Supreme Court of India
Animireddy Venkata Ramana & Ors vs Public Prosecutor, H.C. Of A.P on 5 March, 2008
Author: S.B. Sinha
Bench: S.B. Sinha, Harjit Singh Bedi

CASE NO.:
Appeal (crl.) 917 of 2006

PETITIONER:
Animireddy Venkata Ramana & Ors

RESPONDENT:
Public Prosecutor, H.C. of A.P.

DATE OF JUDGMENT: 05/03/2008

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO. 917 OF 2006 S.B. SINHA, J :

1. Appellants, nine in number, are before us aggrieved by and dissatisfied with a judgment and order dated 6.07.2006 passed by a Division Bench of the Andhra Pradesh High Court in Criminal Appeal No. 2600 of 2004, dismissing an appeal from a judgment of conviction and sentence dated 9.11.2001 passed by VII Additional Sessions Judge in Sessions Case No. 150 of 1999 holding the appellants guilty of commission of murder of one Annamreddi Tatayya Naidu (deceased) and causing injuries to PW-1 Annamreddy Sreenivasa Rao, the son of the deceased.

2. Enmity between the parties stands admitted. All the accused, the deceased and the prosecution witnesses are residents of a village commonly known as K.O. Mallavaram.

The deceased, his two sons PWs 1 and 2 and PWs 5 to 7 were accused in Sessions Case No. 193 of 1998. A dispute between the two groups over some land came upto this Court. There were political differences also. Accused No. 1 allegedly supported Accused No. 3 in the Gram Panchayat elections wherein the deceased lost. Another incident took place in relation thereto. A case was filed against the deceased and others. It ended in acquittal. There was an incident of fire in the village. Some of the accused persons allegedly collected a huge amount promising the victims that they would construct houses for those whose houses stood gutted therein but the said promises were not kept.

3. PWs 1 and 2 as also the deceased and several other family members went at Tuni to attend the court in which the case against the deceased and others was pending. Accused persons were also present in the court. The distance between Tuni and the village is said to be about 20 kms.

Whereas others returned, the deceased and his son PW-1 stayed back. They came to the bus complex of Tuni at about 9.30 p.m. on 23.06.1998. They boarded the bus for going to their village. PW-5 also boarded the same bus. PWs 6 and 7 are said to have boarded the same bus from a bus stop known as

Tandava Centre. Admittedly PW-3 Namala Chandra Rao and PW-4 Yandamuru Prasada Rao were the conductor and driver of the said bus.

While the bus reached Rapaka road junction at about 10.30 p.m., some passengers got down from the bus. When it started again, Accused No. 1 exhorted others to kill the deceased. Appellants herein as also Accused No. 10 (since deceased) inflicted a large number of injuries upon him. His body was dragged near the door of the bus. PW-1 was also assaulted. He was dragged by Accused Nos. 11 to 18 upto the door of the bus. The driver and the conductor as also other passengers fled away. Accused also thereafter left the place of incident. PW-1 cried for help. Hearing his cry, PWs 3 and 4 came back to the bus and on a request made by him, the bus was brought to the house of the deceased.

4. Before the learned Trial Judge a large number of witnesses were examined. Eye witnesses to the incident, however, were PWs 1, 5, 6 and 7. Their testimonies were not relied upon by the learned Trial Judge.

Placing reliance on the testimonies of PW-3 that no passenger boarded the bus from Tandava Centre, the statements of PWs 6 and 7 were disbelieved. As the learned Trial Judge disbelieved the testimonies of PWs 6 and 7 that they had boarded the bus from the said stop, the deposition of PW-5 was also not relied upon. Their testimonies were furthermore disbelieved on the premise that they did not satisfactorily explain as to why they had visited village Tuni on the fateful day. Comments were also made by the learned Trial Judge that no documentary evidence was produced before the Court to establish their presence particularly in view of the evidence of PW-4. The learned Trial Judge also placed importance on the dispute between the parties to arrive at a conclusion that they were interested witnesses.

5. The learned Sessions Judge also laid emphasis on the fact that immediately after the occurrence the officer incharge of the police station as also the officers of the Road Transport Corporation were informed, they came in a bus to the village at about 1 a.m. and examined the witnesses. The deceased and PW-1 were shifted to the hospital at Tuni. But the general diary on the basis whereof the said information was said to have been received by the investigating officer having not been produced, the First Information Report was held to be hit by Section 162 of the Code of Criminal Procedure (Code).

It was furthermore opined that as the lights of bus were switched off, it was not possible for the prosecution witnesses and in particular PWs 5 to 7 to identify all the accused. It was also opined that the weapons which were purported to have been recovered at the instance of the accused being M.O. Nos. 1 to 7 being not uniform in size and shape, their recovery at the instance of the accused could not be relied upon. Details of the said weapons having not been furnished by the said eye-witnesses, an adverse inference in that behalf was also raised.

So far as the deposition of PW-1 who was an injured witness is concerned, the learned Sessions Judge disbelieved him inter alia holding:

" The accused all or any one of them were not seen just prior to the time of occurrence anywhere in Tuni Town or in the Bus stand till they were alleged to have been seen in the bus "

6. On the aforementioned findings, a judgment of acquittal was recorded. The State preferred an appeal thereagainst which has been allowed in part by a Division Bench of the Andhra Pradesh High Court holding the appellants as also Accused No. 10 guilty of commission of murder of the deceased and acquitting Accused Nos. 11 to 24 of all charges.

7. Mr. M.N. Rao, learned Senior Counsel appearing on behalf of the appellants, apart from reiterating the grounds which found favour with the learned Sessions Judge in pronouncing the judgment of acquittal, submitted:

(i) The High Court misdirected itself insofar as it failed to take into consideration that while entertaining an appeal against a judgment of acquittal the parameters therefor are different from one arising out of a judgment of conviction and as in this case two views are reasonably possible, the impugned judgment is unsustainable in law.

(ii) Independent witnesses who were cited in the chargesheet being CWs 11 and 12 having not been examined as regards the veracity of the prosecution case, a doubt about the prosecution version should have been raised by the High Court.

(iii) Statements of PWs 5 to 7 having been found to be doubtful by the learned Trial Judge, the High Court should not have relied upon them.

(iv) Reliance placed by the High Court on the statements of PW-1 is misplaced.

8. Mr. Anoop G. Choudhari, learned Senior Counsel appearing on behalf of the State, on the other hand, submitted:

(i) The learned Trial Judge wrongly discarded the evidence of PWs 6 and 7 purporting to rely upon the evidence of PW-4 who had not made any statement in his deposition that they did not board the bus at Tandava Centre and as such the same is wholly perverse.

(ii) PW-5 who admittedly boarded the bus at Tuni itself in any event could not have been disbelieved only because PWs 6 and 7 were disbelieved.

(iii) None of the prosecution witnesses having been put any question in regard to their purpose of the visit, the learned Sessions Judge misdirected itself in disbelieving their evidence on the ground that they failed to prove their presence and / or purpose of their visit to Tuni.

(iv) There was no reason to disbelieve PW-1 who was an injured witness.

(v) The question as to whether the lights were switched off or not was wholly immaterial as not only all the accused were known to the prosecution witnesses, but also in view of the admitted fact that

the light near the conductor seat was on and the accused were sitting behind the deceased and PW-1.

(vi) Testimony of PW-3, who for reasons best known to him, having resiled from his earlier statement, could not have been preferred to that of PWs 5 to 7 as the evidence of all the three prosecution witnesses are consistent.

9. Certain basic facts are not denied or disputed. The deceased died in the bus at about 10.30 p.m. on 23.06.1998 while traveling to his village home from Tuni. PW-1 also sustained injuries in the said incident. Immediately after the incident, hearing cries from passengers, the driver of the bus stopped the bus. Not only the accused persons fled away, all others also did including PWs 3 and 4. They came back after a short while hearing the cries of PW-1. They acceded to his request to take the bus to his house. From the records, it appears that the distance between the place where the accident took place and the village in question was not much. In any event, the destination of the bus was the said village and they were bound to take the bus thereat. PW-1 informed about the incident to PW-2, another son of the deceased.

10. The dead body of the deceased was brought down from the bus and taken to the house. The conductor of the bus sent an information to the Depot Manager of the State Road Transport Corporation at Tuni. The investigating officer was also informed. A report to that effect might have been noted in the general diary but the same could not have been treated to be an FIR. When an information is received by an officer incharge of a police station, he in terms of the provisions of the Code was expected to reach the place of occurrence as early as possible. It was not necessary for him to take that step only on the basis of a First Information Report. An information received in regard to commission of a cognizable offence is not required to be preceded by a First Information Report. Duty of the State to protect the life of an injured as also an endeavour on the part of the responsible police officer to reach the place of occurrence in a situation of this nature is his implicit duty and responsibility. If some incident had taken place in a bus, the officers of the Road Transport Corporation also could not ignore the same. They reached the place of occurrence in another bus at about 1 a.m. The deceased and the injured were, only then, shifted to the Tuni hospital.

11. A First Information Report was recorded at about 3 O'Clock in the night. In the aforementioned situation, it cannot be said that the information received by the investigating officer on the telephone was of such a nature and contained such details which would amount to a First Information Report so as to attract the provisions of Section 162 of the Code.

12. In the First Information Report all the accused persons were named and overt acts on their part were also stated at some length. Each and every detail of the incident was not necessary to be stated. A First Information Report is not meant to be encyclopedic. While considering the effect of some omissions in the First Information Report on the part of the informant, a court cannot fail to take into consideration the probable physical and mental condition of the first informant. One of the important factors which may weigh with the court is as to whether there was a possibility of false implication of the appellants. Only with a view to test the veracity of the correctness of the contents of the report, the court applies certain well- known principles of caution.

13. Once, however, a First Information Report is found to be truthful, only because names of some accused persons have been mentioned, against whom the prosecution was not able to establish its case, the entire prosecution case would not be thrown away only on the basis thereof. If furthermore the purported entry in the general diary, which had not been produced, is not treated to be a First Information Report, only because some enquiries have been made, the same by itself would not vitiate the entire trial. Enquiries are required to be made for several reasons; one of them is to ascertain the truth or otherwise of the incident and the second to apprehend the accused persons. Arrest of accused persons, as expeditiously as possible, leads to a better investigation. Accused No. 1 was a Sarpanch of the village. Accused No. 2 is a Fair Price Shop dealer. Accused No. 3 was also admittedly a well-known person. It is also not denied and disputed that other accused were also related to him.

In view of the fact that such an incident had taken place, indisputably it would immediately be known to the villagers. Those who hold some respectable position in the village and particularly those who are concerned with the administration of Panchayat were expected to be present.

14. PW17 P. Ramchandra Rao was the investigating officer at the first instance. PW-18 S. Surya Rao investigated the case after PW-17 was transferred. From their testimonies it appears that Accused Nos. 4, 7, 9, 15, 21 and 23 were arrested on 7.07.1998 in the morning from near about a place known as Narappa Tank situated near Tuni. Accused No. 12 was arrested on 14.07.1998 and Accused Nos. 14, 16, 18 and 20 were also arrested on the same day. An injury on the finger of Accused No. 5 was also noticed. He was sent to the government hospital for treatment. Accused Nos. 6, 8, 11, 10 and 24 were arrested in the house of Accused No. 11 on 16.07.1998 in the morning hours. They made confessions leading to recovery of facts which are admissible under Section 27 of the Indian Evidence Act. Some of them, viz., Accused Nos. 6, 8, 10 and 24 also produced blood stained clothes which had been put on by them.

15. We have taken note of the absence of the accused and that they were absconding for a long time only to highlight the conduct on their part and that had they been really innocent and falsely implicated, their presence would have been noticed in the village on the same night and in fact they could have been witnesses to inquest etc.

16. Conduct of the accused vis-`-vis the statement of an eye-witness has been considered by this Court in Dharmendrasinh Alias Mansing Ratansinh v. State of Gujarat [(2002) 4 SCC 679] in the following terms:

"16. The submission made on behalf of the appellant that the complainant had actually not witnessed the occurrence also has no basis. She has made the statement to that effect and nothing could be elicited in her cross-examination by reason of which any doubt could arise about the veracity of her statement. On return from the dairy, she found her husband assaulting the deceased and on her alarm raised, he slipped away from the other door. It is also strange that after the incident the appellant was not available for more than 15 days until he was arrested by the police. In the normal course, on the murder of his two sons, he should have been moving around the scene and to have lodged the report against the real assailants or in case the real assailants were not

known, he could have lodged the report without naming any accused therein "

17. Statements under Section 161 of the Code were recorded by PW-17 P. Ramchandra Rao. Accused Nos. 19 and 22 surrendered before PW-18 S. Surya Rao on 21.07.1998 and Accused Nos. 13 and 17 surrendered before him at 10 a.m. on 6.08.1998.

18. The Mediator's report, inquest report and the observation report all are dated 24.06.1998. The submission that the investigating officer recorded the statements of the witnesses are not borne out from the records except from an endorsement made in the sheet meant for noting the details of the fare received by the conductor which is to the following effect:

"To The D.M.

Sir, 07.30 KM Service, the bus started at 21.45 hours from Tuni and it reached Repaka Centre, some passengers poked among themselves in the bus. In that anxiety, the remaining passengers requested us to stop the bus, got down and ran away. We were also got down from the bus with fear. After some time when we have seen in the bus two passengers received serious injuries with knives. One of them requested us to take them to their house for first aid. We have informed the Depot Manager (DM) and he brought one bus to the village. C1, DSP came and recorded the statements. In the afternoon at 15.00 we have reached the depot.

Hence we are informing you."

The learned Trial Judge, in our opinion, committed a serious error in opining that investigation had already started before the lodging of the First Information Report.

19. PW-3 in his evidence did not say when the said endorsement was made. He did not say that investigating officer came to the village and took his statement. According to him, one DSP came and recorded the said statement.

20. Statements of PWs 3 and 4 cannot be taken to be sacrosanct for the purpose of disbelieving other witnesses. The statements of PW-3 evidently were recorded on the next day after he reached the depot at about 3 p.m. Even then he did not say that one of the passengers had died. No undue importance can be given to a sentence made therein so as to lead a conclusion that the entire prosecution case is vitiated in law.

21. The distance between Tuni, where the hospital and the police station are situate, and the village has been noticed by us. It is about 20 kms. The distance between the village and the place of occurrence is about 2 kms. The First Information Report was lodged at about 3 a.m. on the same night. Inquest started at 7 a.m. next day. It took about three hours. Observation report was drafted at about 6 a.m. The Mediator's Report was drawn up immediately thereafter.

22. Submission of Mr. Rao that the Village Administrative Officer was not informed by PW-1 loses all significance as he is a party to the aforementioned reports. The place of occurrence was an

isolated place. There was no house or shed. There was a land bearing 'Gingelly Crop'. There were bushes on both sides of the road.

23. Post mortem was conducted by PW-11 Dr.B.V.S. Chalapati Rao. It commenced at about 2 p.m. As many as 30 injuries were found on the body of the deceased. Only Injury Nos. 1 to 3 were possible to have been caused by a stick. Apart from the said question, no other question worth any significance has been put to the said witness (PW-11) on behalf of the accused. It is significant to note that according to the accused themselves some of the weapons (MOs 1 to 7) which had been shown to him had one side sharp and one side blunt edges.

24. PW-10 Dr. K. Indira Surya Kumari had examined PW-1 and found a large number of incised injuries but also found seven lacerated wounds on his person. She stated:

"The injuries 2, 3, 5 and 9 are caused by a sharp object and the injuries 1,6,7,10 and 11 are caused by blunt object about 4 to 8 hours prior to the examination."

In cross-examination, according to her, she was informed about the nature of weapons causing injuries to PW-1.

25. The injuries on the person of PW-1 might have been found to be simple. But, he with the dead body of his father came to the house. The mental condition of PWs 1 and 2 can be well imagined. When the Depot Manager and the Deputy Superintendent of Police arrived in a bus at about 1 a.m., as noticed hereinbefore, they must have made preliminary inquiries. They were taken by another bus which was driven by PW-12 Bafti. He was also a witness to the spot inspection.

26. Village Administrative Officer of K.O. Mallavaram was a witness to the inquest as also the recovery. Recovery of a large number of weapons as also blood stained clothes is also not in dispute. PW-14 D. Phani Babu is the Village Administrative Officer of Nandivompu Village. He is a witness to the arrest of some of the accused.

27. The learned Sessions Judge, as noticed hereinbefore, relied upon the evidence of PW-3 (wrongly stated as PW-4) to discredit the evidence of PWs 6 and 7 inter alia on the premise that they are interested witnesses. There were some independent witnesses. They, for obvious reasons, came forward to depose in favour of the prosecution. The High Court has rightly noticed that PWs 3 and 4 tried to save their own skin. They never informed about the particulars of the incident. They only stated that there had been commotion. They did not disclose any details about the incident. On the aforementioned premise the High Court had observed that they might have been desisted from giving the particulars expecting that there may be a trouble to them if the names of the accused are disclosed. Their behaviour, keeping in view the present societal condition, cannot be said to be wholly unnatural. They purported to have made a statement that Accused No. 1 did not board the bus. Although they knew who the accused were but never made any statement before the police that he did not board the bus. It was accepted that there were about 48 passengers in the bus and only one passenger got down at the 4th stage. They did not dispute that Tandava Centre was a bus stop. PW-3 could have proved from the chart that nobody boarded the bus at that stage. We find that

except payment of fare for two stages, fare have been paid for all the stages. He could have correlated the number of stages which would have been attracted if PWs 6 and 7 were to board the bus at Tandava Centre.

28. PWs 6 and 7 could not have been disbelieved only on that account. The learned Sessions Judge took somewhat a strange view as regards the purpose for which PWs 6 and 7 visited Tuni. No question as to whether PW-6 came to Tuni to purchase medicine for his mother or when she had been brought back from Cancer Hospital, Kakinada was put to him. Ordinarily, no witness would carry any documentary proof to show that he had purchased medicine at Tuni. No witness would keep the bus ticket with himself to prove the fact that he travelled in the bus a few years back. They had witnessed a gruesome murder in the night ran about 2 kms. to inform PW-2 about the occurrence. If their testimonies otherwise are acceptable, we are of the view that the same should not have been discarded on such filmsy pretext. PW-5 was already in the bus. He did not board at Tandava Centre. Why his evidence had not been accepted is not decipherable from the judgment of the learned Sessions Judge. Reporting of the matter to the Village Administrative Officer, in our opinion, was not of much significance. The Village Administrative Officer has been examined in this case. No suggestion was put to him that he was not aware of the incident. Even otherwise he was involved in the investigation from 6 O'Clock in the morning. Even in the inquest report, the commission of the offence was attributed to the accused, to which he was a signatory.

29. PW-2 in his evidence categorically stated that PWs 6 and 7 came to his house at about 11 O'Clock in the night and informed him about the incident and some time thereafter the dead body of the deceased as also PW- 1 arrived in the bus in question. He not only found the dead body of his father, but also found PW-1 lying in the bus in between two rows of seats with bleeding injuries. An attempt was made to take him to the hospital. He was placed in a tractor. However, the driver was not available.

In the meanwhile only, the driver and the conductor of the bus informed him that another bus would be coming from Tuni Depot. PW-1 was taken to the hospital only in the said bus leaving the dead body in the house. Strangely enough, apart from throwing a suggestion that PWs 6 and 7 did not inform him about the incident, no other question was put to him to test the veracity of his aforementioned statement. The events which took place immediately after the occurrence, therefore, find corroboration. We do not find any tinge of falsehood in his statement. The sequence of events, which we have noticed hereinbefore, also corroborates the prosecution case in material particulars. What, however, is significant is that PW-1 was not believed at all. PW-1 was an injured witness. He may be an interested witness. But then, there was no reason as to why he would falsely implicate the appellants. Both he and PW-2 disclose the motive on the part of the accused to commit the offence. Enmity, as is well-known, is a double edged weapon. It is too much to expect of a person to notice as to which weapon would be carried by which accused. No accused would openly display them. The observations of the learned Sessions Judge, therefore, that the accused were not seen prior to the occurrence anywhere in the Tuni town or the bus stand till they were alleged to have been seen in the bus, are perverse. It cannot be a ground for discrediting their otherwise truthful witness. The learned Trial Judge accepted in one part of the judgment that an injured witness should be given credit but in the next sentence he stated:

"But in this case his evidence does not inspire confidence."

No specific reason has been assigned in respect of the said statement.

30. A court in the process of its job of appreciation of evidence may rely on a statement of a witness or may not. It may even accept the evidence of a witness in part. But without taking recourse to the right methodology of appreciation of evidence, no court of law should jump to the conclusion that a prosecution witness is wholly untrustworthy only because his evidence has not been corroborated by other witnesses.

31. The learned Judge found that both ocular as also circumstantial evidence did not corroborate the testimony of PW-1. Why he said so has not been stated. To what extent, the medical evidence is in variance with the ocular evidence has also not been discussed.

32. Lacerated wounds were not only caused by assault with sticks but also when a person falls down on a hard surface. PW-1 was found in an injured condition in between two rows of seats. He was dragged like his father.

33. We may, however, notice that in his statement before PW-10 Dr. K. Indira Surya Kumari has stated that he had been assaulted with stick and other sharp cutting weapons. Even if this part of the evidence is ignored, still then there are enough explanations available on record to suggest as to how lacerated wound could have been caused to him.

34. The learned Sessions Judge opined that the bus might not have been stopped near the place of occurrence. Why, how and where an offence is committed cannot be a subject matter of guess. The fact that the accused persons had a motive also stands unrebutted. It is not the case of the accused that the matter relating to the Sessions Case in which the deceased and other relatives were facing trial was not fixed in the court of Tuni on that day. The date admittedly was fixed for commitment of the trial to a Court of Sessions. For one reason or the other it was adjourned. If taking advantage of the said situation as also in view of the fact that they were travelling in the same bus and the bus was passing through a lonely place, Accused No. 1 gave exhortation to kill the deceased resulting in the death of the deceased and sufferance of injuries by PW-1, it cannot be said to be absurd on the face of it. The question posed as to why the accused had chosen the said occasion is not for a court of law to answer. A sweeping statement has been made by the learned Sessions Judge that presence of prosecution witnesses in the bus is highly doubtful. It was not to be readily inferred. The learned Sessions Judge found:

" The presence of PWs in the bus is highly doubtful. The overt acts attributed to particular accused causing particular injuries to the deceased and PW1 is discrepant from one witness to other. The medical evidence is in variance with the evidence of PW 1, 5, 6 and 7 as to the nature of the injuries and also as to the nature of the weapons used for causing injuries to PW1 and the deceased. The evidence as to the arrest and seizure of material objects is arbitrary. None of the witnesses have stated that there was sufficient light for them to witness the occurrence. It is only in court for the first time an attempt to prove that there was light is made by PWs 1, 5, 7 but that was also falsified

by the evidence of PWs 3 and 4. At any rate it is doubtful. None of the witnesses amongst PWs 5, 6 and 7 thought of giving report to VAO who is residing just opposite to the house of PW.1. Above all, the evidence of PWs 3 and 4 and also the circumstances admit that a report was recorded from PW1 earlier than Ex. P.2 but that is not produced. The general diary sought for by the accused has not been produced. The explanation for non-production of the same is not convincing "

35. We have not seen much discussions on the part of the learned Judge in his judgment to discredit the arrest of the accused persons and seizure of material objects. Why such evidence was termed arbitrary is beyond any comprehension.

So far as sufficiency of the light for identification of the witnesses to identify the accused is concerned, suffice it to say that they belonged to the same village. They have been fighting litigations for years. It is too much to say that even in that situation the identity of the accused persons would not be known to the prosecution witnesses. All the passengers were sitting in their respective seats for a long time. They boarded the bus at the same place. Their destinations were same. The High Court, in our opinion, has rightly noticed that as the deceased and the accused persons were sitting just behind the seat of the conductor where a light was on, it was possible for the prosecution witnesses to identify the accused persons committing the offence.

36. Non-production of the general diary by itself cannot be a ground for disbelieving the entire prosecution case particularly when apart from a solitary statement made by PW-3 in his note, no other evidence has been brought on records to show that statement of any witness had been recorded under Section 161 of the Code. It will bear repetition to state that apart from recording the statements by the investigating officers, viz., PWs 16, 17 and 18 who had no role to play in the matter of lodging the First Information Report. Some statements were recorded by the Deputy Superintendent of Police.

37. In Dharmendrasinh Alias Mansing Ratansinh (supra), this Court opined that when the evidence of a witness is found to be natural, the same should be believed.

38. In the aforementioned situation, the High Court, in our view, rightly recorded:

"35. When attack is made by several persons simultaneously, it is impossible for any person to say the particulars regarding the nature of weapon, which person was attacked by the accused and which part of the body they caused injuries. The witnesses tried their best to describe the specific overt acts and the places, parts of the body on which the injuries were caused and the nature of weapons used. Simply because the witnesses failed to give parrot-like version describing everything in a minute manner the argument that the evidence cannot be believed is a far fetched argument and on the pretext of not giving those details by the witnesses though observed the attack cannot be thrown out and due weight has to be given to the evidence of witnesses, if their evidence is truthful and acceptable. Therefore, the trial court went by giving the reasons beyond the imagination of the witnesses, arrived at its own conclusions with a view to give the benefit of doubt to the accused. Simply because PW-1 is also an accused in the other case, his presence cannot be disputed and when he received injuries in the incident, his evidence is brushed aside on the ground that his evidence

did not corroborate the evidence of PWs 5 to 7. Simply because there was enmity between the accused and the prosecution party, it cannot be said that an injured witness is also speaking all the lies. The truthfulness of the version given by such witnesses can be verified from the other circumstances whether their version is truthful and acceptable in the circumstances placed by the prosecution. It cannot be brushed aside automatically simply on the ground that he is inimical to the accused. The accused are known persons and the prosecution witnesses and the accused belonging to the same village. Therefore, it is not impossible to the witnesses to identify the accused with little light. The trial Court admitted that usually there will be lights in the bus, but as PWs 3 and 4 said that there was no light at the time of occurrence, their version has been accepted. PWs 3 and 4 did not completely mention the particulars of the incident except saying that when there was a commotion they got down from the bus and after the incident they got into the bus. They were not inclined to give the particulars regarding the weapons held by the accused, the number of persons got down from the bus, the nature of injuries received by the deceased and PW-1, whether the accused ran away after the incident etc. Therefore, PWs 3 and 4 did not wholeheartedly come forward to give the complete version. They might have been desisted from giving the particulars by expecting that there may be a trouble to them if the names of the accused are given. They did not mention any special reason as to how A-1 to A-3 were only remembered and other accused could not be remembered when they were regularly going to the village and taking passengers from the village. Therefore, the trial Court accepting the evidence of PWs 3 and 4 and rejecting the evidence of PWs 1, 5, 6 and 7 is not appreciable and it is only to acquit the accused."

39. We do not see any reason to take any exception to the said findings of the High Court.

40. Although not argued but we may also take note of the fact that according to PW-1, he was assaulted and dragged by Accused Nos. 11 to 24. They have been acquitted. That may lead us to the conclusion that one part of the story implicating the appellants herein in the matter of assault to him is not exceptionable but then the accused formed a common intention/ common object at the spot. Such a large number of injuries both on the deceased as also PW-1 were not possible to be caused only by a handful of persons. It must have taken place within a few minutes. The entire incident was described by PWs 3 and 4 only. It was only when all the passengers fled away, they also fled away. They even did not notice the dead body or PW-1 in an injured condition.

41. Furthermore, it is a well-settled principle of law that the maxim falsus in uno, falsus in omnibus is not applicable in India. If the High court has given benefit of doubt to Accused Nos. 11 to 24, the same by itself may not be sufficient to extend the same benefit to the main accused who took part in a brutal murder of their arch enemy.

42. There cannot be any dispute in regard to the legal proposition that an appellate court while entertaining an appeal from a judgment of acquittal would not ordinarily interfere therewith, if two views are possible. In our attempt to analyse the judgment of the learned Trial Judge, we have noticed very serious infirmities therein both in regard to the legal propositions as also appreciation of evidence. Non-consideration of material facts and consideration of irrelevant facts would be factors which would invite an interference with the judgment of acquittal.

This Court recently in Mahadeo Laxman Sarane & Anr. v. State of Maharashtra [2007 (7) SCALE 137] 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 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 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."

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.}"

43. Which matter, therefore, deserves interference at the hands of the appellate court would depend upon the fact situation of each case. Legal proposition must be applied having regard to the fact of each case.

44. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly.