chest and when PW-8 shouted, the appellant hit him also with the knife on the left abdomen and hands and ran away. The deceased died of assault and PW-8 got injured, and was taken to the hospital for treatment.**

H **The trial court held that prosecution failed to prove beyond reasonable doubt that the appellant had committed murder of the deceased or made an attempt**

to kill PW-8 and acquitted the appellant of the charges under Sections 302 and 307 IPC. On appeal, the High Court convicted the appellant under Section 302 and Section 324 IPC and awarded him life imprisonment. The instant appeal was filed challenging the order of the High Court.

Allowing the appeal, the Court

HELD: 1.1. While lodging the complaint, PW-8 stated that the appellant came to his brother's shop and demanded money from him and since his brother did not give the money demanded, the appellant got angry and threatened that he would take care of him later. However, the evidence of PW-8 in his deposition in the court did not mention about the first visit of the appellant and demand of Rs. 150/- from the victim. [Para 12] [1010-F-G]

1.2. *Medical Evidence & Ocular Evidence:* PW.5 who conducted post mortem examination on the body of the deceased explained in his deposition that it was not normally possible to cause injuries to the deceased with weapon Ext.MO.1 if held with both arms together while inflicting the injuries. However, if the sharp edge and tip of the scissors is held open while assaulting, such injuries could be caused. PW.6 who examined PW.8 deposed that the injuries found on his person could be caused by sharp edged weapon. Thus, in view of that, there could be no dispute that as per the opinion of doctors, it was possible to cause the injuries found on the person of the deceased and PW-8 with scissors in case the sharp edge and tip of the scissors is held open at the time of assault. In his oral complaint on 26.3.1996, PW.8 had stated that the accused caused the injuries with knife. He deposed in the Court that the accused stabbed his brother with a scissors on the stomach and stabbed PW.8 with the scissors on his left side of stomach, on

A right hand and on the left shoulder. Thus, it is apparent from the deposition that PW.8 was not sure as to whether injuries were caused by knife or scissors. No explanation came forward as to whether PW.8 was capable to understand the distinction between knife and scissors.

B The contradiction in the statement of PW.8 in the court as compared with his statement before the police under Section 161 Cr.P.C. also demolished the aspect of motive. [Paras 10, 12, 14] [1010-A-C; 1011-D-H; 1012-A-B; 1013-E]

C 2. There was delay in lodging the FIR. In the instant case, the alleged occurrence took place at 2.00 p.m. and the police station was hardly at a distance of 1 K.M. from the place of the occurrence and PW.8 had never deposed that he had become unconscious. The delay was,

D therefore, not explained. PW.17, the I.O. consistently deposed that he was searching for the brother of the appellant. Admittedly, even as per the prosecution, author of the crime was the appellant and not his brother. There was, thus, no reason for the I.O. to apprehend the

E brother of the appellant. [Paras 15, 16] [1013-F-G]

3.1. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory

F due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while

G deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case should not be made a ground on which

H the evidence can be rejected in its entirety. The court has

to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. If the case in hand is examined in the light of these settled legal proposition, the prosecution definitely made an attempt to establish the presence of the accused in the shop and PW.8 was the only eye witness. His presence also cannot be doubted in view of the fact that he himself got injured in the incident. However, the question would arise as to under what circumstances he had told his sister and brother-in-law that his brother had been killed by accused-appellant when in his substantive statement before the court he had deposed that he came to know about the death of his brother after being discharged from the hospital and he remained there as indoor patient for 15 days. Such a statement made in the court also would create a doubt as to whether he could be the author of the complaint for the reason, that in the complaint lodged by him he had stated that his brother had died. Similarly, non-production of the FSL report in the court by the prosecution was fatal as in absence thereof it was difficult for the court to reach to the conclusion as to whether the offence was committed with M.O.1. More so, after the incident, the I.O. was busy in searching the brother of the accused and he made no attempt to search the accused. These factors clearly indicated that investigation was not conducted fairly. [Paras 17, 18] [1013-H; 1014-A-D; 1015-B-F]

State Represented by Inspector of Police v. Saravanan & Anr. AIR 2009 SC 152; 2008 (14) SCR 405; *Arumugam v. State* AIR 2009 SC 331; 2008 (14) SCR 309; *Mahendra Pratap Singh v. State of Uttar Pradesh* (2009) 11 SCC 334; 2009 (2) SCR 1033; *Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra* JT 2010 (12) SC 287; 2010 (15) SCR 452; *Vijay @ Chinee v. State of M.P.* (2010) 8 SCC 191; 2010 (8) SCR 1150; *State of U.P. v. Naresh & Ors.*

- A (2011) 4 SCC 324;; *Brahm Swaroop & Anr. v. State of U.P.*
AIR 2011 SC 280; 2010 (15) SCR 1; *State of Rajasthan v.*
Rajendra Singh (2009) 11 SCC 106 – relied on.

- 3.2. It is settled legal proposition that in exceptional
B circumstances the appellate court under compelling
circumstances should reverse the judgment of acquittal
of the court below if the findings so recorded by the court
below are found to be perverse, i.e., the conclusions of
the court below are contrary to the evidence on record
C or its entire approach in dealing with the evidence is
found to be patently illegal leading to miscarriage of
justice or its judgment is unreasonable based on
erroneous law and facts on the record of the case. While
dealing so, the appellate court must bear in mind the
D presumption of innocence of the accused and further that
acquittal by the court below bolsters the presumption of
his innocence. The High Court committed an error in
recording the finding of fact that the prosecution
succeeded in proving the case beyond reasonable
E doubt. The High Court failed to meet the grounds pointed
out by the trial court discarding the case of prosecution
and thus, the findings of fact recorded by the High Court
remain perverse. [Paras 19, 20] [1015-G-H; 1016-A-C]

- Abrar v. State of U.P.* (2011) 2 SCC 750; 2010 (13) SCR
F 1217; *Rukia Begum & Ors. v. State of Karnataka* (2011) 4
SCC 779 – relied on.

Case Law Reference:

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|---|-------------------|-----------|---------|
| | 2008 (14) SCR 405 | relied on | Para 17 |
| G | 2008 (14) SCR 309 | relied on | Para 17 |
| | 2009 (2) SCR 1033 | relied on | Para 17 |
| | 2010 (15) SCR 452 | relied on | Para 17 |

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2010 (8) SCR 1150	relied on	Para 17	A
(2011) 4 SCC 324	relied on	Para 17	
2010 (15) SCR 1	relied on	Para 17	
(2009) 11 SCC 106	relied on	Para 17	B
2010 (13) SCR 1217	relied on	Para 19	
(2011) 4 SCC 779	relied on	Para 19	

CRIMINAL APPEAL JURISDICTION : Criminal Appeal
No. 1006 of 2007. C

From the Judgment & Order dated 28.2.2007 of the High Court Karnataka, Bangalore in Criminal Appeal No. 1069 of 2000.

Sanjay Mishra (for Dinesh Kumar Garg) for the Appellant. D

Rashmi Nandakumar (for Anitha Shenoy) for the Respondent.

The Judgment of the Court was delivered by E

DR. B.S. CHAUHAN, J. 1. This criminal appeal has been filed under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 against the judgment and order dated 28.2.2007 of the High Court of Karnataka, Bangalore, in Criminal Appeal No.1069 of 2000 by which the High Court has reversed the judgment and order dated 31.10.1998 passed by the XVth Additional City Sessions Judge, Bangalore, in Sessions Case No.366 of 1996, acquitting the appellant of the charges under Sections 302 and 307 of the Indian Penal Code, 1860 (hereinafter called 'IPC'). F G

2. Facts and circumstances, as per the prosecution case giving rise to this appeal had been that the law was put into motion by younger brother of the deceased, Shankara (PW.8), who lodged a complaint orally on 26.3.1996 that the appellant H

A came to the Barber Saloon of Murthy Prasad, deceased, on 25.3.1996 at about 8 p.m. and demanded Rs.150/- from the deceased. Since the deceased did not give the money demanded, the accused got angry and threatened that he would take care of him later. Appellant accused again came back at
 B 9.30 p.m. to the shop of the complainant, sought shelter therein, had food, and slept there with the deceased and the complainant. At about 2 a.m. the complainant heard sounds and after being awoken he saw that the appellant was hitting his elder brother with a knife on the chest and on shouting of
 C the complainant the appellant hit him also with the same on the left abdomen and hands and ran away. Murthy Prasad died of assault and the complainant got injured, and was taken to the hospital for treatment.

D 3. On the basis of the said oral complaint, an FIR No.82/96 dated 26.3.1996 (Ext.P4) was recorded. The investigation ensued and the appellant was arrested on 31.3.1996. After conclusion of the investigation, charge sheet was filed against the appellant and he was put to trial under Sections 302 and 307 IPC. In order to prove the guilt of the appellant, prosecution
 E examined 17 witnesses. The appellant was examined under Section 313 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") wherein apart from denying the evidence against him given by the witnesses directly, he also denied to have gone to the Saloon of the deceased at all as
 F alleged by the prosecution.

G 4. After considering the entire evidence on record, the Trial Court came to the conclusion that prosecution failed to prove beyond reasonable doubt that the appellant had committed murder of Murthy Prasad or made an attempt to kill the complainant Shankara (PW.8). Thus, vide judgment and order dated 31.10.1998, the appellant was acquitted of the charges under Sections 302 and 307 IPC.

H 5. Being aggrieved, the State of Karnataka preferred

Criminal Appeal No.1069 of 2000 which has been allowed by the High Court convicting the appellant under Section 302 IPC for committing the murder of Murthy Prasad, deceased and awarding him life imprisonment. The appellant also stood convicted under Section 324 IPC for causing injuries to the complainant Shankara (PW.8) and has been awarded six months imprisonment and a fine of Rs.5,000/-. In default of depositing the fine to undergo simple imprisonment for a period of one month. Both the sentences have been directed to run concurrently. Hence, this appeal.

6. Shri Sanjay Mishra, learned counsel appearing for the appellant has submitted that the High Court has committed an error in interfering with the well reasoned judgment of acquittal by the Trial Court and relying upon the evidence on record while ignoring the material inconsistencies between the evidence of the witnesses; and medical and ocular evidence. No motive was proved by the prosecution to commit the offence. There had been an inordinate delay of 4 hours in lodging the F.I.R. as the murder was alleged to have been committed at 2 a.m. while the complaint was lodged at 6 a.m. on the same day, though the Police Station was at a distance of only one kilometre. There had been discrepancy relating to the seizure and kind of weapon used in the offence. Therefore, the appeal deserves to be allowed.

7. Per contra, Ms. Rashmi Nandakumar, learned counsel appearing for the State of Karnataka vehemently opposed the appeal contending that the High Court has rightly reversed the findings recorded by the Trial Court being the First Court of Appeal after appreciating the evidence properly. The Court below had mis-appreciated the material evidence of the witnesses. More so, the trial Court had failed to give due weightage to the evidence of injured witness, namely Shankara (PW.8). Hence, the appeal lacks merit and no interference is required.

A 8. We have considered the rival submissions made by learned counsel for the parties and perused the record.

B 9. The post mortem examination report dated 26.3.1996 revealed that following injuries were there on the person of Murthy Prasad:

- (1) Vertically placed incised wound over the front of tip of right thumb measuring 3 cm x 0.5 cms x 0.5 cms deep;
- C (2) Incised wound over top of left shoulder measuring 2 cms x 0.5 cms x skin deep;
- (3) Incised wound over left side of chest situated 8 cms vertically below left arm fit, measuring 2 cms x 0.5 cms;
- D (4) Incised wound over left side lower part of chest situated 23 cms below later 1/3rd of left collar bone, vertical measuring 2 cms x 0.5 cms x 5 cms, deep;
- E (5) Incised wound over left side lower part of chest situated 20 cms below left arm fit, oblique measuring 2.5 cms x 0.5 cms x 0.5 cms, deep;
- (6) Incised wound over left side lower part of front of abdomen measuring 2.5 cms x 0.5 cms x 1 cms, deep;
- F (7) Horizontally placed stab wound present over the left side of hip situated 3 cms behind and 2 cms below the level of left anterior iliac spine measuring 2.5 cms. x 2 cms x 9 cms deep, the front end is pointed and back end blunt, margins are clean cut, the wound is directed backwards, downwards, and to right by cutting sciatic nerve and underlying vessels edged clean cut;
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- (8) Incised wound over left side upper part of neck situated 2 cms below middle of ramus of mandible, measuring 1 cms x 0.5 cms x 0.5 cms, deep; A
- (9) Stab incised wound present over left side back of chest situated 12 cms below the level of 7th cervicle spine 5 cms to left of midline measuring 3 cms x 1.5 cms chest cavity deep. B

The post mortem report further revealed that so far as injury no.9 was concerned, the weapon had cut the skin and muscles of chest had entered the chest cavity in 5th intercostals space, and pierced the lower lobe of left lung on which it measures 2 cms x 0.5 cms x 0.5 cms deep. According to the opinion of the Doctor, the death was due to shock and haemorrhage as a result of the aforesaid injuries. C

10. The medical examination report of complainant Shankara, aged 18 years dated 26.3.1996 revealed the following injuries on his person : D

- (1) Incised wound seen on the left side of abdomen measuring 1-1/2 cm x 0.5 cm x just below the last rib on the left side at mid clavicular line; E
- (2) Incised wound seen on the front of right fore at lower 1/3rd measuring 1-1/2 cm x 1 cm, skin deep; F
- (3) Incised wound seen on the medial side of left thumb, 2-1/2 cm x 1/2 cm; G
- (4) Incised wound seen on the left upper arm on the detoid muscle measuring 1-1/2 cm x 1/2 cm skin deep; G

(5) Incised wound seen on the left cheek measuring 1-1/2 cm x 1/2 cm skin deep.

11. Dr. B.R.S. Kashyap (PW.5) who conducted post H

- A mortem examination on the body of Murthy Prasad explained in his deposition in the court that it was not normally possible to cause injuries to the deceased with weapon Ext.MO.1 if held with both of its arms together while inflicting the injuries. However, if the sharp edge and tip of the scissors is held open while assaulting, the injuries can be caused. So far as the evidence of Dr. H. Venkatesh (PW.6) who examined Shankara (PW.8) complainant is concerned, he deposed that injuries found on his person could be caused of sharp edged weapon. Thus, in view of the above, there could be no dispute that as per the opinion of Doctors, it was possible to cause the injuries found on the person of the deceased and the complainant with scissors in case the sharp edge and tip of the scissors is held open at the time of assault.

12. Material Contradictions :

(I) Evidence of Witnesses:

- Murthyalappa (PW.2), and Smt. Ramanjanamma (PW.3), the brother-in-law and sister of the deceased, respectively, deposed in the Court that they made a visit to the hospital where Shankara (PW.8) had been admitted and he had told to both of them that the appellant had killed Murthy Prasad, and caused injuries to him. Though Shankara (PW.8) complainant himself deposed in his examination-in-chief that he came to know about the death of his brother only after being discharged from the hospital living therein as indoor patient for 15 days.

Shankara (PW.8), while lodging the complaint stated as under:

- "On 25.3.1996 at about 8.00 P.M. the accused younger brother of Rudresh came to the Super Hair Style Shop of the deceased, elder brother of the complainant viz., Murthy Prasad and demanded Rs.150/- from him. Since he did not give the money demanded, the accused got angry and threatened that he would take care of him later. He once

again came back at 9.30 P.M. to the shop of the complainant and with intent to murder the complainant and his elder brother, he sought shelter in the shop, had food and slept there itself." A

But, in the court Shankara (PW.8) deposed: B

"Last year on one day at about 8 p.m. the accused came to our saloon and enquired me about my brother. I informed the accused that my brother had gone out and he will be returning soon. Accused stayed in my saloon only. My brother Murthy Prasad returned to Saloon at about 9 p.m. Myself, my brother and accused took meals in the saloon and slept in the saloon." C

Thus, it is evident that Shankara (PW.8) in his deposition in court did not mention about the first visit of the appellant and demand of Rs.150/- from Murthy Prasad. D

(II) Medical Evidence & Ocular Evidence:

As per the medical evidence, injury nos.7 and 9 found on the person of Murthy Prasad deceased had been fatal and could be caused with the pointed part of the scissors, if used holding sharp edge and tip of the scissors open, at the time of assault. E

In his oral complaint on 26.3.1996, Shankara (PW.8) had stated that the accused caused the injuries with **knife**. He deposed in the Court: F

"Accused was stabbing my brother with a **scissors**. He stabbed on the stomach of my brother... Accused also stabbed me from the **scissors** on my left side of stomach, on right hand and on the left shoulder...Now I see the scissors M.O.1, the accused assaulted me and my brother with M.O.1". (Emphasis added) G

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A Thus, it is apparent from the above that Shankara (PW.8) was not sure as to whether injuries were caused by knife or scissors. No explanation came forward as to whether the complainant, Shankara (PW.8) was capable to understand the distinction between knife and scissors.

B (III) Identity of the accused:

C As per Ramanjanamma (PW.3), brother of one Rudresh murdered Murthy Prasad. According to Sriram (PW.4), the brother of Umesh assaulted them: "I do not know who is brother of Umesh. I do not know the accused." Shankara (PW.8) refers to the accused as brother of Rudresh. Abdul Suban (PW.17) stated that "I tried to ascertain and search for Rudresh but he was not found. I did not enquire the father of the accused and his family members about Rudresh".

D (IV) FSL Report:

E As per Abdul Suban (PW.17), he sent all the seized articles including M.O.1 for FSL examination through Police Constable 2313 on 2.6.1996 and received back on 7.6.1996. However, FSL report was not produced before the Court. Abdul Suban (PW.17) has admitted that he received the Post Mortem report and FSL report and after completing the investigation he submitted the charge sheet on 27.6.1996. No explanation has been furnished as to why this FSL has not been produced before the court as it was necessary to ascertain as to whether M.O.1 was actually used in the commission of offence or not.

(V) Recovery of weapon:

G As per Abdul Suban (PW.17) the accused in the presence of panchas had seen the occurrence and also took out a scissors hidden under a stone slab near the saloon. He seized the scissors M.O.1 in the presence of Panchas under Panchnama Exh. P-8. As per the evidence of Ganganarasaiah (PW.9) the scissors was in the bucket which was filled with

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water. The bucket was inside the shop. The police alone saw it. Narayanaswamy (PW.15) stated that the accused told him that he committed the offence and he took out a scissors kept under a stone slab. Police seized the same and wrapped in a cloth and drawn a mahazar. He signed the mahazar and stated that M.O.1 was the scissors seized by the police.

13. The trial Court has taken into consideration each and every discrepancy/contradictions referred to hereinabove. However, the High Court has dealt with the case observing that presence of Shankara (PW.8) at the place of occurrence has not been disputed. Injuries found on his person are also supported by the evidence and particularly other statements made by Shankara (PW.8) in the Court which were worth acceptance regarding his staying outside for some time. The High Court came to the conclusion that there was nothing unnatural in his statement. However, the High Court did not deal with the contradictions referred hereinabove.

14. The contradiction in the statement of Shankara (PW.8) in the court as compared with his statement before the police under Section 161 Cr.P.C. also demolishes the aspect of motive.

15. There was delay in lodging the FIR. In the present case, the alleged occurrence took place at 2.00 p.m. and the police station was hardly at a distance of 1 K.M. from the place of the occurrence and Shankara (PW.8) had never deposed that he had become unconscious, the delay has not been explained.

16. Abdul Suban (PW.17), the I.O. consistently deposed that he was searching for Rudresh. Admittedly, even as per the prosecution, author of the crime had been Shankar-appellant and not his brother Rudresh. We fail to understand as for what reason the I.O. was trying to apprehend the brother of the accused.

17. In all criminal cases, normal discrepancies are bound

- A to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness
- B of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case,
- C should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors
- D to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "*Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.*" The omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide: *State Represented by Inspector of Police v. Saravanan & Anr.*, AIR 2009 SC 152; *Arumugam v. State*, AIR 2009 SC 331; *Mahendra Pratap Singh v. State of Uttar Pradesh*, (2009) 11 SCC 334; *Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra*, JT 2010 (12) SC 287; *Vijay @ Chinee v. State of M.P.*, (2010) 8 SCC 191; *State of U.P. v. Naresh & Ors.*, (2011) 4 SCC 324; and *Brahm Swaroop & Anr. v. State of U.P.*, AIR 2011 SC 280].
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Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in

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order to make the evidence acceptable, it cannot be safe to rely upon such evidence. (Vide : *State of Rajasthan v. Rajendra Singh*, (2009) 11 SCC 106). A

18. If the case in hand is examined in the light of the aforesaid settled legal proposition, the prosecution has definitely made an attempt to establish the presence of the accused in the shop and Shankara (PW.8) is the only eye witness. His presence also cannot be doubted in view of the fact that he himself got injured in the incident. However, the question does arise as under what circumstances he has told his sister and brother-in-law that his brother has been killed by accused-appellant when in his substantive statement before the court he has deposed that he came to know about the death of his brother after being discharged from the hospital and he remained there as indoor patient for 15 days. Such a statement made in the court also creates a doubt as to whether he could be the author of the complaint for the reason, that in the complaint lodged by him on 26.3.1996 he has stated that his brother had died. Similarly, non-production of the FSL report in the court by the prosecution is fatal as in absence thereof it was difficult for the court to reach to the conclusion as to whether the offence has been committed with M.O.1. B
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More so, after the incident, Abdul Suban (PW.17) had been busy in searching Rudresh, brother of the accused and he made no attempt to search the accused. These factors clearly indicate that investigation has not been conducted fairly. F

19. It is settled legal proposition that in exceptional circumstances the appellate court under compelling circumstances should reverse the judgment of acquittal of the court below if the findings so recorded by the court below are found to be perverse, i.e., the conclusions of the court below are contrary to the evidence on record or its entire approach in dealing with the evidence is found to be patently illegal leading to miscarriage of justice or its judgment is unreasonable based on erroneous law and facts on the record G
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- A of the case. While dealing so, the appellate court must bear in mind the presumption of innocence of the accused and further that acquittal by the court below bolsters the presumption of his innocence. (Vide: *Abrar v. State of U.P.*, (2011) 2 SCC 750; and *Rukia Begum & Ors. v. State of Karnataka*, (2011) 4 SCC 779).

- C 20. In view of the above, we are of the considered opinion that the High Court committed an error in recording the finding of fact that the prosecution succeeded in proving the case beyond reasonable doubt. The High Court failed to meet the grounds pointed out by the trial Court discarding the case of prosecution and thus, the findings of fact recorded by the High Court remain perverse.

- D In view of the above, the appeal succeeds and is allowed. The judgment and order of the High Court dated 28.2.2007 is hereby set aside and judgment and order of the trial Court dated 31.10.1998 passed in Sessions Case No.366 of 1996 is restored. The appellant has been enlarged on bail by this Court vide order dated 26.7.2010. The bail bonds stand discharged.

D.G.

Appeal allowed.