

PETITIONER:
STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:
DR. M.V. RAMANA REDDY AND ORS.

DATE OF JUDGMENT 14/08/1991

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
PUNCHHI, M.M.

CITATION:
1991 AIR 1938 1991 SCR (3) 600
1991 SCC (4) 536 JT 1991 (3) 421
1991 SCALE (2) 337

ACT:
Indian Penal Code--Sections 148, 302 and 324--Acquittal
of accused--Whether valid and proper on the evidence ad-
duced.
Delay in holding identification parade--Effect of.

HEADNOTE:

One Ram Subba Reddy, an advocate, politician and a trade unionist, was murdered on the night between 14th and 15th April, 1975, at his house in Proddatur, when the deceased is stated to have received fatal blows by lethal weapons whilst his daughter (PW 1), sleeping nearby received injuries when she attempted to go to help her father. According to the prosecution, Accused No. 1 (Respondent No. 1), was a friend and a regular visitor to the house of the deceased, till they fell out on account of trade union activities. Accused No. 1 was the President of the workmen's unions of Andhra Cotton Mills, Proddatur, International Packaging Company, Proddatur and Transport Workers, espousing the cause of workmen and directing their union activities while the deceased, a practising Advocate represented the managements of these companies and tendered legal advice to them in connection with the various labour problems arising in those companies. The deceased who was a lawyer for the companies had advised the accused No. 1 not to resort to violence for settlement of industrial disputes. The fact that infuriated accused No. 1 further was the help which the deceased agreed to provide to PW 11 for setting up an office of INTUC in his own office. This was intended to counter the militant activities of Accused 1 who was in control of most of the labour unions in the town.

According to the prosecution at about 3.30 a.m. on the day of occurrence, PW 1 who was sleeping on the terrace of the house nearby her father, woke up bearing the cries of her father and saw accused 1 with 6 or 7 others stabbing her father with daggers. She raised an alarm and tried to go to rescue her father but she was prevented by three of them from getting up; accused No. 3 had gagged her mouth with his hand and had pinned her down to the cot. Thereafter accused 5 tried to stab her with a dagger twice but on both the occasions she warded off the blows and in the process sus-

tained injuries on her left index finger,

601

thumb and palm extending to another finger. After the assailants left, she got down and informed her mother PW 2 about the incident; she opened the door to PWs 3 and 4, who were sleeping outside. She sent a message to the police through PW S, her neighbour, as telephone lines were cut. The police took up investigation and 19 persons including the respondents were put up for trial before the Additional Sessions Judge, Cuddapah on different charges e.g. criminal conspiracy, rioting and murder, etc. The learned trial judge came to the conclusion that the prosecution had failed to establish the charge of criminal conspiracy under Section 120B, I.P.C. It accepted the testimony of PWs 1 to 5 and held (i) that the incident occurred at 3.30 a.m. on the terrace of the residence of the deceased; (ii) the injuries borne on the fingers of PW 1 were not self-inflicted as suggested by defence and (iii) that the intimation of the incident was to the police without loss of time. Accordingly the trial Judge convicted Accused Nos. 1 and 3 under Sections 148 and 302 and Sec. 324 with the aid of Section 149, I.P.C. and accused No. S under Section: 148, 302 and 324, I.P.C. and sentenced all the three to life imprisonment for murdering Ram Subba Reddy and to rigorous imprisonment for 3 years under section 148, IPC. The other 16 accused were acquitted. The convicted persons appealed to the High Court and the State filed an application for enhancement of the sentence imposed on Accused No. 1 to capital punishment. The High Court allowed the appeal by the convicted persons and acquitted them. Hence this appeal by the State against the order of acquittal, by special leave. The High Court held that the evidence of PW 1 is tainted in that the names of accused 2 and 4 who were strangers to her figure in her statement Exh. P-1 and further her statement regarding identity of Accused 3 and S was unacceptable. The High Court therefore found the evidence led by the prosecution untrustworthy. and thus acquitted the accused appellants before it.

Partly allowing the appeal, this Court,

HELD: On the question of presence of PW 1 in Proddatur on the date of the incident, apart from the oral evidence of PWs 1 to 3 and 5, there is the documentary evidence in the form of the entry Ex. S6 recorded by PW 24 in the general diary on April 15, 1975 at about 4-30 a.m. That entry was made on the information supplied by PW 5. It is clearly stated therein by PW S that he had been told by PW 1 that her father was murdered at his residence. It was on receipt of this information that the police went to the house of the deceased, drew up the inquest report and recorded the statements of those present there including PW 1. The presence of PW 1 is, therefore clearly established

602

by this document prepared within an hour from the time of the incident. This contemporaneous document corroborates the oral evidence of the aforesaid witnesses. [614A.C]

The High Court failed to realise that when an injury is on an accessible part of the body, which the individual can himself reach, such an injury could also be self-inflicted and when a medical witness is asked if it was possible to self-inflict it he would have to answer in the affirmative unless the direction of the injury or such other factors show otherwise. But merely because the medical officer says that they could be self-inflicted, there is no reason to jump to such a conclusion unless circumstances establish such a possibility. In the present case there was hardly any opportunity to self-inflict them. Her not being a left

handler should make no difference because she is bound to use that hand to ward off the blows if her assailant is on that side of her bed. The High Court was not justified in concluding that PW 1 had self inflicted the wounds found on her left hand. This conclusion of the High Court is, to say the least, wholly conjectural and totally against the weight of evidence on record. [615F-616A]

Once it is accepted that PW 1 had slept on the terrace and had sustained the injuries in the incident, her evidence regarding the identity of accused No. 1 who was quite well known to her cannot be doubted. [616G]

The evidence of PW1 is that when she heard the cries of her father she woke up and saw accused No. 1 and six or seven others belabouring him. This means that she did not know and could not identify the companions of accused No. 1. However, when she tried to raise an alarm three of the assailants approached her and pinned her down to the bed, and one of them threatened to stab her. He did carry out his threat as is evidenced from the injuries sustained by her. She was able to identify two of them at the identification parade held on May 23, 1975. This is proved through the evidence of PW 14 who conducted the test identification parades. Now accused Nos. 3 and S had surrendered before the Court on May 13, 1975. PW 14 received the requisition for arranging a test identification parade on May 17, 1975. the identification parade was actually held on May 23, 1975. There is no valid explanation tendered by the prosecution for the delay in holding the identification parades. The High Court was reluctant to place absolute reliance on the evidence of PW 1 regarding the identity of accused Nos. 3 and 5. In the absence of a valid explanation for the delay, the Court did not think that this approach of the High Court can be said to be manifestly wrong to call for intervention. [617A-E]

603

The Court, in the result, partly allowed the appeal in so far as it related to original Accused No. 1-respondent No. 1 set aside the High Court's order acquitting him and restored the order of trial Judge convicting and sentencing him. The Court affirmed the High Court's order of acquittal passed in respect of other accused, giving them the benefit of doubt. [617E-G]

State of Jammu and Kashmir v. Hazara Singh & Anr., [1980] , Suppl. SCC 641, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 7 of 1979.

From the Judgment and Order dated 13.2.1978 of the Andhra Pradesh High Court in Criminal Appeal No. 812 of 1976 and 807 of 1977.

K. MadhaVa Reddy, TVSN.Chari, Narashima P.V.P.L. and Ms. M. Gupta for the Appellant.

R.K. Garg, T. Rama Mohan Raj, N.M. popli and V.J. Francis for the Respondents.

The Judgment of the Court was delivered by

AHMADI, J. Ram Subba Reddy, an advocate, politician' (an ex-MLA) cum trade unionist was done to death when he was sleeping on the terrace of his house in Proddatur, District Cuddapah, on the night 'between 14th and 15th April, 1975. The incident in question occurred at about 3.30 a.m. in which, apart from the deceased Ram Subba Reddy having received fatal blows by lethal weapons, his daughter PW 1

Krishnaveni, aged about 24 years, received injuries when she attempted to 'go to help her father. As many as 19 persons were put up for trial before the learned Additional Sessions Judge, Cuddapah on different charges. Original accused Nos. 1 and 7 to 19 were charged for criminal conspiracy under section 120B; original accused Nos. 1 to 6, 12 and 13 were charged for rioting with deadly weapons under section 148; original accused No. 16 was charged under section 147 along with original accused Nos. 1 to 6, 12 and 13; original accused Nos. 1 to 6, 12 and 13 were also charged for murder under section 302; the said accused alongwith original accused No. 16 were also charged under section 302/149; original accused No. 5 was charged under section 324 and he as well as original accused Nos. 1 to

604

4, 6, 12, 13 and 16 were charged under Section 324/149, I.P.C. To bring home the charges against them the prosecution mainly relied on the testimony of PW 1 Krishnaveni, PW 2 Venkata Subbamma, widow of the deceased, PW 3, Venkat Rami Reddy and PW 4 Kasireddy sambasiva Reddy, both of whom it is claimed were sleeping on the ground floor of the house of the deceased and PW 5 Annapu Reddy Venkata Subba Reddy, a neighbour who arrived at the scene of incident on hearing the commotion and who at the instance of PW 1 lodged the FIR Exh. P-56 at about 4.30 a.m. The learned Additional Sessions Judge accepted the evidence of PWs 1, 2, 3 and 5, PW 4 having turned hostile, and convicted original accused Nos. 1 and 3 under section 148 and section 302 and 324 with the aid of section 149, I.P.C. and original accused' No. 5 under sections 148, 302 and 324, I.P.C., substantively. All the three of them were sentenced to life imprisonment for murdering Ram Subba Reddy and to rigorous imprisonment for 3 years under section 148, I.P.C. No separate sentence was imposed for causing injuries to PW 1. The rest were acquitted of all the charges levelled against them. No appeal was preferred to the High Court against their acquittal but the three convicted accused preferred an appeal to the High Court challenging their conviction while the State appealed for enhancement of the sentence of accused No. 1 from life imprisonment to capital punishment. The High Court doubted the testimony of PWs 1, 2, 3 and 5 and their capacity to identify the assailants and, therefore, acquitted them of all the charges levelled against them. Consequently the State's appeal for enhancement of accused No. 1's sentence also failed. While the State has preferred this appeal against the order of acquittal or' original accused Nos. 1, 3 and 5, no appeal has been preferred against the dismissal of the State's appeal for enhancement of the accused No. 1's sentence. A few facts leading to this appeal may be noticed. The deceased was a practising lawyer and a congressman. He was member of the Legislative Assembly during the 1967, 1972 term. He had his own house in which he resided. Accused No. 1, a medical practitioner, was a trade union activist belonging to the Communist party of India (Marxist-Leninist group) and wielded considerable influence among the working classes. Accused No. 2 was a lower division clerk in the judicial department, District Cuddapah, but was on leave at the material time. He was a close associate of accused No. 1. Accused Nos. 3 and 5 were employees of Andhra Cotton Mills, Proddatur, while accused Nos. 4 and 6 were employees of International Packaging Company, Proddatur, and took part in trade union activities. In the first quarter of 1974 the workers of the International Packaging Com-

605

pany had served the management with a charter of demands and accused No. 1, who was the President of the Union had served the management with a strike notice on the failure of the negotiations which the management countered by declaring a lock-out. Thereafter PW 21 Jutura Ramaniah partner of the company was assaulted on the night of March 30, 1974 for which a case was registered against accused No. 1 and his companions. The deceased who was a lawyer for the company is stated to have advised accused No. 1 not to resort to violence for settlement of such industrial disputes. As the deceased was representing the company the relations between the deceased and accused No. 1 which were cordial were soured and the latter stopped visiting the former. In the month of November 1974, on the advice of the deceased, the management brought workers from Bangalore and started the factory. However the workers' union could prevail upon those workers not to report for work and the unit again came to a standstill within about ten days of commencement. The dispute was referred to the arbitration of three persons but they could not resolve it on account of the uncompromising attitude of the workers led by accused No. 1.

While this unrest continued trouble started brewing with the transport workers union of which accused No. 1 was the President striking work. Here too the management was represented by the deceased. The atmosphere in the township was surcharged and tense. With the intervention of the State Minister the dispute between the transport workers and the owners was settled but so far as the International Packaging Company is concerned its employees did not participate in the meeting called by the Minister. A warrant for the detention of accused NO. 1 under MISA was issued on February 14, 1975 but the same could not be executed as he went underground. On the advice of the Minister the management unilaterally opened the factory w.e.f. March 19, 1975. The deceased had throughout taken a very active interest in ensuring the starting of the factory notwithstanding the stand taken by the union. The union had also complained about the unilateral imposition of certain conditions on the workmen but to no avail. The workers began to report for work though the union was not reconciled. On the other hand since the warrant for accused No. 1's arrest could not be executed a warrant for the attachment of his properties was issued on April 9, 1975.

PW 11 M. Sajjana, Assistant Station Master, Cuddapah, had started an INTUC branch at Cuddapah sometime in December, 1973. Under its banner a youth conference was organised on January 26,

606

1975. PW H presided over that conference and a decision was taken to explore the possibility of starting an INTUC branch at Proddatur with the help of the deceased. Pursuant thereto PW 11 and others visited Proddatur on March 27, 1975 to discuss the matter with the deceased. The deceased promised all possible help and agreed to provide space for the office of INTUC in his own office. Ultimately to counter the militant activities of accused No. 1 who was in control of most of the labour unions in the town a decision was taken to start an INTUC branch in Proddatur w.e.f. April 19, 1975. Pamphlets were issued in this behalf soliciting the co-operation of workers and others. This was the last straw on the camel's back.

The physical condition of the place of occurrence may be noticed to appreciate the ocular evidence. The house faced southward and lay along a public road with open space in the front covered by a compound wall in the front with no

such wall on the remaining three sides. In the front was a verandah and thereafter came the drawing room in which was installed a telephone. Further to the north was a room and beyond that was a hall. Then came another covered verandah with a tin-sheet sloping roof at a height of about 7 feet from the ground level. This was the ground floor accommodation. The staircase leading to the terrace was situated in the hall. This staircase opened in a room leading to the open terrace. This terrace room had an asbestos 'sheet projection' whereunder there was an electric bulb. The terrace had a parapet wall all round of the height of about 3 feet. On the south-west side of the terrace room along the parapet wall there existed a 24 feet long pial of the height of 20 inches and width of 18 inches. A window in the western wall had a cement shade 4 feet x 2 feet in size. Adjacent to that window was a telephone pole hardly five feet away from the wall with the upper end hardly 6-1/2 inches from the cement shade. The prosecution case is that this telephone pole was used by the assailants to launch the attack on the deceased.

The family of the deceased comprised of his wife PW 2, two daughters, one of whom was married and lived with her husband and, the other PW 1 was a medical student, and three sons none of whom was in town on that day. Pw. 1 was studying in the third year at Kakinada and had come home as the college was closed from April 12 to April 20, 1975. PW 1 deposed that on the date of the incident after dinner she and her parents chit-chatted for sometime and thereafter her father went to the terrace as it was summer and retired for the night. She continued to talk with her mother and in the meantime PWs 3 and 4 arrived. They carried their-beddings to the verandah and slept
607

there. PW 3 used to sleep at their house since the last couples of years whereas PW 4 came there occasionally. After they left for the verandah the witness closed the 'ground floor door to the house, carried an anatomy book and went to the terrace to sleep. She read in the terrace light which was under the asbestos projection and then went to bed on the cot laid for her keeping the light on as was the usual practice. Her mother did not sleep on the terrace as she was not allowed to climb the stairs since she had recently undergone an operation. Her father was sleeping on the bed laid on the floor wearing a banian. A hurricane lantern was also kept lighted on account of frequent power failures. At about 3.30 a.m. she woke up hearing the cries of her father and saw accused No. 1 and 6 or 7 others stabbing her father with daggers. She raised an alarm and tried to go to the rescue of her father but she was prevented by three of them from getting up. According to her accused No. 3 had gagged her mouth with his hand and had pinned her down to the cot. Thereafter accused No. 5 tried to stab her with a dagger twice but on both the occasions she warded off the blows and in the process sustained injuries on her left index finger, thumb and palm region extending to another finger. Till the assailants had finished with her father she was pinned down to her bed and thereafter the assailants went to the west, climbed the parapet wall and went down the terrace. She then ran down crying that accused No. 1, whom she knew since quite sometime, and his companions had killed her father. She woke up her mother and informed her of what had happened. On hearing a knock on the main entrance to the house, she opened the door and found PWs 3 and 4 holding a torch. On inquiry she told them that accused No. 1 and his companions had killed her father and she too was injured. She

learnt from them that they had seen accused No. 1 and 4 or 5 others slide down the telephone pole situated to the west of the house. She then tried to contact the police on phone but found that the same was disconnected. Since PW 5 a neighbour was there she requested him to go to the police station and fetch the police. On receipt of information a Sub-Inspector of police and a few constables arrived by about 5.00 or 5.30 a.m. to whom she narrated the incident whereupon her statement was recorded which has been introduced on record as Exh. P-1. The Sub-Inspector held the inquest on the dead body between 7.00 and 10.30 a.m., drew up a panchnama of the scene of occurrence, attached the anatomy text book and other blood stained articles from the terrace, including the electric bulb from the socket of the electric holder on the terrace. At the identification parade held later she identified accused Nos. 3 and 5 as the companions of accused No. 1. In cross-examination she denied the suggestion that accused Nos. 3 and 5 were shown to her while they were in the sub-jail before

608

she was asked to identify them. It transpires from her cross-examination that the defence case was that she had not slept on the terrace, that the cut injuries on her left hand were self-inflicted and that she was falsely implicating accused Nos. 3 and 5 as they had supported her rival Padma in a college election when she was in the B.Sc. class. It was also suggested that photographs of accused Nos. 3 and 5 were shown to her from a group photo obtained from A.C. Mills Union Office. It may be mentioned that the suggestions made to this witness in regard to the identity of accused Nos. 3 and 5 are self contradictory in the sense that if the suggestion that she was falsely involving these two accused because they had helped Padma who contested the election against her is correct it would follow that they were known to her since long in which case there would be no need to point them out to her while they were in the sub-jail or to show their photographs to her. Suffice it to say that nothing very striking, except minor contradictions, has been elicited in her cross-examination which would shake her credibility. PW 2, her mother, corroborates her say in regard to the incident and the involvement of accused No. 1.. PW 3 has deposed that since he and PW 4 anticipated danger to the life of the deceased on account of the disturbed management-labour relationship they slept at the house of the deceased. PW 3 states that he saw eight persons sliding down the telephone pole..Amongst them were accused Nos. 1 to 5 and S.V. Subbarayadu whom he identified as accused No. 6. PW 4 has stated that on the date of the incident he had heard about the murder when he was at his residence at about 4.30 a.m. He was treated as hostile and was allowed to be cross-examined by the prosecution. PW 5, whose house was only about 100 yards away, deposed that when he was sleeping on his terrace he heard cries at about 3.30 a.m. and went to the house of the deceased. PWs 1 to 4 were present there alongwith other neighbours. PWs 1 and 2 were weeping while PWs 3 and 4 were trying to console them. PW 1 asked him to inform the police that her father was murdered. He then went and informed the police about the incident and returned with the police to the scene of offence. Thus the evidence of this witness also corroborates PW 1.

The inquest was held between 7.00 and 10.30' a.m. The statements of PWs 1 to 5 were also recorded and certain articles were attached from the terrace. These included blood stained bed-sheets, pillows, towel, shawl, shrit, etc., and

Cunningham's text book on human anatomy which PW 1 was reading before going to bed. The telephone connection was found snapped and there were drops of blood from the place where the dead body was found till the drawing room downstairs where the telephone was installed which corroborated the story of PW 1. The banian worn by the deceased, was blood stained and had cuts corresponding to injuries found on the chest of the deceased. Several other articles found on the person of the deceased were blood stained. There were as many as 33 injuries on the person of the deceased which is clearly indicative of the involvement of a group of persons in the killing. This stands corroborated by the post-mortem report. On the cot which was occupied by PW 1 there were blood drops on the bed, bed cover and bed sheet. The reports of the Chemical Analyser and Serologist, Exhs. P-18 and P-19, show that all the articles were stained with human blood. A lantern was burning nearby and the electric light on the terrace was also on. This inquest panchnama Exh. P-6 leaves no room for doubt that the incident occurred on the terrace portion of the residence of the deceased.

PW 1 was medically examined by the medical officer PW 13 on the same day at about 11.45 a.m. She had incised wounds on the left index finger $1\frac{1}{2}$ " x $\frac{1}{4}$ ", on the left hand below tile wrist $1\frac{1}{8}$ " x $\frac{1}{8}$ " and on the middle of the left palm $1\frac{1}{8}$ " x $\frac{1}{8}$ " x $\frac{1}{8}$ " and on the little finger of left hand $\frac{1}{2}$ " x $\frac{1}{8}$ " x $\frac{1}{8}$ ". This would indicate that she received these injuries while trying to ward off the blows.

Identification parades were held on May 23, 1975. In the first one accused Nos. 7, 10 and 11 were made to stand with non-suspects, in the second parade accused Nos. 12, 13 and 16 were made to take their positions along with several others and in the last parade accused Nos. 17, 18 and 19 were concerned. PW 1 could not identify any one from amongst the said accused persons in all the three parades. Out of the three parades PW 3 identified all the three accused of the second parade. In the evening an identification parade was held concerning accused Nos. 2 to 6 and 9. PW 1 could identify. 'accused Nos. 3 and 5 while PW 3 could not identify any of them.

The defence of all the accused was of total 'denial and false involvement. In fact accused No. 1 contended that he was out of station from May 13, 1975 and learnt of the murder on his return to Proddatur. When he learnt of his false involvement he surrendered before the Court. Accused Nos. 12, 13 and 16 contended that they were shown to PW 3 before the identification parade while accused Nos. 3 and 5 pleaded that the police had taken a group photograph in which they figured from the union office and had shown it to PW. Accused Nos. 7, 11, 14, 15, 17 and 19 were not examined under section 313 of the Criminal Procedure Code as no evidence incriminating them was tendered on record. No defence witness came to be examined.

610

The learned Additional Sessions Judge, Cuddapah, came to the conclusion that the prosecution had failed to establish the charge of criminal conspiracy under section 120B, I.P.C. He came to the conclusion that the evidence on record, however, indicated that accused Nos. 1 to 6 had a direct and strong motive to kill the deceased and the likelihood of the others having shared their feelings could not be ruled out altogether. The direct testimony of PWs 1 to 5 and the other circumstantial evidence adverted to earlier established beyond any manner of doubt that the incident occurred at

3.30 a.m. on the terrace of the residence of the deceased. The learned Judge held that intimation of the incident was given to the police without loss of time and PW 1 had lodged her complaint by about 6.00 a.m. when the police came to the scene of occurrence alongwith PW 5 who had gone to call them. The suggestion that injuries found on the person of PW 1 were selfinflicted or that PW 2 was giving false evidence as she was promised financial help to the tune of Rs. 1,50,000 were brushed aside by the learned Judge as totally imaginary, and unfounded. The learned Judge, however, did not treat PW 1's complaint Exh. P-1 as admissible in evidence as he came to the conclusion that it was hit by section 162 of the Code since information regarding the incident had reached the police station through PW 5. The learned trial Judge, therefore, accepted the evidence of PWs 1, 2, 3 and 5 as reliable and convicted them as stated earlier while acquitting their companions.

The said three convicted accused preferred an appeal, being Criminal Appeal No. 812 of 1976, in the High Court. The State also preferred an appeal for awarding capital punishment to accused No. 1, being Criminal Appeal No. 807 of 1976. The State's appeal came to be dismissed and that is where the matter rests. However, the appeal by the convicted accused came to be allowed and the appellants were acquitted. It is against the said order of acquittal that the State has approached this Court by way of special leave. It would, therefore, be proper to ascertain the grounds on which the impugned order of the High Court is founded.

The High Court came to the conclusion that the complaint of PW 1 was not recorded at the time it purports to have been for if it were so it would not have reached the concerned Magistrate as late as 1.40 p.m. In that case even the inquest report Exh. P-6 would not have been delayed till 10.55 p.m. The explanation for the delay found in Exh. P-25 cannot be accepted at its face value. The evidence of PW 1 is tainted, in that, although she knew accused No. 1 as he visited her father quite often the rest of the assailants were total strangers and yet

611

the names of accused Nos. 2 and 4 appear in her statement Exh. P-1 which goes to show that she was tutored into giving their names. That according to the High Court raises a serious doubt regarding her trustworthiness. On the question of identity of accused Nos. 3 and 5, the High Court points out that even before the identification parade she had told the Magistrate that she would be able to identify only two persons and later pointed an accusing finger at accused Nos. 3 and 5 at the identification parade. This, says the High Court, reinforces the defence version that she was shown the group photo before she was called to identify the accused persons. The identification parade was delayed upto May 23, 1975 as till then the photograph was not secured by the police. In the circumstances the High Court did not find the evidence of PW 1 regarding the identity of accused Nos. 3 and 5 acceptable. The High Court also held that the injuries on the left hand of PW 1 were in all probability self-inflicted, more so because she is not a left-hander. So also the absence of blood stains on the bed lying on the floor of the terrace casts a serious doubt regarding her version of the incident. The High Court found the prosecution story that the electric light as well as the kerosene lamp were kept on throughout the night rather unusual. In this view of the evidence, the High Court did not consider PW 1 a truthful witness. As regards PW 3 the High Court found his version that he slept at the residence of the deceased since

sometime unacceptable. It also noticed that PW 3 claimed to know accused Nos. 1 to 6 by their names and he gave out those names to the police and yet he could not identify any of them at the test identification parade. For this reason the High Court did not place reliance on his evidence. The High Court, therefore, found the evidence led by the prosecution untrustworthy and acquitted the accused/appellants. Hence the present appeal.

Mr. Madhav Reddy, the learned counsel for the appellant-State contended that the presence of PW 1 at the time of the incident was not only deposed to by PWs 2 and 3 but also by PW 5. The presence of PW 3 at the house at about 4.30 a.m. is deposed to even by the hostile witness PW 4. He, therefore, submitted that the presence of PWs 1 to 5 is clearly established and is reinforced by the evidence of PW 13, the medicalman, who examined PW 1 at the Government Hospital at about 11.45 a.m. on the same day. The Sub-Inspector PW 24 also deposes that PW 5 had told him that PW 1 had sent him to report the murderous assault on her father. He submitted that once the presence of PWs 1 and 3 was established there was no reason to doubt their testimony merely because PW 3 was honest enough not to falsely involve any one by pointing an accusing finger at the identification

parade. He submitted that even PW 1 was honest enough to identify only two persons, namely, accused Nos. 3 and 5, whom she had an occasion, to see near her cot on the terrace. To reject her evidence as regards the identity of these two accused on the specious plea that their photographs were shown to her'. before the identification parade would be, to say the least, unjust. If she could be shown the photograph why not PW 3 also! He also submitted that it was preposterous to hold that the injuries found on the left hand of PW 1 were self-inflicted. The absence of blood on the bed sheet of the bed on the floor of the terrace clearly explained that the deceased must have rolled onto the terrace floor where the presence of blood was noticed. He, therefore, submitted that the High Court had reversed the well reasoned judgment of the trial court on totally imaginary grounds which had resulted in grave miscarriage of justice.

Mr. R.K.Garg, learned counsel for the respondents/accused, submitted that this Court should not interfere with the decision of the High Court' unless it' finds the view taken by the High Court as perverse and wholly improper, resulting in miscarriage of justice. In support he cited State of Jammu & Kashmir v. Hazara Singh & Anr., [1980] Supp, SCC 641. He also submitted that the investigating agency had shown extra zealotness as the deceased was a prominent lawyer and an ex-MLA. Supporting the view of the High Court he urged that the presence of PW 1 was highly doubtful and in any case it would be risky to rely on her interested testimony regarding the identity of accused Nos. 3 and 5. The 'absence of blood on the bed shows that the same was planted after the event to concoct the story that PW 1' was sleeping on the cot and not downstairs with her mother PW 2 who' had recently undergone an operation.' Once the evidence of PW 1 is excluded there is no direct testimony since PW 3 had not identified any of the accused at the identification parades. In short he supported the judgment of the High Court and prayed that we should not interfere in exercise of our extra-ordinary powers under Article 136 of the Constitution.

The motive for the commission of the crime was the industrial unrest occasioned on account of the strike by the

workers of the International Packaging 'Company and later by the transport workers. Indisputably accused No.1 commanded considerable clout over the employees of various industrial units such as the International Packaging Company, Andhra Cotton Mills and the transport industry in Proddatur.. Accused No. 1 was championing the cause of the workmen during the. prolonged agitation and strike by the workers of the Inter-

613

national Packaging Company and also spearheaded the agitation by the transport workers. The deceased was the lawyer for the managements and was considered the main obstacle, in the realisation of the workers* demands. There was, therefore, animosity between the deceased and accused No. 1. This is more than clear from the oral evidence of PWs 2,3,4, 10, 11,21 to 23 and from the documentary evidence tendered as Exhs. P-2 to P-5, P-30 to P-37 and P-40 to P-55. In view of this overwhelming documentary evidence which corroborates the ocular evidence of the aforesaid prosecution witnesses, it is established beyond any manner of doubt that the rivalry between the trade unions headed by accused No. 1 and the managements. advised by the deceased had assumed ugly proportions. The starting of the INTUC branch at Proddatur with the active participation of the deceased was perhaps the last straw on the camel's back which worsened the relations between accused No. 1 and the deceased. This is the motive according to the prosecution for the crime in question. But as has often been commented bitter animosity can be a double edged weapon which may be instrumental for deliberate false involvement or for the witnesses wrongly inferring and strongly believing (without having actually witnessed it) that the crime must have been committed by the rival group. This possibility has to be kept in mind while evaluating the prosecution evidence regarding the involvement of accused No. 1 and his companions in the commission of the crime.

There is no dispute regarding the description of the residential house of the deceased and the location of the telephone pole to the west thereof. It is not disputed that the said pole could be conveniently used for slidding down from the terrace. So also the fact that the telephone connection was snapped is not put in issue. The fact that the incident occurred on the terrace is not disputed but the fact that the deceased was sleeping on the floor and PW 1 was sleeping on the cot is disputed. It was suggested in the course of cross-examination of the prosecution witnesses that the deceased alone was sleeping on the cot on the terrace and PW 1 was in fact not in town and even if she was in town she must have been sleeping with PW 2. Lastly the fact that the deceased died a homicidal death on receipt of as many as 33 injuries is not disputed- The find of human blood on the various articles attached by the police, i.e. those worn by the deceased as well as PW 1 and those found lying on the terrace, is clearly established by the reports Exhs. P-18 and P-19 which have not been questioned. It is in this background that we must consider if the High Court has committed any grave error requiring interference under Article 136 of the Constitution.

614

On the question of presence of PW 1 in Proddatur on the date of the incident, apart from the oral evidence of PWs 1 to 3 and 5, there is the documentary evidence in the form of the entry Exh. 56 recorded by PW 24 in the general diary on April 15, 1975 at about 4.30 a.m. That entry was made on the information supplied by PW 5. It is clearly stated therein

by PW 5 that he had been told by PW 1 that her father was murdered at his residence. It was on receipt of this information that the police went to the house of the deceased, drew up the inquest report and recorded the statements of those present there including PW 1. The presence of PW 1 is, therefore, clearly established by this document prepared within an hour from the time of the incident. This contemporaneous document corroborates the oral evidence of the aforesaid witnesses. She was examined by the medical officer PW 13 on the same day at about 11.45 a.m. In addition thereto, the find of the Anatomy book and slippers on the terrace, also lends assurance to the prosecution evidence in this behalf. Therefore, even if it is assumed that the time of recording her statement' Exh. P-1 is not correctly recorded, her presence at the scene of offence at the material time is established beyond a shadow of doubt.

Accused No. 1 was a friend of the deceased till they fell out. He was a regular visitor to the house of the deceased and, therefore, PW 1 knew him quite intimately. She has frankly admitted that others were strangers but she was able to identify accused Nos. 3 and 5 because she had an opportunity to see them from close quarters when they were near her cot. The existence of a cot and a bed on the terrace is indicative of the fact that two persons were sleeping on the terrace. There were only three family members present on the date of the occurrence, one of whom was PW 2 who had undergone surgery only recently and was advised not to climb the stairs. It is, therefore, obvious that the deceased and PW-1 slept on the terrace.. The submission that the bed on the floor was planted is based on the fact that there was no blood on the bed-sheet of that bed. But this submission overlooks the existence of blood drops nearabout the bed. The dead body of the victim was also found lying on the terrace floor nearby. The High Court relied on the photograph Exh. D-4 for holding that the bed was fresh and unused. But as is apparent from the, crossexamination of PW 24 that the said photograph shows "the bed-sheet spread over the bed on the cot is tucked beneath the bed". Thus the said photograph is not of the bed on the floor. The High Court seems to have misread the evidence. Secondly, it is clear that the dead body was lying at some distance from the bed suggesting that the deceased had rolled over during the night or in the course of the attack. The

615

other articles lying nearby e.g towel, shawl, etc. were blood stained and there were fresh drops of blood between the dead body and the western waif leading to the telephone pole. Since there were Only three family members one of whom, PW 2, had undergone an operation in the recent past, it is difficult to understand how PW 1 alone could shift the dead body of her father from the cot to the place where it was found to concoct evidence against the accused. It is too much to attribute such intelligence to PW 1 or for that matter PW 3 also. If the dead body which was bleeding had in fact been shifted there would have been blood drops from the cot to the place where it was found. Besides, where was the time for the entire exercise? PW 5 was sent to call the police and he had returned with the police after his report was entered in the general diary at 4.30 a.m.. It. therefore, seems difficult to believe that the bed on the floor was planted to support the prosecution version that PW 1 slept on the terrace that night..

The medical officer PW 13 found four incised wounds on the left hand of PW 1, possible by a sharp cutting weapon like a dagger or knife. These injuries were indeed minor in

nature. The High Court has concluded that the possibility of these injuries being self-inflicted cannot be ruled out, PW 1 says she received these injuries in the process of warding off the blows aimed at her. PW 13 also deposes that these injuries could have been received while trying to ward off the blows on her. Thus the medical evidence supports her say. However, in cross-examination he stated that all the four injuries were cut injuries and not stab wounds. In response to a suggestion made in cross-examination he stated that the possibility of the injuries being self-inflicted was not an impossibility. Merely from this suggestion and PW 1 not being a left hander the High Court concluded that the possibility of the injuries being self-inflicted could not be ruled out. With respect, the High Court failed to realise that when an injury is on an accessible part of, the body which the individual can himself reach, such any injury could also be self-inflicted and when a medical witness is asked if it was possible to self-inflict it he would have to answer in the affirmative unless the direction 'of the injury or such other factors show otherwise. But merely because the medical officer says that they could be self-inflicted, there is no reason to jump to such a conclusion unless' circumstances establish such a possibility. In the present case there was hardly any opportunity to self-inflict them.. Her not being a left hander should make no difference because she is bound to use that hand to ward off the blows if her assailant is on that side of her bed. We, therefore, feel that the High Court was not justified in concluding that PW 1 had self inflicted the wounds found on her left hand. With

616

respect, this conclusion of the High Court is, to say the least, wholly conjectural and totally against the weight of evidence on record.

The delay in Sending the FIR Exh. P-1 to the Magistrate has been seriously commented upon by the High Court while rejecting the explanation given in Exh. P-25. This comment has lost its significance as the said document has not been admitted in evidence by both 'the courts below on the ground that it is hit by section 162 of the Code. We would have examined the explanation if that document had formed part of the record.' Any way that cannot impinge on the credibility of PW 1 if her evidence is otherwise acceptable, which we find it is'.

On the question of identity it is clear from the evidence of PW 1 that accused No. 1 was known to her quite well since before the incident. She could, therefore, have no difficulty in identifying him even in poor light. Immediately after the accused fled she ran down and informed her mother that accused No. 1 and his companions had killed her father. Since PW 1 had not disclosed the name of accused No. 1 as one of the assailants to PW 5, the latter did not speak about him to the police and hence his name does not appear in the FIR recorded at 4.30 a.m. Accused No. 1 pleaded an alibi: which he miserably failed to probabalise. The absence of names of assailants in the general diary entry made on the basis of information supplied by PW 5 at the behest of PW 1 has weighed considerably in the High Court doubting the version regarding the involvement of accused No. 1 in the commission of the crime. It must, however, be realised that PW 1 had disclosed the name of accused No. 1 at the earliest point of time when the complaint Exh. P-I and the inquest report Exh. P-6 were recorded. It must also be realised that, PW 1 was under terrible strain at that time. Not only had this young girl lost her father in a ghastly assault,

she had also to look after her ailing mother: and console her. She frantically tried to inform the police on telephone but found the instrument dead with the wires snapped. She, therefore, asked this young boy aged 'about 16 years, PW 5, to go to the police station and fetch the police. There was hardly-any time to give details of the incident. Under the circumstances the absence of the name of accused 'No. 1 as One of the assailants in the entry made in the general diary at the instance of PW 5 is quite understandable. Once it is accepted that PW 1 had slept on the terrace and had sustained the injuries in the incident, her evidence regarding the identity of accused No. 1 who was quite well known to her cannot be doubted.'We are, therefore, of the view that the High Court was not justified in disturbing the view taken by the trial court in this behalf.

617

That takes us to the question of the involvement of accused Nos. 3 and 5. The evidence of PW 1 is that when she heard the cries of her father she woke up and saw accused No. 1 and six or seven others belabouring him. This means that she did not know and could not identify the companions of accused No. 1. However, when she tried to raise an alarm three of the assailants approached her and pinned her down to the bed, and one of them threatened to stab her. He did carry out his threat as is evident from the injuries sustained by her. She was able to identify two of them 'at the identification parade held on May 23, 1975. This is proved through the 'evidence of PW 14 who conducted the test identification parades- Now accused Nos. 3 and 5 had surrendered before the court on May 13, 1975. PW 14 received the requisition for arranging a test identification parade on May 17, 1975. The identification parade was actually held on May 23, 1975. There' is no valid explanation tendered by the prosecution for the delay in holding the identification parades. The defence has suggested in the cross-examination of PW 1 and PW 25 that in the meantime the accused who were in custody were shown to the witnesses and the police had secured a group photograph in which accused Nos. 3 and 5 figured to facilitate their identification. The High Court was, however, reluctant to place absolute reliance on the evidence of PW 1 regarding the identity of accused Nos. 3 and 5. In the absence of a ,valid explanation for the delay we do not think that this approach of the High Court can be said to be manifestly wrong to call for our intervention.

In the result this appeal is partly allowed insofar as it relates to original accused No. 1 i.e., respondent No. 1 before us. The High Court's order acquitting him is set aside. The appeal is, however, dismissed so far as original accused Nos. 3 and 5 i.e., respondent Nos. 2 and 3 before us are concerned- We restore the order of conviction and sentence of original accused NO. 1--respondent No. 1--recorded by the learned Additional Sessions Judge, Cuddapah for his involvement in the crime with several other unknown persons. We, however, give the benefit of doubt to original accused Nos. 3 and 5, i.e, respondent Nos. 2 and 3 and confirm the order of their acquittal recorded by the High Court. The original accused No. 1--respondent No. 1 will submit to his bail forthwith- The bail bonds in respect of other two respondents will stand cancelled.

Y.L.
allowed

Appeal partly

618

JUDIS