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D.V. SHANMUGHAM AND ANR.

v.

STATE OF ANDHRA PRADESH

APRIL 25, 1997

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[G.N. RAY AND G.B. PATTANAIK, JJ.]

*Penal Code, 1860—Sections 302, 307, 302/149, 324—Murder—Grievous injuries on head of accused—Prosecution failed to explain such injuries—It is Obligatory on the prosecution to explain injuries on the accused when those are of grievous nature—All eye witnesses are related to deceased and thus could be interested—No explanation as to how blood-stained stones were found at far off place from occurrence—Prosecution witnesses were not sure about the place of occurrence—Independent witness not examined though present at the time of occurrence—Hence, inference can be drawn that the prosecution did not present true version as regards role played by accused—Co-accused who was ascribed same role as accused given the benefit of doubt by High Court—Held, accused/appellant no. 1 is also entitled to benefit of doubt and his conviction and sentence set aside—However, enough evidence for conviction of appellant No. 2—Hence his conviction upheld.*

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*Criminal trial—Appreciation of evidence—Independent witnesses available but not examined—Only related witnesses were examined by the prosecution—Held, in such a situation the prosecution case has to be scrutinised with more care and caution.*

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*Constitution of India—Article 136—Appreciation/reappraisal of evidence—Supreme Court can examine the evidence if appreciation of such evidence by the court below on the face of it appears to be erroneous causing miscarriage of Justice.*

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**According to prosecution, accused and the complainant were from same village. Some incident had happened between them in respect of which a complaint had been lodged and on this account there was ill feeling between both the groups.**

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**On 22.9.90 Accused A-1 and A-2 on some misunderstanding picked up a quarrel with N and challenged him. The said N was a relative of the complainant. One the same day at 10 PM, when the complainant PW-1 and**

the deceased M were returning from a theatre the five accused persons formed themselves into an unlawful assembly and attacked PW-1 and M with deadly weapons. While A-1 caught hold of deceased M, A-2 stabbed him with a knife on the abdomen and M fell down wounded, when PW-1 intervened he was also stabbed with a knife by A-2 on his left hand and A-1 dealt a blow with a stick on his right hand. PW-1 then raised an alarm and his relatives including S, the other deceased came out of their house and rushed towards M. The accused persons also attacked these people and while A-3 caught hold of S, A-2 stabbed him with knife on his abdomen and caused fatal injuries. The injured persons were taken to the hospital. M died during the same mid-night on account of shock and haemorrhage as a result of injuries sustained by him. S.I. recorded the statement of the S, who died on the next day. On the basis of the information given by PW-1 the investigation proceeded and charge sheet was filed against all the five accused.

The Additional Sessions Judge convicted all the accused other than A-2 under Sections 302/149, 148, 307/149, 324/149 IPC and A-2 was convicted under Sections 302, 307, 324, 324/149 IPC and all of them were sentenced accordingly.

In appeal, High Court set aside the conviction of the accused A-3, A-4 & A-5 and acquitted them of all charges and also set aside the conviction and sentence of A-1 under Sections 148, 307/149, and 324/149 IPC. His conviction under Section 302/149 was modified to one under Section 302/34 and his sentence for imprisonment for life was confirmed. His conviction under Section 324 for causing hurt to PW 2 was also maintained. So far as A-2 is concerned, his conviction and sentence passed under Section 148 and 324/149 was set aside. However, the conviction and sentence passed by the Sessions Judge for the offence under section 302 and 307 IPC was confirmed by the High Court. Hence, this appeal.

The appellants contended that prosecution was guilty of suppressing the genesis and the origin of the occurrence in as much as no explanation has been offered for the injuries sustained by the appellants, more particularly, the injuries to A-1 which was grievous in nature and the prosecution was also guilty of shifting of place of occurrence. It was also contended that the role ascribed to A-1 and A-3 being identical and the High Court having re-appreciated the evidence and given benefit of doubt to A-3 and when there were same infirmities in relation to the role ascribed to A-1,

A A-1 was also entitled to benefit of doubt.

The respondent State contended that the prosecution evidence having been scrutinised by the Sessions Judge and the High Court and having been accepted by the two Courts below it would not be proper for this Court to interfere with the conviction in exercise of powers under Article 136 of the Constitution.

Disposing of this appeal, this Court

HELD : 1. Principle of Criminal Jurisprudence cast an obligation on the prosecution to explain the injuries on the accused particularly when the injuries are of grievous nature. That apart in appropriate case there is no bar on the power of this Court even to examine the evidence if the appreciation of the evidence by the Courts below on the face of it appears to be erroneous and such erroneous appreciation causes miscarriage of justice. The injuries on A-1 was of such nature that it cannot go unnoticed by the witnesses to the occurrence more so when the medical evidence is to the effect that there must be profused bleeding. The prosecution failed to explain such injuries and such non-explanation lead to an inference that the prosecution has not presented the true version so far as the role of A-1 is concerned. Hence, the High Court committed gross error in coming to the conclusion that non-explanation of injuries on A-1 is not material.

[1001-G-H; 1002-A-B]

*Lakshmi Singh and Others v. State of Bihar*, [1976] 4 SCC 394, relied on.

2.1. The prosecution witnesses were also not sure as to where the occurrence took place. It also appeared from the evidence of PW-2 and PW-8 that there were several other people who witnessed the occurrence and they are not the residents of that locality. If such independent witnesses were available and yet were not examined by the prosecution and only those persons who are related to the deceased were examined then in such a situation the prosecution case has to be scrutinised with more care and caution. [1002-G-H]

2.2. It is rightly contended by the appellant that the witnesses ascribed the role of catching hold of M by A-1 and role of catching hold of S by A-3 and the High Court gave the benefit to A-3 since the witnesses had not narrated the same to the police when examination under Section 161

Cr. P.C. took place and therefore the same self infirmities having crept in when the prosecution witness stated about catching hold of M by A-1, the said A-1 is also entitled to the benefit of doubt. On account of such infirmities in the prosecution case and more particularly when the prosecution has failed to offer any explanation for the grievous injuries sustained by A-1 on his head and the High Court has already found that the said injury was caused in course of incident, A-1 is entitled to benefit of doubt and so his conviction and sentence passed under section 302/34 and 324 IPC is set aside. [1003-A-D]

3. As far as the injuries on A-2 is concerned, those are of simple and superficial in nature and the prosecution is not bound to explain such minor and superficial injuries. That apart where the evidence is absolutely clear, cogent, and consistent coming from an independent source, it far outweighs the effect of the omission on the part of the prosecution to explain injuries on the accused. In such a case a conviction can be based notwithstanding injury being explained or not. It has been consistently stated by all the eye-witnesses to the occurrence that A-2 stabbed M and S on their abdomen with the knife. It is also corroborated by the medical examination and the post-mortem Reports. Even in the earliest version in the FIR, it had been categorically stated that A-2 stabbed deceased with a knife on his abdomen. The accused cannot be given benefit of doubt in view of such clinching evidence notwithstanding the non- explanation of the injuries found on the person of the accused especially when they were simple and superficial in nature. The prosecution case against A-2 has been proved beyond reasonable doubt and his sentence and conviction passed by the High Court does not warrant any interference. [1003-F-H; 1004-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 647 of 1994.

From the Judgment and Order dated 15.4.94 of the Andhra Pradesh High Court in CrI. A. No. 695 of 1993.

K. Parasaran and V. Krishnamurthy for the Appellants.

K. Amreshwari and G. Prabhakar for the Respondent.

The Judgment of the Court was delivered by

PATTANAIAK, J. This appeal is directed against he judgment of the

- A High Court of Andhra Pradesh dated 15th April 1994 in Criminal Appeal No. 659 of 1993 arising out of Sessions Case No. 251 of 1991. The two appellants alongwith three others stood charged of having committed several offences and were tried by the Additional Sessions Judge, Chittoor at Tirupati and by judgment dated 9th July, 1993 all of them were convicted under different sections of the Penal Code. All of them except A-2 were convicted under Section 302/149 IPC and were sentenced to imprisonment for life. They were also convicted under Section 148 and sentenced to imprisonment for one year, under Section 307/149 they were sentenced to imprisonment for five years and under Section 324/149 were sentenced to imprisonment for one year, all the sentences have been directed to run concurrently. A-2 was convicted under Section 302 for causing murder of Mohan and Sekhar and was sentenced to imprisonment for life, convicted under Section 307 and sentenced to rigorous imprisonment for 5 years and a fine of Rs. 200 in default imprisonment for 2 months, convicted under Section 324 IPC and sentenced to imprisonment of one year, and 324/149 IPC and sentenced to imprisonment for one year, sentences to run concurrently. In appeal, the High Court by the impugned judgment set aside the conviction of accused Nos. 3, 4 and 5 and acquitted them of all the charges. The High Court also set aside the conviction and sentence of accused No. 1 under Sections 148, 307/149 and 324/149 IPC. His conviction under Section 302/149 was to modify one under Section 302/34 and sentence of imprisonment for life was confirmed. His conviction under Section 324 for causing hurt to PW-2 was also maintained. So far as accused No. 2 is concerned the High Court confirmed the conviction and sentence passed by the learned Sessions Judge for the offence under Sections 302 and 307 IPC. His conviction under Sections 148 and 324/149 and the sentence passed thereunder was set aside and thus the present appeal.

The prosecution case in nutshell is that all the accused persons belong to village Dasarimatam and the complainant party belong to the same village. Some incident had happened between the two groups on 6th May, 1990 in respect of which a complaint had been lodged by accused No. 1. On account of the same there was ill feeling between the two groups and on the date of occurrence on 22nd September, 1990 at 8.00 p.m. when one Natarajan was coughing on account of his fever the accused No. 1 was passing by that road on his scooter. He took this to be a taunting, and therefore, brought his brother accused No. 2 and picked up quarrel and challenged him. Said Natarajan was a relation of the complainant. Shortly

thereafter at 10 p.m. the complainant PW 1 and the deceased - Mohan were returning from a theatre and when they had reached the house of one V. Murli the five accused persons formed themselves into an unlawful assembly and attacked the complainant and the deceased with deadly weapons. While accused No. 1 caught hold of deceased - Mohan accused No. 2 stabbed him with a knife on the abdomen and Mohan fell down wounded. When the complainant, PW-1 intervened he was also stabbed with a knife by accused No. 2 on his left hand and accused No. 1 dealt a blow with a stick on the right hand. PW-1 then raised an alarm and on hearing the cries his relatives including Sekhar who is the other deceased came out of their houses and rushed towards Mohan. The five accused persons then also attacked these people and while accused No. 3 caught hold of Sekhar, accused No. 2 stabbed him with knife on his abdomen and caused fatal injury. These accused persons more particularly accused No. 4 and 5 hurled stones which caused injury to the member of the complainant group. Accused No. 1 also stabbed one Ravi Kumar with a knife on his left elbow, as a result of which said Ravi Kumar was injured. The injured persons were taken to the hospital for treatment and Mohan died during the mid-night on account of shock and haemorrhage as a result of the injuries sustained by him. The sub-Inspector of Police, East PS, on receiving the information about the incident rushed to the hospital and recorded the statement of injured Sekhar at 5 a.m. on 23rd September, 1990 and Sekhar ultimately died in the hospital on 24th September 1990 at 9.25 p.m. On the basis of information given by PW-1 the investigation proceeded and on completion of investigation charge sheet was submitted against the five accused persons as already stated and on being committed they stood their trial.

The prosecution to establish the charges against the accused persons examined as many 23 witnesses and exhibited a large number of documents. The defence did not examine any witness but exhibited several documents including the former statements of the prosecution witnesses recorded under Section 161 Cr. P.C. for the purpose of contradicting them during the course of their examination during trial. The learned Sessions Judge on scanning the evidence on record came to the conclusion that the prosecution witnesses are reliable and basing upon their testimony convicted the accused persons and sentenced them as already stated. The High Court, however, in the appeal re- appreciated the evidence led by the prosecution and came to the conclusion that the prosecution has been able

- A to establish the charge beyond reasonable doubt with regard to the role played by accused No. 1 and 2 for causing injuries to deceased - Mohan on account of which Mohan ultimately died. But so far as the injuries caused on Sekhar though the prosecution has been able to establish the role ascribed by accused No. 2 on that score but the role ascribed to accused No. 3 and 5 have not been established beyond reasonable doubt.
- B In other words, the High Court discarded the evidence of the eye-witnesses so far as they ascribed different parts played by accused No. 3, 4 and 5 in forming the alleged unlawful assembly and in assaulting the complainant party essentially because none of them in their earliest version to the police had implicated these accused persons. Having come to the aforesaid
- C conclusion the High Court held that none of the charges against accused No. 3, 4 and 5 can be said to have been established by the prosecution and as such they were acquitted of the charges. But relying upon the evidence of the self-same prosecution witnesses the High Court came to hold that the role ascribed to accused No. 1 and 2 in causing injuries on deceased -
- D Mohan and sekhar may be held to have been established beyond reasonable doubt, and therefore, convicted A- 2 under Section 302 IPC and A-1 under Section 302/34 IPC. The High Court also convicted these accused 1 and 2 who are the appellants in this appeal under Section 324 IPC for causing hurt to PW-2 and PW-1 respectively and further convicted accused No. 2 under Section 307 IPC for attempting to commit the murder
- E of PW- 7. It may be stated that the High Court gave a positive finding on re-appreciating the evidence that accused No. 4 and 5 have not pelted stones as narrated by the prosecution witnesses and this finding will have a vital bearing in deciding the present criminal appeal. It may also be stated that the State has not preferred any appeal against the acquittal of accused
- F No. 3, 4 and 5 which order of acquittal has thus become final.

- Mr. K. Parasaran, the learned senior counsel appearing for the two appellants argued with emphasis that no doubt two persons Mohan and Sekhar have died in the course of occurrence but the prosecution story as
- G unfolded through a number of prosecution witnesses who are alleged to be the eye-witnesses to the occurrence is not the correct version and the prosecution is guilty of suppressing the genesis and the origin of the occurrence in as much as no explanation has been offered for the injuries sustained by the two appellants as well as their father Subramanium, more particularly, the injuries on the head of accused No. 1 on account of which
- H the said accused had multiple stitches and was required to be removed to

Neurological Surgical Centre and the injury is grievous in nature. Mr. K. Parasaran further argued that the prosecution is also guilty of shifting the place of occurrence in as much as though according to the prosecution witnesses the incident including the stabbing of Mohan and Sekhar took place in front of the house of accused Murli but the blood and blood stained stone could be recovered from the veranda of one Mr. Reddy which is far away from the house of accused Murli and the prosecution is totally silent as to how such blood and blood stained stone could be recovered from the Veranda of Shri Reddy. Mr. K. Parasaran also contended that all the prosecution eye-witnesses are related to each other and they have repeated the version in the same manner and the only independent witness PW-10 did not support the prosecution case at all and in such circumstances when other independent witnesses were available as narrated by the prosecution witnesses themselves, non-examination of such other independent witnesses available affects the prosecution case also. Mr. K. Parasaran, lastly urged that the role ascribed to accused No. 1 and accused No. 3 being identical namely accused No. 1 caught hold of Mohan when accused No. 2 stabbed Mohan and accused No. 3 caught hold of Sekhar when accused No. 2 stabbed Sekhar and the High Court having re-appreciated the evidence has already rejected the same so far as the role ascribed to accused No. 3 is concerned, the same infirmities in relation to the role ascribed to accused No. 1 also vitiates the ultimate conclusion of the High Court in convicting accused No. 1 and the accused No. 1 is entitled to get benefit of doubt. Mrs. Amreshwari, learned senior counsel appearing for the State on the other hand contended that when two courts of fact have already appreciated the evidence and have recorded their conclusions to the effect that the prosecution has been able to establish the charges against accused No. 1 and 2 beyond reasonable doubt it would not be proper for this Court to interfere with the same conclusion in exercise of power under Section 136 of the Constitution more particularly when two precious life have been lost. The learned counsel also urged that it is true that prosecution has not been able to explain injuries on the accused persons but the said question has also been considered by the High Court and yet in view of the clear cogent evidence of the prosecution witnesses when the High Court has convicted the two accused persons, the same need not be interfered with by this Court. According to the learned counsel the substratum of the case is that accused No. 1 caught hold of Mohan when accused No. 2 stabbed Mohan with the knife at his abdomen has been

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- A fully established through the several witnesses who themselves have been injured in the course of incident, and therefore, the conviction of the two appellants maintained by the High Court need not be interfered with by this Court Mrs. Amreshwari, however, in her ultimate submission stated that though accused No. 1 may be entitled to benefit of doubt by applying the same reasoning and the same infirmities in the prosecution witnesses
- B on which accused No. 3 had been acquitted, but so far as accused No. 2 is concerned, conviction being based upon clear and cogent evidence which gets corroborated by the medical evidence the same cannot be interfered with.
- C Coming to the question of non-explanation of the injuries on the accused, it appears from Exhibit D-6, Private Wound Certificate the accused appellant No. 1 sustained a lacerated injury of 5 x 1/2 cm on parietal eminence - clot formed and was admitted in MS III under Neurosurgery Ward but discharged against the medical advice and the said injury is
- D grievous in nature but might have been caused by blunt object. It is also clear from Exhibit P-10 issued by Dr. S. Koteswara Rao, Casualty Medical Officer of the hospital at Tirupati that the appellant No. 1 was discharged from the hospital on 24.4.1990 at 10 p.m. to get treatment for Neurosurgery care at higher centre. The Doctor (PW-15) in his evidence stated :
- E "A-1 was examined by me on the requisition sent by East P.S. Tirupati on 23.9.90. The A-1 was sent to the hospital with an escort of five police constables. I examined A-1 on 23.3.1990 at 4.45 a.m. As per accident register A-1 told me at that time that he was assaulted with iron rods, sticks and chains. I found a lacerated
- F injury 5 x 1/1 cms. On right parietal eminence. Blood clot were found. X-Ray was also taken. A-1 was admitted in M.B.3 ward under Neurosurgeon. The injury found on A-1 was grievous and there are 12 to 13 stitches and after the receipt of the said injury to A-1, he should have profused bleeding."
- G Exhibit D-11 is the certificate given by the said Doctor indicating that on 5.10.1990 the accused - appellant No. 1 attended the hospital for suture removal and dressing and even on that date the wound was not completely healed up and according to Doctor it would take another one month for healing. The aforesaid injury on accused - appellant No. 1 on vital part of
- H the body is undoubtedly a grievous injury and the injured must have

profused bleeding as stated by PW-15. The accused - appellant No. 2 had sustained the following injuries as is apparent from Exhibit D-7, which was the certificate issued by PW-15 :

"1. Multiple abrasions with swelling of 2 x 1 cm.

Size over right eye.

2. Right black eye present.

3. Swelling of right Molar bone present."

PW-15 in his evidence also stated :

"The same police brought A-2 at 4.45 a.m. and I examined him on police requisition. He identified A-2 comparing his identification marks. A-2 also stated before me that he was assaulted with iron rods, chains and sticks. I found the following injuries on A-2 at that time. 1. Swelling of 2 x 1 cm. Size on the right molar bones. 2. A black eye present. 3. Swelling in right molar bone. The injuries are simple in nature. Ex D.7 is the certificate issued in favour of A-2."

The aforesaid injuries on accused - appellant No. 2 are undoubtedly simple in nature. The father of both the accused - appellants, Subramaniam also sustained the following injuries as is apparent from the certificate Exhibit D-8 issued by PW-15 :

"1. An abrasion of 5 cm. In length over the vault of the Skull. Red in colour.

2. Swelling in left eye brow.

3. Swelling in upper part of leg.

4. Abrasion of 6 x 3 cm. Over left calf muscle.

5. Abrasion of 7 x 4 cm. below left calf muscle.

X-Ray No. 1505/14536 of skull AP - No bony injury noted of left leg. No bony injury noted.

He has been admitted in MS III ward under Neurosurgery and

A discharged against Medical advice.

The injury is simple in nature, might have been caused by blunt object and the age is about 6 hours.

Station : Tirupati.

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Sd/-

20.10.90

20-10-90

(Dr. S. KOTESWARA RAO)

CIVIL ASST. SURGEON

S.V.R.R. HOSPITAL

TIRUPATI."

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PW-15 also in his evidence reiterated the same by stating:

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"I found the following injuries on him. I have examined him at 4.45 a.m. 1 An abrasion 5 cms. In length over the vault of skull. 2. Swelling on left eye brow present. 3. Swelling of upper part of the left leg. 4 Abrasion of 6 x 3 cm. over the left calf muscle. 5. An abrasion of 7 x 4 cms. Below right cough muscles. He was also admitted ward No. 3 in charge of Neurosurgeon. The injuries are simple in nature and the age is about six hours. 5 x D.8 is the said certificate."

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The aforesaid injuries no doubt are simple in nature as opined by PW-15.

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The High Court came to the conclusion that both the accused appellants as well as their father - Subramaniam received the injuries in course of the occurrence. The question that arises for consideration is whether the prosecution has offered any explanation for such injuries on the accused - appellants as well as their father and if no explanation has been offered then for such non-explanation the prosecution case in any way gets affected. The law in this regard has been well discussed in a judgment of this Court in the case of *Lakshmi Singh and Others v. State of Bihar*, [1976] 4 SCC 394. It has been held by this Court in the aforesaid case that where the prosecution fails to explain the injuries on the accused then two

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H results may follow :

1. that the evidence of the prosecution witness is untrue; and
2. that the injuries probabalise the plea taken by the appellants.

It has also been held in the aforesaid case that in a case of murder non-explanation of the injuries sustained by the accused at about the time of the occurrence is a very important circumstance from which the court can draw the following inferences :

- (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

It has further been held that omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses. But it is equally well settled that the prosecution is not obliged to explain the injuries sustained by the accused if the injuries are minor and superficial and where the injuries are not sustained in course of the occurrence. On a bare examination the injuries found on the two appellants as well as their father - Subramanium, we found that though the injuries on appellant No. 2 as well as father - Subramanium were minor in nature and quite superficial and as such the prosecution was not obliged to explain those injuries but the injury on appellant No. 1 was of such nature that it cannot go unnoticed by the witnesses to the occurrence more so when the medical evidence is to the effect that there must be profused bleeding. In respect of such grievous injury sustained by the appellant No. 1 the prosecution is bound to offer some explanation and if explanation is not offered then the court is entitled to draw inference as held by this Court in the case of *Lakshmi Singh and Others v. State of Bihar* referred to supra. PW-1 who is admittedly an eye-witness to the occurrence and was at the spot right from

A the beginning, in his evidence stated : "it is not true to say that in the incident A-1 and A-2 received bleeding injuries on the head and A-1 sustained serious head injury. It is not true to say that at the time of the incident Subramaniam - the father of A-1 and A-2 was present and he received injury on his head and other parts of his body". PW- 2 who is also an eye-witness to the occurrence stated " I have seen the bleeding injuries on the head of A-1 and A-2 but the said injuries were caused due to hurling of stones by A-4 and A-5 from the building". It was elicited from his cross-examination: "Police asked me as to how A-1 and A-2 got bleeding injuries and I did not state to the police at that time that A-1 and A-2 received bleeding injuries due to hurling of stones by A-4 and A- 5". PW-3 who is also an eye-witness to the occurrence did not state anything about the injuries being sustained by A-1 and A-2 and how such injuries were sustained. PW-6 is also an eye-witness to the occurrence and was himself also one of the injured. He also in his evidence stated that there were no injuries on A-1 and A-2 at the time of occurrence and further he states that he does not know whether A-1 and A-2 and their father were admitted to the hospital by the police. PW-7 is also a witness to the occurrence and he stated in his evidence that at the time of occurrence there were no bleeding injuries on the head of A-1 and A-2. PW-8 is equally a witness to the occurrence and he no doubt had stated that he had marked the bleeding injuries on the head of A-1 but did not state as to how accused A-1 and A-2 sustained those injuries. PW-10 though was examined by the prosecution but did not support the prosecution and therefore was permitted by the court to be cross-examined by the prosecution. PW-12 is a witness to the assault by accused No. 2 on Sekhar as well as the assault on PW-7 by accused No. 1. He in his evidence has stated : "at the Scene of occurrence I did not see any bleeding injuries on A-1 and A-2". Thus, out of the aforesaid 7 eye-witnesses to the occurrence except PW-2 and PW-8 rest did not even state to have seen the injuries on the head of the two accused appellants. PW-8 though stated to have seen the injuries but did not offer explanation as to how those injuries were sustained by the accused appellants. PW-2 though offered an explanation namely the injuries are sustained on account of hurling of stones by A-4 and A-5 but the High Court on appreciating the evidence came to the positive conclusion that the prosecution story that A-4 and A-5 were hurling stones is not believable and in fact they had not hurled the stones as alleged. That apart as has been indicated earlier the PW-2 had not stated before the police while

being examined under Section 161 Cr.P.C. about the existence of injuries on the head of the accused persons or as to how those injuries were caused. In the aforesaid circumstances the conclusion is irresistible that the prosecution has not offered any explanation for the grievous injuries on accused - appellant No. 1 which the prosecution was obliged to explain and such omission on the part of the prosecution to explain the injuries on accused appellant No. 1 assumes greater significance since all the eye-witnesses to the occurrence are related to the deceased and thus were interested in the prosecution. Inasmuch as PWs 1 and 2 are brothers of deceased Sekhar, PW-3 is the mother of deceased Sekhar, PWs-6 and 7 are brothers of deceased Mohan, PW-8 is the brother-in-law of Mohan and PW-12 is the elder brother of Mohan. In the aforesaid premises, we find considerable force in the submission of Mr. Parasaran, the learned senior counsel for the appellants, that prosecution has not explained the grievous injury on the head of accused - appellant No. 1 and such non-explanation persuades us to draw an inference that the prosecution has not presented the true version at least so far as the role played by accused appellant No. 1 and the witnesses who have been examined and who have ascribed a positive role to the appellant No. 1 that he caught hold of Mohan when appellant No. 2 stabbed Mohan are not true on material point and their evidence thus has become vulnerable. Even though the accused - appellant No. 2 also sustained some injuries as indicated earlier but those injuries being simple and superficial the prosecution may not be obliged to offer the explanation to the same but the same principle will have no application when an injury of such grievous nature as was sustained by accused - appellant No. 1 had not been explained by the prosecution witnesses who are grossly interested in the prosecution being all related to one another.

At this stage it would be proper for us to notice the contention advanced by Mrs. Amreshwari, the learned, senior counsel appearing for the State that the prosecution evidence having been scrutinised by the learned Sessions Judge and the High Court and having been accepted by the two courts below it would not be proper for this Court to interfere with the conviction in exercise of powers under Article 136 of the Constitution. We, however, are unable to persuade ourselves to agree with the submission since we are not appreciating the evidence in this case but we are only applying a principle of criminal jurisprudence which casts an obligation on the prosecution to explain the injuries on the accused particularly when the injuries are of grievous nature and the consequences of such non-explanation

A tion of the injury. That apart in appropriate cases there is no bar on the powers of this Court even to examine the evidence if the appreciation of such evidence by the courts below on the face of it appears to be erroneous and such erroneous appreciation causes miscarriage of justice. However, we are not delving further into the question since we are not appreciating the evidence in the case in hand. The High Court in our opinion committed gross error in coming to the conclusion that non-explanation of the injuries on A-1 is not material. The very approach of the High Court that since police did not confront the witnesses about the accused receiving injuries while examining them under Section 161 Cr.P.C., no explanation is forthcoming is erroneous.

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It would also appear from the materials on record that though accordingly to the eye-witnesses the incident occurred in front of the house of accused No. 3 where both deceased Mohan and Sekhar were stabbed by accused No. 2 and while taking the injured persons Mohan fell down in front of the house of Prabhakar as a result of which blood fell down in front of the house of Prabhakar, yet it is difficult to imagine as to how blood stains were found from the house of Prabhakar upto the house of Venkat Reddy and even on the Veranda of the house of Venkat Reddy as has been stated by PW-2 and PW-22 one of the investigating officers and according to the said PW-22 the distance between Prabhakar's house and Venkat Reddy's house is more than 120 feet. Though Mohan and Sekhar were stabbed in front of the house of accused No. 3 as stated by the prosecution witnesses but blood stains being available upto the house of Prabhakar is explained from the fact that the injured persons were carried upto that place but beyond that it is no *body's* case that the injured persons were carried any further and as such no explanation is forthcoming as to how blood stains could be found upto the Veranda of the house of Venkat Reddy and then blood stained stones were also recovered from the Veranda of said Venkat Reddy. This feature also indicates that the prosecution witnesses are not sure as to where the occurrence took place. It also appeared from the evidence of PW-2 and PW-8 that there were several other people who witnessed the occurrence and they are not the residents of that locality. If such independent witnesses were available and yet were not examined by the prosecution and only those persons who are related to the deceased were examined then in such a situation the prosecution case to be scrutinised with more care and caution. Further Mr. Parasaran is right in his submission that the witnesses ascribed the role of catching

hold of Mohan by accused No. 1 and role of catching hold of Sekhar by accused No. 3 and the High Court gave the benefit to accused No. 3 since the witnesses had not narrated the same to the police when examination under Section 161 Cr.P.C. took place and therefore the self same infirmities having crept in when the prosecution witness stated about catching hold of Mohan by accused No. 1, the said accused No. 1 is entitled to the benefit of doubt. In fact as stated earlier Mrs. Amreshwari, the learned senior counsel appearing for the State also fairly stated that possibly it would be difficult to sustain the conviction of accused No. 1 when the accused No. 3 has got benefit and has been acquitted and no appeal against the said order of acquittal has been filed by the State. On account of such infirmities in the prosecution case as indicated above and more particularly when the prosecution has failed to offer any explanation for the grievous injuries sustained by accused No. 1 on his head and the High Court has already found that the said injury was caused in course of the incident, we have no hesitation to hold that the accused - appellant No. 1 D.V. Shanmugam is entitled to the benefit of doubt and we accordingly set aside the conviction and sentence of the said accused - appellant No. 1 both under Section 302/34 IPC as well as under Section 324 IPC and direct that he shall be set at liberty forthwith if his detention is not required in any other case.

But coming to the case of appellant No. 2 the same stand on a slightly different footing. Mr. Parasaran no doubt had argued with vehemence that the entire case must be discarded inasmuch as the prosecution has not presented the true version and has suppressed the genesis and origin of the occurrence which inference is to be drawn for non-explanation of the injuries on the accused person. But as we found that the injuries on the accused - appellant No. 2 are all simple and superficial in nature and the prosecution is not bound to explain such minor and superficial injuries. That apart where the evidence is absolutely clear, cogent and consistent coming from an independent source that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries on the accused, in such a case a conviction can be based notwithstanding injury is not being explained as has been held by this Court in the very case of *Lakshmi Singh and Others v. State of Bihar* on which Mr. Parasaran, the learned senior counsel placed reliance upon. So far as the substratum of the prosecution case of accused - appellant No. 2 is concerned it has been consistently stated by all the eye-witnesses to the occurrence that accused No. 2 stabbed Mohan on his abdomen with the knife and stabbed Sekhar



- A also on the abdomen with the knife. Their evidence also get corroborated from the medical evidence as well as from the post- mortem examination of the dead bodies of the two deceased persons. Even in the earliest version, in the FIR it had been categorically stated that accused No. 2 D. Vaidvelu stabbed Mohan with a knife on his abdomen and also stabbed
- B Sekhar with knife on his stomach and intestine came out. In view of the aforesaid clinching evidence so far as the role ascribed to accused - appellant No. 2, notwithstanding the infirmities indicated earlier which we have given benefit of doubt to accused - appellant No. 1, it must be held that the prosecution case as against the appellant No. 2 has been proved beyond reasonable doubt and therefore the conviction and sentence against
- C the said accused - appellant No. 2 as affirmed by the High Court does not warrant any interference by this Court. In the net result, the conviction and sentence of appellant No. 1 - D.V. Shanmugam passed by the High Court is set aside and he is acquitted of the charges. He be set at liberty forthwith unless required in any other criminal case but conviction and sentence as
- D against appellant No. 2 passed by the High Court stands affirmed and the appeal so far as A-2 is concerned is dismissed. This appeal is allowed in part.

B.K.

Appeal allowed.