GOSU JAIRAMI REDDY & ANR. A

v.

STATE OF A.P.

(CRIMINAL APPEAL NO. 1321 OF 2006)

JULY 26, 2011 B

[V.S. SIRPURKAR AND T.S. THAKUR, JJ.]

Constitution of India, 1950:

Article 136 – Scope of – HELD: The extra-ordinary jurisdiction of the Court under Article 136 is not and cannot be a substitute for a regular appeal –Appellant cannot seek reversal of views taken by the courts below simply because another view was possible on the evidence adduced in the case – It must be demonstrated that the view taken by the trial court or the appellate court for that matter is affected by any procedural or legal infirmity or is perverse or has caused miscarriage of justice – Penal Code, 1860 – ss. 147, 148, 302/149 – Explosive Substances Act, 1908 – ss. 3 and 5. C D

Penal Code, 1860: E

ss. 147, 148, 302/149 IPC and ss. 3 and 5 of the Explosive Substances Act – Accused hurling bombs at the Jeep of complainants and hacking one of the victims to death by hunting sickles – Conviction and life sentence by courts below – HELD: It is evident from the depositions of the three eye-witnesses that the deceased had come to his factory accompanied by them and the driver of the Jeep and that the deceased was killed inside the factory by five accused persons – The version of these eye-witnesses has been accepted as truthful by the trial court as also the High Court in appeal – In the absence of any material contradiction in the version given by the eye-witnesses and in the absence of any other cogent reason rendering the depositions F G

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A *unacceptable, there is no reason why the said version should not be accepted as truthful – The depositions of two other witnesses who were also in the factory premises substantially support the prosecution case and prove the presence of deceased and the three other eye-witnesses apart from the* B *driver of the Jeep inside the compound of the factory at 5 p.m. when the incident took place – In the circumstances, there is no reason to interfere with the view taken by the courts below.*

Criminal Law:

C ***Motive*** *– Relevance of – HELD: In a case based on eye witness account of the incident, proof or absence of the motive is not of any significant consequence – If the motive is proved it may support the prosecution version – In the instant case, the prosecution case that the accused appellants had a* D *motive for the commission of the offence alleged against them stood satisfactorily proved.*

Plea of alibi *– HELD: In the instant case, the courts below have rejected the plea – A finding of fact concurrently recorded on the question of alibi is not disturbed by the* E *Supreme Court in an appeal by special leave – The plea of alibi has been rightly rejected by the courts below even on an appraisal of the evidence on record – Though the defence witnesses stated that they had gone to the district headquarters on the day of occurrence and A-1 and A-3 were* F *with them there was no evidence to corroborate their version – Constitution of India, 1950 – Article 136.*

Delay/Laches:

G *Delay of 1 hour in lodging FIR – Delay in sending copy of FIR to jurisdictional Magistrate – HELD: The credibility of the report was not affected on account of the so called delay of one hour in lodging of the complaint – So also, the receipt of the report by the Magistrate at 1.05 a.m. was not so inordinately delayed as to render suspect the entire*

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prosecution case especially when no question regarding the cause of delay was put to the Investigating Officer. A

Evidence:

Eye-witness account and medical evidence – Discrepancy – Witness stating that injury was inflicted on the neck of the deceased – In the post-mortem report, injury noted on right clavicle – HELD: It is a case where the witness describes the infliction of the injury in a region which may not be accurate from the point of view of human anatomy but which is capable of being understood in a layman's language to be an injury in an area that is proximate. B C

Non-examination of some of the witnesses of incident – HELD: It is entirely in the discretion of the Public Prosecutor to decide which of the listed witnesses are essential for unfolding the prosecution story – Simply because more than one witnesses have been cited to establish the very same fact is no reason why the prosecution must examine all of them – The prosecution, in the instant case, examined three eye-witnesses to prove the incident in question – There was no particular fact that could be proved only by the deposition of the driver and not by other witnesses – So also the non-examination of another named person does not make any dent in the prosecution case nor would it render the version given by three eye-witnesses, who have supported the prosecution version, unworthy of credit – As a matter of fact once the deposition of the eye-witnesses examined at the trial is accepted as trustworthy, non-examination of other witnesses would become inconsequential. D E F

Investigation: G

Non-seizure of the Jeep in which the victims travelled – Accused hurled bombs at the Jeep and hacked one of its occupants to death – HELD: The vehicle in question was not used for the commission of the offence – It was, therefore, not H

A *necessary to seize the vehicle – All that the prosecution was required to establish was that the Jeep was indeed damaged on account of throwing of bombs one of which had exploded on the bonnet of the vehicle and the other on the left side of its door – The Investigating Officer had taken care to have the* B *damaged portions of the vehicle cut, seized and sent the same to the Forensic Science Laboratory for opinion – The report from the FSL supports the prosecution case and proves that explosive mixture used in manmade bombs was found in the same.*

C **The five appellants along with five others were prosecuted for the murder of one 'PR'. The prosecution case was that A-1 and A-3 were set up by a political party, namely, TDP to contest the election to MPTC/ZPTC. They approached 'PR' to support their candidature, but 'PR'** D **declined stating that he being a staunch congressman was committed to support the candidate set up by his party. A-1 and A-3 lost the election and started nursing a grudge against 'PR'. On 31.7.2001 at 5.00 P.M., when 'PR' accompanied by his son (PW-1), nephews (PWs 2 and 3)** E **and two others reached his slab polishing factory on a Sumo Jeep and the driver parked the jeep inside the factory premises, A-1, his brother A-2 and A-3 and his sons A-4 and A-5, armed with bombs and hunting sickles, entered the factory. A-2 hurled two bombs towards the** F **Jeep and when the occupants of the Jeep ran for safety, A-1 and A-3 to A-5 attacked 'PR' with hunting sickles, causing his death. The trial court convicted A-1 to A-5 of the offences punishable u/ss 147, 148 and 302/149 IPC and ss. 3 and 5 of the Explosive Substances Act, 1908,** G **and sentenced each of them, *inter alia,* to imprisonment for life with fine. The High Court affirmed the conviction and the sentence.**

In the instant appeals filed by the accused, it was contended for the appellants that the trial court had rightly H **rejected the theory of motive set up by the prosecution,**

but the High Court erred in believing the prosecution case in this regard; that there was no explanation for lodging the FIR with the delay of one hour and the delay in despatch of copy of FIR to the jurisdictional Magistrate; that the driver of the Jeep and two other persons accompanying the complainant party to the place of incident were not examined by the prosecution; and that there was contradiction in medical report and the eye-witness account as regards the injuries caused to the deceased. The plea of alibi on behalf of A-1 to A-3 was also reiterated.

Dismissing the appeals, the Court

HELD: 1. The extra-ordinary jurisdiction of the Court under Article 136 is not and cannot be a substitute for a regular appeal where the same is not provided for by the law. The scope of any such appeal has, therefore, to be limited lest the spirit and the intent of the law that does not sanction a second round of appellate hearing in criminal cases, is defeated and a remedy that is not provided directly made available indirectly through the medium of Article 136. The appellant cannot seek reversal of views taken by the courts below simply because another view was possible on the evidence adduced in the case. In order that the appellant may succeed before this Court, it must be demonstrated that the view taken by the trial court or the appellate court for that matter is affected by any procedural or legal infirmity or is perverse or has caused miscarriage of justice. [para 10-11] [520-A-C; 521-C-D]

Gurbaksh Singh v. State of Punjab **AIR 1955 SC 320;** *D. Macropollo and (Pvt.) Ltd. v. D. Macropollo and (Pvt.) Ltd. Employees' Union and Ors.* **AIR 1958 SC 1012;** *Ramaniklal Gokaldas & Ors. v. State of Gujarat* **AIR 1975 SC 1752;** *Pallavan Transport Corporation Ltd. v. M. Jagannathan* **2001 AIR SCW 4786;** *Radha Mohan Singh alias Lal Saheb and*

A *Ors. v. State of U.P.* 2006 (1) SCR 519 = AIR 2006 SC 951; *Bhagwan Singh v. State of Rajasthan* AIR 1976 SC 985; *Suresh Kumar Jain v. Shanti Swarup Jain and Ors.* 1996 (9) Suppl. SCR 28 = AIR 1997 SC 2291; and *Kirpal Singh v. State of Utter Pradesh* 1964 SCR 992 = AIR 1965 SC 712
B – relied on

2.1 It is settled by a series of decisions of this Court that in cases based on eye-witness account of the incident, proof or absence of the motive is not of any significant consequence. If the motive is proved it may
C support the prosecution version. But existence or otherwise of the motive plays a significant role in cases based on circumstantial evidence. [para 13] [522-B-C]

2.2 In the instant case, the finding of the trial court
D that there was no material to show enmity between the accused and the complainants was manifestly erroneous. Not only was there evidence on record in the form of depositions of PW1 and PW2, the alleged political rivalry between the two sides was mentioned even in the first
E information report lodged by PW1 in writing. The complaint and so also the FIR registered on the basis of the same clearly referred to the reason why the deceased had been killed. It attributed the reason for the ghastly murder of the deceased to his refusal to support the
F candidature of A1 and A3 in the ZPTC/MPTC elections. It was not, therefore, a case where motive was introduced as an improvement in the prosecution story. It was on the contrary a case where right from the stage of lodging of the FIR till recording of depositions in the court, political rivalry was said to be the motive for the killing of the
G deceased. The High Court appreciated the above evidence and rightly observed that there was political rivalry between the accused party and the deceased party and the accused bore grudge against the deceased on account of the refusal of the deceased to support
H them in the elections and on account of the defeat of A-

1 and A-3 in the ZPTC elections. There is no reason much less a compelling one for this Court to take a view different from the one taken by the High Court. The prosecution case that the accused appellants had a motive for the commission of the offence alleged against them thus stood satisfactorily proved. [para 15-16] [523-A-G]

3. A report regarding the commission of a cognizable offence, lodged within an hour of the incident cannot be said to be so inordinately delayed as to give rise to a suspicion that the delay – if at all the time lag can be described to be constituting any delay – was caused because the complainant, resorted to deliberations and consultations with a view to presenting a distorted, inaccurate or exaggerated version of the actual incident. Besides, no such suggestion was made to PW1, the first informant. It is the totality of the circumstances that would determine whether the delay long or short has in any way affected the truthfulness of the report lodged in a given case. The credibility of a report cannot be judged only by reference to the days, hours or minutes it has taken to reach the police station concerned. Viewed thus, the credibility of the report was not affected on account of the so called delay of one hour in lodging of the complaint. So also, the receipt of the report by the Magistrate at 1.05 a.m. was not so inordinately delayed as to render suspect the entire prosecution case, especially, when no question regarding the cause of delay was put to the Investigating Officer. [para 18] [524-C-H]

4.1 As regards the eye-witness account of the incident, according to PW 1, as soon as the jeep carrying the complainant party was parked by the driver inside the factory premises, A1 to A5 came running through the gate into the factory. A2 was armed with bombs while the other accused were armed with hunting sickles. A2

A hurled two bombs towards the jeep. The witness ran and stood behind the workers room from where he witnessed the occurrence. He saw that when 'PR' was running to the office room of the factory, A1 attacked him with a hunting sickle on his head. Similarly A3 also attacked
B 'PR' on the neck. 'PR' fell down at a distance of 3 ft. from the office room. A3 instigated the other accused to kill 'PR' whereupon A4 and A5 also hacked the deceased. The accused left the place from the same gate carrying the blood stained sickles. The witness goes on to state
C that PW 3 also came to the spot after the occurrence and saw the dead body of the deceased. Persons were sent by the witness to the village to inform his mother and brother. The witness himself went to the Police Station and lodged the report at the Police Station. At the inquest,
D the watchman told the witness that he had seen A6 to A10 outside the factory gate. It was on the basis of the said statement that the names of A6 to A10 were also included as persons responsible for the commission of the offence. Despite extensive cross-examination nothing
E material has been extracted from the witness which could possibly discredit his testimony. [para 20-21] [526-B-H; 527-A-C]

4.2 To the same effect are the depositions of PW 2 and PW3 who too have fully supported the prosecution
F case and the narrative given by PW1. The version of these witnesses who, according to the prosecution, were eye-witnesses to the occurrence, has been accepted as truthful by the trial court as also the High Court. In the absence of any material contradiction in the version
G given by these witnesses and in the absence of any other cogent reason rendering the depositions unacceptable, there is no reason why the said version should not be accepted as truthful. [para 22] [527-D-F]

4.3 It is evident from the depositions of the three
H witnesses (PWs 1 and 3) that the deceased accompanied

by them reached his factory on a Sumo Jeep and that the deceased was killed inside the factory by the five accused. The depositions of PW 4 who was staying in a labour room of the factory and PW-5, who was a factory worker, substantially support the prosecution case and prove the presence of the deceased and PWs 1, 2 and 3 apart from the driver of the Sumo Jeep inside the compound of the factory at 5 p.m. on 31.7.2001 when the incident took place. Once the presence of PWs 1, 2 and 3 was established by their own depositions which have remained unshattered and the supporting evidence of PWs 4 and 5, the version given by the said three witnesses cannot be brushed aside lightly. [para 25] [528-E-G]

5.1 It is true that PW 1 has in his depositions attributed an injury to A 3 which according to the witness was inflicted on the neck of the deceased. It is also true that the post-mortem examination did not reveal any injury on the neck. But this discrepancy cannot affect the prosecution case, in the light of the evidence on record and the fact that it is not always easy for an eye-witness to a ghastly murder to register the precise number of injuries that were inflicted by the assailants and the part of the body on which the same were inflicted. Courts need to be realistic in their expectation from witnesses and go by what would be reasonable, based on ordinary human conduct with ordinary human frailties of memory and power to register events and their details. In the instant case, injury no.6 was found over the right clavicle. The injury was bone deep and the clavicle fractured. It is a case where the witness describes the infliction of the injury in a region which may not be accurate from the point of view of human anatomy but which is capable of being understood in a layman's language to be an injury in an area that is proximate. Further, the injuries noticed on the dead body of the deceased, according to the

A medical evidence, had been inflicted by sharp cutting instrument like sickles as deposed by the eye-witnesses. [para 28-30] [530-A-E; 532-F-G; 533-A-C]

6. As regards the non-examination of the driver, it is well-settled that every witness that the prosecution may B have listed in the charge-sheet need not be examined. It is entirely in the discretion of the Public Prosecutor to decide as to how he proposes to establish his case and which of the listed witnesses are essential for unfolding the prosecution story. Simply because more than one C witnesses have been cited to establish the very same fact is no reason why the prosecution must examine all of them. The prosecution, in the instant case, examined three eye-witnesses to prove the incident in question. There was no particular fact that could be proved only D by the deposition of the driver and not by other witnesses. The driver of the vehicle reversed and parked it facing the gate, was the fact regarding which each one of the occupants of the vehicle was a competent witness. PWs. 1, 2 and 3 have in their depositions testified that the E vehicle was parked facing the gate by the driver of the vehicle after reversing the same. So also the non-examination of 'HR' does not make any dent in the prosecution case nor would it render the version given by three eye-witnesses, who have supported the F prosecution version, unworthy of credit. As a matter of fact once the deposition of the eye-witnesses examined at the trial is accepted as trustworthy, non-examination of other witnesses would become inconsequential. [para 31] [533-G-H; 534-A-E]

G *Nirpal Singh v. State of Haryana* 1977 (2) SCR 901 = (1977) 2 SCC 131; ***State of U.P. v. Hakim Singh and Ors.*** (1980) 3 SCC 55, *Nandu Rastogi alias Nandji Rastogi and Anr. v. State of Bihar* 2002 (3) Suppl. SCR 30 =(2002) 8 SCC 9, *Hem Raj & Ors. v. State of Haryana* AIR 2005 SC H 2010; *State of M.P. v. Dharkole @ Govind Singh and Ors.*

2004 (5) Suppl. SCR 780 = AIR 2005 SC 44 and *Raj Narain Singh v. State of U.P. & Ors.* (2009) 10 SCC 362 – relied on. A

7. With regard to the plea that failure of the Investigating Officer to seize the Jeep must give rise to an adverse inference and discredit the entire prosecution case, sufficie it to say that the vehicle in question was not used for the commission of the offence. It was, therefore, not necessary to seize the vehicle. All that the prosecution was required to establish was that the Jeep was indeed damaged on account of throwing of bombs one of which had exploded on the bonnet of the vehicle and the other on the left side of its door. The Investigating Officer had taken care to have the damaged portions of the vehicle cut, seized and sent to the Forensic Science Laboratory for opinion. The report from the FSL supports the prosecution case and proves that explosive mixture used in manmade bombs was found in the same. Thus, the non-seizure of the Jeep made no difference to the veracity of the prosecution case. [para 33-34] [535-C-G] B C D

8.1 So far as the plea of alibi set up by accused A-1 and A-3 is concerned, their case was that they were at Anantpuram, between 11 A.M. to 5 P.M. on the date of occurrence. The trial court has rejected the plea. The High Court has affirmed the said finding. A finding of fact concurrently recorded on the question of alibi is not disturbed by the Supreme Court in an appeal by special leave. [para 35] [535-H; 536-A-E] E F

Thakur Prasad v. The State of Madhya Pradesh AIR 1954 SC 30 Vol. 41 – relied on G

8.2 That apart, the plea of alibi has been rightly rejected by the courts below even on an appraisal of the evidence on record. DW1 an Agriculturist deposed that he approached A-1 to help him in getting compensation for compulsory acquisition of his land and for that H

A purpose A1 and A3 and others reached Anantpur. DW2 in her deposition stated that she had made an application for the grant of a fair price shop licence and on the date of the incident she went to Anntpur and met A1 in the RDO office along with DW1. These witnesses did not B have any supporting material, such as copy of their applications etc., with regard to their respective claims. In the absence of any evidence to corroborate their version that they were at Anantpur on 31.7.2001, the courts below were justified in rejecting the same. DW3 C also claims to be at Anantpur on 31.7.2001 and stated that A-1 and A-3 accompanied him to SP Office at 5 P.M. The courts below have rightly rejected the testimony of this witness also. The close affiliation of this witness and A-1 and A-3 to the party to which they belong and his D antecedents, suggesting involvement in several criminal cases registered against him, was reason enough for the courts to disbelieve his version also and consequently reject the plea of alibi raised by the accused in their defence. [paras 36, 37-39, 41] [536-G-H; 537-A-B; G-H; E 538-A-F; 539-D-E]

9. In the circumstances, there is no reason to interfere with the view taken by the courts below. [para 42] [539-F]

F Case Law Reference:

AIR 1955 SC 320	relied on	para 10
AIR 1958 SC 1012	relied on	para 10
AIR 1975 SC 1752	relied on	para 10
G 2001 AIR SCW 4786	relied on	para 10
2006 (1) SCR 519	relied on	para 10
AIR 1976 SC 985	relied on	para 10
H 1996 (9) Suppl. SCR 28	relied on	para 10

1964 SCR 992	**relied on**	**para 10**	A
1977 (2) SCR 901	**relied on**	**para 31**	
(1980) 3 SCC 55	**relied on**	**para 32**	
2002 (3) Suppl. SCR 30	**relied on**	**para 32**	B
AIR 2005 SC 2010	**relied on**	**para 32**	
2004 (5) Suppl. SCR 780	**relied on**	**para 32**	
(2009) 10 SCC 362	**relied on**	**para 32**	
AIR 1954 SC 30 Vol. 41	**relied on**	**para 35**	C

CRIMINAL APPELLATE JURISDICITION : Criminal Appeal No. 1321 of 2006.

From the Judgment & Order dated 20.07.2006 of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1112 of 2005. D

WITH

Crl. A. No. 1327 of 2006. E

Sushil Kumar, Ranjit Kumar, Guntur Pramod Kumar, K. Rani Reddy, Guntur Prabhakar, T. Anamika, Chandra Mohani Setty for the Appellants.

June Chaudhary, Ramesh Allanki, G. Madhavi, Prabhat Kr. Rai, Savita Dhanda, D. Mahesh Babu for the Respondent. F

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. Political rivalry at times degenerates into personal vendetta where principles and policies take a back seat and personal ambition and longing for power drive men to commit the foulest of deeds to avenge defeat and to settle scores. These appeals by special leave present a somewhat similar picture and assail the judgment and orders of conviction and sentence passed by the Additional Sessions G H

A Judge, Anantapur of Gooty and the High Court of Andhra Pradesh in appeal. The prosecution case may be summarised as under:

2. Gosu Ramchandra Reddy (A1) and his two brothers Gosu Jayarami Reddy (A2) & Gosu Jayaranga Reddy (A3) B together with Gosu Rameshwar Reddy (A4) and Gosu Rajagopal Reddy (A5) sons of Gosu Ramchandra Reddy (A1) all residents of village Aluru of Anantapur District in the State of A.P. were political activists owing their allegiance to the Telugu Desam Party. The opposite group active in the region C and owing allegiance to the Congress party comprised Shri Midde Chinna Pulla Reddy (deceased) his son Shri M. Sanjeeva Reddy (PW1) and his two nephews M. Rammohan Reddy (PW2) and M. Veeranjaneyuly (PW3); all residents of village Kaveti Samudram in the District of Anantpur.

D

3. Elections to MPTC/ZPTC were held in July 2001 which saw Gosu Jayaranga Reddy (A3) contesting for M.P.T.C. from Virapuram village, while Gosu Ramchandra Reddy (A1) sought election from the neighbouring Yerraguntapalli village. Both of E them were set up by Telugu Desam Party. Electoral contest took a bitter turn when the duo mentioned above sought the support of the deceased M. Chinna Pulla Reddy which he declined for he claimed to be a staunch congressman committed to supporting the candidate set up by his party. It F so happened that A1 and A3 were both defeated at the hustings.

4. The accused did not, according to the prosecution, reconcile to the defeat. Instead they started nursing a grudge against M. Chinna Pulla Reddy who was in their view the cause G of their humiliation in the electoral battle. The animosity arising out of the electoral debacle of the two accused persons provided the motive for a murderous assault and resultant death of M. Chinna Pulla Reddy on 31st July, 2001 at village Sajjaladinne where the deceased had established a slab

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polishing factory in the name and style of Reddy & Reddy Slab Polishing factory. A

5. The prosecution case is that the deceased Shri M. Chinna Pulla Reddy reached his house at Tadipatri from his village in a Tata Sumo Jeep alongwith his son M. Sanjeeva Reddy (PW1) and his nephews M. Rammohan Reddy (PW2) and M. Veeranjaneyuly (PW3). One Hanumanatha Reddy and Mabu also accompanied them. From there the deceased and his companions came to the Slab Polishing Factory at Sajjaladinne at about 5.00 p.m. Hardly had Ganur Shankar the driver of the jeep parked the jeep at the factory office when A1 to A5 entered the factory from the main gate, with A2 carrying bombs and A1 & A3 to A5 carrying hunting sickles. Coming closer, accused Gosu Jayarami Reddy (A2) hurled two bombs towards the Jeep out of which one fell and exploded on the bonnet of the Jeep while the other fell on its left side door and exploded thereby partially damaging the Jeep. The inmates of the Jeep ran for safety in different directions. The deceased also got down from the jeep and started running towards the office room of the factory, when A-1 Gosu Ramchandra Reddy and A3 to A5 viz. Gosu Jayaranga Reddy, Gosu Rameshwar Reddy and Gosu Rajagopal Reddy attacked him with the hunting sickles which they were carrying. The prosecution case is that A1 Gosu Ramchanda Reddy hacked the deceased on his head, while A3 Gosu Jayaranga Reddy assaulted him on his neck. A4 Gosu Rameshwar Reddy and A5 Gosu Rajagopal Reddy also similarly hacked the deceased resulting in the death of the deceased on the spot. The entire incident is said to have been witnessed by M. Sanjeeva Reddy (PW1) from behind the workers room and by M. Ram Mohan Reddy (PW2) from the Pial of the Southern door of the office room. The incident was witnessed even by M. Veeranjane Reddy allegedly from the side of the labour room. B C D E F G

6. A written complaint about the occurrence was lodged by M. Sanjeeva Reddy (PW1) on the basis whereof FIR No.85/ H

A 01 was registered in the Police Station at Tadipatri at 6 p.m. on 31st July, 2001. The police arrived at the scene of occurrence at about 7 p.m., conducted an inquest and sent the dead body for post-mortem examination to the Government hospital at Tadipatri. After completion of the investigation, a B chargesheet was presented against A1 to A5 and five others for commission of offences punishable under Sections 147, 148 and 302 read with Section 149 IPC and Sections 3 and 5 of the Explosive Substances Act, before the Judicial Magistrate, Ist Class, Tadipatri who committed the accused C persons to the Court of Sessions at Anantpur. The case was then made over to VIth Additional District and Sessions Judge, (Fast Track) Anantapur before whom the accused persons pleaded not guilty and claimed a trial.

D 7. In support of its case the prosecution examined PWs 1 to 10 apart from placing reliance upon the documents marked Ex.P1 to P22 and MOs marked 1 to 20. Accused Gosu Ramchandra Reddy (A1) and Gosu Jayaranga Reddy (A3) examined DW1 to DW4 apart from placing reliance on documents marked D1 to D12, in support of the plea of alibi E raised in defence.

8. By its judgment and order dated 15th July, 2005, the Trial Court convicted A1 to A5 for commission of offences punishable under Sections 147, 148, 302 read with Section F 149 and Sections 3 and 5 of Explosive Substances Act and sentenced them to suffer rigorous imprisonment for a period of one year for the commission of an offence under Section 147 IPC, two years under Section 148 IPC and life imprisonment for the offence punishable under Section 302 IPC. They were G also convicted and sentenced to ten years imprisonment for the offence punishable under Sections 3 and 5 of the Explosive Substances Act. The sentences were ordered to run concurrently. The Trial Court also directed payment of fine of Rs.10,000/- each by the accused persons and a default H sentence of three months simple imprisonment for the offence

under Section 302 IPC and a fine of Rs.1,000/- each for the offence under Sections 3 and 5 of the Explosive Substances Act and in default simple imprisonment for a period of one month. A6 to A10 were, however, acquitted of the charges framed against them. A

9. Aggrieved by the judgment and order passed by the Trial Court the appellants filed Criminal Appeal No.1112 of 2005 before the High Court of Andhra Pradesh at Hyderabad. The High Court after reappraisal of the entire evidence on record affirmed the conviction and sentence awarded to the appellants and dismissed the appeal. The present appeals by special leave assail the correctness of the said judgment and order. B C

10. We have heard learned counsel for the parties who have taken pains to extensively refer to the evidence adduced by the prosecution and the defence before the Trial Court in a bid to show that the Trial Court as well as the High Court both have failed to properly appreciate the same hence erroneously found the appellants guilty of the offences alleged against them. Before we advert to the criticism levelled against the inferences & conclusions drawn by the Courts below we need to point out that an appeal to this Court by special leave under Article 136 of the Constitution of India is not an ordinary or regular appeal against an order of conviction recorded by a competent Court. In an ordinary or regular appeal, the appellate Court can and indeed is duty bound to re-appraise the evidence and arrive at its own conclusions. It has the same power as the Trial Court when it comes to marshalling of facts and appreciation of the probative value of the evidence brought on record. The accused can, therefore, expect and even demand a thorough scrutiny and discussion of his case in all its factual and legal aspects from the appellate Court, in the same manner as would be required of a Trial Court. But once the appellate Court has done its task, no second appeal lies against the judgment; under the Cr.P.C. whether to the High Court or to this Court. A revision against an appellate judgment of a criminal Court is D E F G H

A maintainable before the High Court but the same has its own limitations. Suffice it to say that the extra-ordinary jurisdiction of this Court under Article 136 of the Constitution is not and cannot be a substitute for a regular appeal where the same is not provided for by the law. The scope of any such appeal has, B therefore, to be limited lest the spirit and the intent of the law that does not sanction a second round of appellate hearing in criminal cases, is defeated and a remedy that is not provided directly made available indirectly; through the medium of Article 136 of the Constitution. The decisions of this Court on the subject are a legion. Reference to some of them would however C suffice. In *Gurbaksh Singh v. State of Punjab* (AIR 1955 SC 320) this Court held that it cannot consistently with its practice convert itself into a third Court of facts. In *D. Macropollo and (Pvt.) Ltd. v. D. Macropollo and (Pvt.) Ltd. Employees' Union and Ors.* (AIR 1958 SC 1012) this Court declared that it will D not disturb concurrent findings of fact save in most exceptional cases. In *Ramaniklal Gokaldas & Ors. v. State of Gujarat* (AIR 1975 SC 1752) this Court observed that it is not a regular Court of appeal which an accused may approach as of right in criminal cases. It is an extraordinary jurisdiction which this court E exercises when it entertains an appeal by special leave and this jurisdiction by its very nature is exercisable only when the Court is satisfied that it is necessary to interfere in order to prevent grave or serious miscarriage of justice. In *Pallavan Transport Corporation Ltd. v. M. Jagannathan* (2001 AIR SCW F 4786) this Court held that reassessment of evidence in proceedings under Article 136 is not permissible even if another view is possible. In Radha Mohan Singh alias *Lal Saheb and Ors. v. State of U.P.* (AIR 2006 SC 951) this Court declared that re-appreciation of evidence was permissible only G if the Trial Court or the High Court is shown to have committed an error of law or procedure and conclusions arrived at are perverse. This Court further held that while it does not interfere with concurrent findings of fact reached by the Trial Court or the High Court, it will interfere in those rare and exceptional cases H where it finds that several important circumstances have not

been taken into account by the Trial Court and the High Court resulting in serious miscarriage of justice or where the trial is vitiated because of some illegality or irregularity of procedure or is otherwise held in a manner violating the rules of natural justice or that the judgment under appeal has resulted in gross miscarriage of justice. (See also *Bhagwan Singh v. State of Rajasthan* (AIR 1976 SC 985), *Suresh Kumar Jain v. Shanti Swarup Jain and Ors.* (AIR 1997 SC 2291) and *Kirpal Singh v. State of Utter Pradesh* (AIR 1965 SC 712).

11. It is in the light of the above pronouncements of this Court evident that an appeal by special leave against the judgment and order of conviction and sentence is not a regular appeal against the judgment of the Trial Court. The appellant cannot seek reversal of views taken by the Courts below simply because another view was possible on the evidence adduced in the case. In order that the appellant may succeed before this Court, it must be demonstrated that the view taken by the Trial Court or the appellate Court for that matter is affected by any procedural or legal infirmity or is perverse or has caused miscarriage of justice.

12. It is now our task to determine whether the order of conviction and sentence recorded by the courts below suffers from any such infirmity as is mentioned above so as to justify interference with the same in exercise of our extra ordinary jurisdiction. On behalf of the appellants it was argued that the alleged motive behind the killing of the deceased Midde Chinna Pulla Reddy has not been established. The Trial Court has according to the learned counsel rejected the plea of political rivalry being the driving force behind the incident in question. The High Court was, argued the learned counsel for the appellants, in error in reversing that finding and holding that the prosecution had established the existence of political rivalry as the motive for the murder of the deceased. Absence of a strong motive was a circumstance, that according to the learned counsel rendered the entire prosecution story suspect, the

A benefit whereof ought to go to the appellants.

13. It is settled by a series of decisions of this Court that in cases based on eye witness account of the incident proof or absence of a motive is not of any significant consequence. B If a motive is proved it may supports the prosecution version. But existence or otherwise of a motive plays a significant role in cases based on circumstantial evidence. The prosecution has in the instant case examined as many as five eye witnesses in support of its case that the deceased was done to death by the appellants. The depositions of Shri M. Sanjeeva Reddy C (PW1), Shri M. Rammohan Reddy (PW2), Shri Veeranjaneyu (PW3), Shri D. Dastnagiramma (PW4) and Shri Eswaraiah (PW5) have been relied upon by the prosecution to substantiate the charge framed against the appellants. If the depositions giving the eye witness account of the incident that D led to the death of late Shri Midde Chinna Reddy are indeed reliable as the same have been found to be, by the Trial Court and the first appellate Court, absence of a motive would make little difference.

E 14. Having said that we need to examine the reasoning of the Trial Court while it dealt with the question of motive – which finding of the trial Court has been reversed by the High Court. The trial court has on the question of motive observed:

F "In the present case 3 eye witnesses are there and their evidence is supported by PW.4. Even though both parties accused group and the deceased group belonged to different political parties, but actually there is no evidence that there are pending civil litigations between them. In the MPTC Elections the accused No.1 and 3 contested for the G post of MPTC on behalf of the Telugu Desam Party and the deceased supported the congress back ground candidates and who succeeded and the accused persons were defeated in the elections. Except that there is no material to state that the deceased and his sons got enmity H towards the accused persons"

15. The above finding was manifestly erroneous. Not only was there evidence on record in the form of depositions of Shri M. Sanjeeva Reddy PW1 and Shri M. Rammohan Reddy PW2, the alleged political rivalry between the two sides was mentioned even in the first information report lodged by PW1 in writing. The complaint and so also the FIR registered on the basis of the same clearly referred to the reason why the deceased had been killed. It attributed the reason for the ghastly murder of the deceased to his refusal to support the candidature of A1 and A3 in the ZPTC/MPTC elections. It was not, therefore, a case where motive was introduced as an improvement in the prosecution story. It was on the contrary a case where right from the stage of lodging of the FIR till recording of depositions in the court political rivalry was said to be the motive for the killing of the deceased. Shri M. Sanjeeva Reddy PW1, who was also the first informant had stood by his version regarding the political rivalry being the cause for the murder of his father Chinna Pulla Reddy. So had M. Rammohan Reddy PW 2 who had also in no uncertain terms said that the rivalry between the two groups was the reason why the deceased was done to death. The High Court appreciated the above evidence and rightly observed:

> "From the above evidence, it is clear that there was political rivalry between the accused party and the deceased party and the accused bore grudge against the deceased on account of the refusal of the deceased to support them in the elections and on account of the defeat of A-1 and A-3 in the ZPTC elections."

16. There is, in our opinion, no reason much less a compelling one for us to take a view different from the one taken by the High Court. The prosecution case that these accused appellants had a motive for the commission of the offence alleged against them thus stood satisfactorily proved.

17. It was next contended that the incident in question having occurred at 5 p.m. the first information report lodged at

A 6 p.m. was delayed for which delay, the prosecution had offered no explanation. It was further contended that the jurisdictional Magistrate had received a copy of the FIR only at 1.05 a.m. Keeping in view the distance between the place of occurrence and the Police Station as also the distance between the Police B Station and the jurisdictional Magistrate's court the delay in lodging of the report and in sending a copy thereof to the Magistrate were significant which would in the absence of any valid explanation render the entire prosecution case, suspect.

18. There is in our view no merit even in this submission C of the learned counsel. A report regarding the commission of a cognizable offence, lodged within an hour of the incident cannot be said to be so inordinately delayed as to give rise to a suspicion that the delay – if at all the time lag can be described to be constituting delay, was caused because the D complainant, resorted to deliberations and consultations with a view to presenting a distorted, inaccurate or exaggerated version of the actual incident. No suggestion was made to PW1 the first informant that he delayed the lodging of the report because he held any consultation in order to present a false or E distorted picture of the incident. A promptly lodged report may also at times be inaccurate or distorted just as a delayed report may despite the delay remain a faithful version of what had actually happened. It is the totality of the circumstances that would determine whether the delay long or short has in any way F affected the truthfulness of the report lodged in a given case. The credibility of a report cannot be judged only by reference to the days, hours or minutes it has taken to reach the police station concerned. Viewed thus the credibility of the report was not affected on account of the so called delay of one hour in G lodging of the complaint. So also, the receipt of the report by the magistrate at 1.05 a.m. was not so inordinately delayed as to render suspect the entire prosecution case especially when no question regarding the cause of delay was put to the Investigating Officer. If delay in the despatch of the First H Information Report to the Magistrate was material the attention

of the Investigating Officer ought to have been drawn to that aspect to give him an opportunity to offer an explanation for the same. How far was the explanation acceptable would then be a matter for the court to consider.

19. It was then contended by the learned counsel for the appellants that there were certain erasures and interpolations in the first information report which according to them suggested a manipulation and raised a doubt about the registering of the first information report. A similar contention, it appears was raised even before the Trial Court, who repelled the same holding that the only discrepancy in the first information report was a correction of FIR No.84 to First Information Report No.85. The Trial Court further held that the said correction was wholly immaterial and did not affect the prosecution version. Before us, an attempt was made by the learned counsel for the appellants to argue that the correction made in the first information report altered the FIR number from 86 to 85 meaning thereby that the first information report had been ante timed. There is no merit in that contention either. The trial court has in our opinion correctly found that the over-writing in the First Information Report was limited to converting the digit 4 to digit 5 in the number assigned to the FIR. This correction is visible to the naked eye. The contention that the correction had the effect of converting FIR No.86 into FIR No.85 is not supported by the record. As a matter of fact the correction simply altered the FIR number from 84 to 85. In the circumstances, unless the correction is shown to be of any significance, nothing much turns on the same. Learned counsel for the appellants were unable to demonstrate that the correction of the First Information Report No.84 to 85 suggested any distortion in the prosecution case or prove that the first information report was false or ante timed. It is also significant that neither in the memo of appeal before the High Court nor in the special leave petition filed before this Court had the appellants pursued the challenge or urged the alleged

A interpolation in the First Information Report as a ground warranting rejection of the prosecution case.

20. That brings us to the substance of the prosecution case which essentially comprises the depositions of M. Sanjeeva Reddy PW1, M. Rammohan Reddy, PW2 and M. Veeranjaneya Reddy PW 3. According to M. Sanjeeva Reddy PW 1, late Shri Chinna Pulla Reddy, Ramamohan Reddy, Hanumantha Reddy, Veeranjaneya Reddy, Mabu and driver Shankar started from Kavetimasumdram in a Tata Sumo Jeep driven by Shankar on 31st of July, 2001 and reached Tadipatri at 4 p.m. From the house of the deceased at Tadipatri the aforesaid persons including the deceased travelled to Sanjjaladinne village and reached the slab polishing factory by 5 p.m. The driver of the vehicle drove through the gate of the factory premises and then reversed the same for parking the jeep facing the gate. It was at this stage that A1 to A5 came running through the gate into the factory. A2 was armed with bombs while the other accused were armed with hunting sickles. A2 hurled two bombs, one of which fell on the bonnet of the Jeep and exploded while the other bomb exploded on the left side door of the vehicle. All of them were terrified by the sudden attack and started running away for shelter. The witness ran towards labour room of the factory on the west side and stood behind the workers room from where he witnessed the occurrence. He saw that when the deceased was running to the office room of the factory Gosu Ramachandra Reddy A1 hacked him with a hunting sickle on his head. Similarly Gosu Rajagopal Reddy A3 also hacked the deceased on the neck. Because of the blows sustained by the deceased he fell down at a distance of 3 ft. from the office room. A3 instigated the others to kill the deceased whereupon A4 and A5 also hacked the deceased. The witness was stunned out of fear and remained frozen at the place from where he watched the occurrence, while the accused left the place from the same gate carrying their hunting sickles stained with blood.

21. The witness goes on to state that PW 3 M.

Veeranjaneya Reddy also came to the spot after the occurrence and saw the dead body of the deceased. Mabu and Ramamohan Reddy were sent by the witness to the Village to inform his mother and brother. The witness himself went to the Police Station and lodged a report at Tadipatri Police Station, Ex.P1. The police arrived at the spot and conducted an inquest between 7 p.m. to 10 p.m. with the help of electric lights and two petromax lamps. At the inquest the watchman told the witness that he had seen A6 to A10 outside the factory gate. It was on the basis of the said statement that the names of A6 to A10 were also included as persons responsible for the commission of the offence. Despite extensive cross examination nothing material has been extracted from the witnesses which could possibly discredit his testimony nor was any specific contention based on the said statement made in the courts below or urged before us.

22. To the same effect are the depositions of PW 2 and PW3 who too have fully supported the prosecution case and the narrative given by PW1. The version of these witnesses who according to the prosecution were eye witnesses to the occurrence has been accepted as truthful by the trial court as also the High Court in appeal. In the absence of any material contradiction in the version given by these witnesses and in the absence of any other cogent reason rendering the depositions unacceptable, we see no reason why the said version should not be accepted as truthful.

23. Deposition of D. Dastagiramma PW4 has also substantially supported the prosecution version although she was declared hostile by the public prosecutor on account of her refusal to identify the accused. According to this witness she was staying in the slab factory of the deceased Pulla Reddy in a labour room. Pulla Reddy had come to the factory along with PW1, PW2 and PW3. Hanumantha Reddy and Mabu, Driver Shankar was also with him in the white jeep. They reached the factory at 5 p.m. The Jeep was reversed by the driver and

A parked facing towards the gate, when five persons came running from the gate. One person was having bombs while the remaining were armed with hunting sickles. Both the bombs thrown at the jeep exploded whereafter PW 1 to PW 3 ran away. PW 1 had run towards the Labour room while the five B assailants surrounded the deceased China Pulla Reddy. At this stage the witness ran away due to fear to the back side of the factory and left for Ramapuram her parents' village.

24. Eswaraiah PW5 was also a labourer who was working in the factory of the deceased Pulla Reddy. This witness was C taking care of the poultry in the factory owned by the deceased. Since some of the birds had escaped from the factory, he was chasing them back into the factory. At about 5 p.m. he heard a loud noise from the factory. He returned to the factory within 10 minutes and found that Pulla Reddy had been hacked and was D lying dead in a pool of blood at a short distance from the jeep. This witness saw PWs 1 to 3, Mabu, Hanumantha Reddy near the dead body but did not see the assailants as they had run away from there.

E 25. It is evident from the depositions of the three witnesses referred to above that the deceased Pulla Reddy had come to his factory accompanied by PW 1 M. Sanjeeva Reddy, PW 2 M. Rammohan Reddy, PW 3 M. Veeranjaneya Reddy and Shankar the driver of the sumo jeep and that the deceased was F killed inside the factory by five persons. The depositions of PWs 4 and 5 substantially supports the prosecution case and proves the presence of the deceased Pulla Reddy, and PWs 1, 2 and 3 apart from Shanker, the driver of the Sumo jeep inside the compound of the factory at 5 p.m. on 31st July, 2001 when the G incident took place. Once the presence of PWs 1, 2 and 3 was established by their own depositions which have remained unshattered and the supporting evidence of PWs 4 and 5, the version given by the said three witnesses cannot be brushed aside lightly.

H 26. Mr. Ranjit Kumar, learned Sr. counsel appearing for

A1, A4 and A5 contended that since the accused persons belonged to a different village in the absence of any evidence to show, that they knew that the deceased was visiting his factory it would be difficult to believe that they were lying in wait to assault and kill him. There is indeed no evidence to show that the accused persons knew about the visit of the deceased to his factory but that does not in our view, make any material difference. What is important is that the stone polishing factory was owned by the deceased and was not far from his house at Tadipatri. A visit by the owner of the factory was not so improbable that the accused could not expect the same especially when those with a sinister design like a cold blooded murder, could lie in wait if necessary to strike at an opportune time. The fact that a factory owned by Accused No.1 was in close proximity to the factory of the deceased, made it all the more easy for the assailants to carry out their nefarious design. That the deceased had been killed in the factory, is not even questioned by the defence as indeed the same cannot be questioned in the light of the deposition of the witnesses examined by the prosecution. The depositions of the eye witnesses PWs 1 to 3 are clear and free from any embellishments hence completely reliable. It is also difficult to believe that the witnesses who are closely related to the deceased would screen the real offenders and falsely implicate the appellants only because of the political rivalry between the two groups.

27. Mr. Kumar next argued that the weapons allegedly used by the appellants were said to be hunting sickles, whereas the injuries found on the person of the deceased were said to have contused margins which could not be caused by a hunting sickle. It was also argued that while the eye witnesses had attributed to A3 an injury on the neck of the deceased no such injury was reported by the doctor in the post mortem examination. This was, according to the defence, a major contradiction, that would render the prosecution story doubtful.

28. It is true that PW 1 has in his depositions attributed an injury to A 3 which according to the witness was inflicted on the neck of the deceased. It is also true that the post mortem examination did not reveal any injury on the neck. But this discrepancy cannot in the light of the evidence on record and the fact that it is not always easy for an eye witness to a ghastly murder to register the precise number of injuries that were inflicted by the assailants and the part of the body on which the same were inflicted. A murderous assault is often a heart-rending spectacle in which even a witness wholly unconnected to the assailant or the victim may also get a feeling of revulsion at the gory sight involving merciless killing of a human being in cold blood. To expect from a witness who has gone through such a nightmarish experience, meticulous narration of who hit whom at what precise part of the body causing what kind of injury and leading to what kind of fractures or flow of how much blood, is to expect too much. Courts need to be realistic in their expectation from witnesses and go by what would be reasonable based on ordinary human conduct with ordinary human frailties of memory and power to register events and their details. A witness who is terrorised by the brutality of the attack cannot be disbelieved only because in his description of who hit the deceased on what part of the body there is some mix up or confusion. It is the totality of the evidence on record and its credibility that would eventually determine whether the prosecution has proved the charge against the accused. Having said that let us see the nature of the injuries that were noticed by Dr. Satyanarayana Reddy PW 6, who conducted the post mortem on the deceased and examine whether the discrepancy pointed out by the defence makes any real dent in the prosecution case. The witness has described the injuries as under:

"EXTERNAL INJURIES

1. Incised injury over left side of head Fronto parietal area 15 cms x 2 cms x bone deep. Bones fractured. Brain

matter seen out side through the injuries. Margins contused.

2. Incised injury over the occipital area of head on right side 8 cms x 2 cms. bone deep, margins contused.

3. Incised injury over left side of face 6 cms. x 2 cms. muscle deep. Margins contused.

4. Incised injury over the lower Jaw extending on both side of face 16 cms. x 3 cms. x bone deep, margins contused, mandible fractured.

5. Incised injury over lower lip on left side 7 cm x 2 cm. muscle deep, margins contused.

6. Incised injury over right clavicle 6 cm x 2 cm bone deep, margins contused, right clavicle fractrured.

7. Incised injury over left shoulder 6 cm x 2 cm muscle deep, margins contused.

8. Incised injury over left side of chest below clavicle 15 cm x 2 cm cavity deep, margins contused. Lung tissue protruding over through the injury.

9. Incised injury over the palm of left hand near wrist 2 cm x 1 cm tissue deep, margins contused.

10. Incised injury over the palm of left hand near little finger 2 cm x 1 cm tissue deep, margins contused.

11. Incised injury over the dorsal aspect of left forearm upper 1/3 5cm x 2 cm muscle deep, margins contused.

12. Incised injury over the back of left scapular area 4 cm x 2 cm muscle deep, margins contused.

Deep dissection and internal examination: Skull: fracture of left frontal and left parietal bone present.

A Fracture of occipital bone right side fractured. Brain underlying the fractured bones extensively injured. Intracranial haemorrhage present. Hyoid normal fracture of mandible present. Fracture of right clavicle present. Thorax on left side fracture of ribs from 1 to 3 present. Lung tissue
B protruding out through the injury. Left lung extensively injured. Extravasations of blood about 800 cc present in left thoracic cavity. Heart chambers empty. Right lungs normal and pale. Stomach contain digested food, Liver normal and pale. Kidneys normal and pale. Extravasations
C of blood surrounding all external injuries. The injuries are ante mortem in nature. Rectum empty. Bladder empty.

Opinion : The deceased would appear to have died of shock and haemorrhage due to multiple injuries, especially injuries to vital organs. Brain: caused by injuries No.1 and
D 2 and injury to left lung caused by the injury No.8 and died 15 to 18 hours prior to post mortem examination. Injuries would have been caused by sharp weapons like sickles. The P.M. certificate is Ex.P.3. Injuries 1 to 12 are ante mortem in nature. The above injuries sufficient to cause to
E death in ordinary course of nature."

29. Two aspects are clear from the above. First is that injury no.6 (supra) was found over the right clavicle. The injury was bone deep and the clavicle fractured. A witness who has
F a momentary view of the incident which is over within a few minutes may not have his testimony rejected only because instead of describing the injury to the clavicle he described the same to be an injury to the neck. It is not a case where the witness attributes an injury to the assailants on a vital part like
G the head but no such actual injury is found in that region of the body. Instead an injury is found say on the leg or any other portion of the body. It is a case where the witness describes the infliction of the injury in a region which may not be accurate from the point of view of human anatomy but which is capable of being understood in a layman's language to be an injury in
H an area that is proximate.

30. The other aspect is that the deposition of the doctor establishes the fact that the injuries noticed on the dead body of the deceased had been inflicted by sharp cutting instrument like sickles. It is further stated by the doctor that in all probabiliting the deceased might have died on receipt of the first injury itself. There is nothing in the examination of the eye-witnesses from which the court may infer that the injuries found in the post mortem examination of the deceased could not have been caused by sharp edged sickles that the accused were carrying with them and are said to have used in the course of the incident. The argument that there is a material contradiction between the ocular evidence on the one hand and the medical evidence on the other must therefore fail and is hereby rejected.

31. It was then contended on behalf of the appellants that the prosecution had dropped Shankar the driver of the Sumo Jeep and Hanumantha Reddy who according to the defence witnesses could have given true account of incident if at all they were accompanying the deceased on the date of the occurrence. It was argued by Mr. Sushil Kumar, learned senior counsel for the appellants that the non-examination of Shankar, the driver of the Jeep assumes importance because according to the prosecution version the driver had after entering the factory premises reversed the Jeep and parked it facing the gate. This part of the case could be supported only by the driver and since the driver had been given up at the trial the prosecution case that the vehicle was parked facing the gate, must be deemed to have remained unproved. The parking of the vehicle in the manner suggested by the prosecution was according the learned counsel material in as much as unless the prosecution introduced the theory of the vehicle being parked by the driver facing the gate the so-called eye-witness to the occurrence would have had no opportunity to see the accused persons entering the factory with bombs and sickles. We regret to say that there is no merit in that contention either. It is well-settled that every witness that the prosecution may have listed in the charge-sheet need not be examined. It is

A entirely in the discretion of the Public Prosecutor to decide as to how he proposes to establish his case and which of the listed witnesses are essential for unfolding the prosecution story. Simply because more than one witnesses have been cited to establish the very same fact is no reason why the prosecution B must examine all of them. The prosecution in the present case examined three eye-witnesses to prove the incident in question. There was no particular fact that could be proved only by the deposition of the driver and not by other witnesses. That Shanker was the driver of the vehicle at the relevant time, and C that he reversed the vehicle and parked it facing the gate, were facts regarding which each one of the occupants of the vehicle was a competent witness. PWs. 1, 2 and 3 have in their depositions testified that the vehicle was parked facing the gate by Shankar driver of the vehicle after reversing the same. So D also the non-examination of Hanumantha Reddy does not, in our opinion, make any dent in the prosecution case or render the version given by three eye-witnesses who have supported the prosecution version unworthy of credit. As a matter of fact once the deposition of the eye-witnesses examined at the trial E is accepted as trustworthy the non-examination of other witnesses would become inconsequential. This Court in *Nirpal Singh v. State of Haryana* (1977) 2 SCC 131 stated the principles in the following words:

> "The real question for determination is not as to what is F the effect of non-examination of certain witnesses as the question whether the witnesses examined in Court on sworn testimony should be believed or not. Once the witnesses examined by the prosecution are believed by the Court and the Court comes to the conclusion that their G evidence is trust-worthy, the non-examination of other witnesses will not affect the credibility of these witnesses. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point. In the instant case, once the evidence of the eye witnesses is believed, there is an H end of the matter."

32. To the same effect are the decisions of this Court in *State of U.P. v. Hakim Singh and Ors.* (1980) 3 SCC 55, *Nandu Rastogi alias Nandji Rastogi and Anr. v. State of Bihar* (2002) 8 SCC 9, *Hem Raj & Ors. v. State of Haryana* (AIR 2005 SC 2010), *State of M.P. v. Dharkole @ Govind Singh and Ors.* (AIR 2005 SC 44) and *Raj Narain Singh v. State of U.P. & Ors.* (2009) 10 SCC 362.

33. It was argued on behalf of the appellants that the failure of the Investigating Officer to seize the Jeep must give rise to an adverse inference and discredit the entire prosecution story. That submission needs notice only to be rejected. The vehicle in question was not used for the commission of the offence. It was, therefore, not necessary to seize the vehicle. All that the prosecution was required to establish was that the Jeep was indeed damaged on account of throwing of bombs one of which had exploded on the bonnet of the vehicle and the other on the left side of its door. The Investigating Officer had taken care to have the damaged portions of the vehicle, cut, seized and sent to the Forensic Science Laboratory for opinion. The report from the FSL marked Ex.P20 supports the prosecution case and proves that explosive mixture used in manmade bombs was found in the same. The relevant part of the report is as under:

> "The above items are analysed and Potassium, Chlorate, Chloride, Arsenic, Sulphide, Sulphate are found in both of them.
>
> The above radicals are the resultant components and residues of explosive Potassium Chlorate, Arsenic Sulphide and Sulphur after explosion. This explosive mixture is used in countrymade bombs of throw type."

34. In the light of the above the non-seizure of the Jeep made no difference to the veracity of the prosecution case.

35. Time now to examine the plea of alibi set up by accused Nos.1 and 3. In support of their plea the accused have

A examined four witnesses viz. Thirupalu DW1, Radha Kumari, DW2 and Prem Nagi Reddy DW 3 and Shri Jageeshwara Reddy D.W.4 as witnesses. Based on the depositions of the said witnesses the defence has attempted to prove that A1 and A3 were at Anantpur from 11 a.m. to 5 p.m. on the date of the B incident, and were not therefore responsible for the murder of deceased Pulla Chinna Reddy committed at 5 p.m. on 31st July, 2001. The Trial Court has carefully examined the evidence adduced by defence but rejected the plea that accused A1 and A3 were at Anantpur at the time of the incident. The High Court C has affirmed that finding upon a reappraisal of the evidence on record. What we have to examine is whether the concurrent finding on a question which is a pure question of fact namely whether accused A1 and A3 were at Anantpur at the time of incident leading to the murder of deceased Pulla Chinna Reddy D took place in his stone polishing factory at Village Sajjaladinne warrants any interference. We may at the threshold say that a finding of fact concurrently recorded on the question of alibi is not disturbed by this Court in an appeal by special leave. The legal position in this regard is settled by the decision of this E Court in *Thakur Prasad v. The State of Madhya Pradesh* AIR 1954 SC 30 Vol. 41

> "The plea of alibi involves a question of fact and both the courts below have concurrently found that fact against the appellant. This Court, therefore, cannot, on an appeal F by special leave, go behind that concurrent finding of fact."

36. That apart the plea of alibi has in our opinion been rightly rejected by the courts below even on an appraisal of the evidence on record. We may in this regard briefly refer to the G defence evidence adduced in support of the plea. Thirapalu, DW1 an Agriculturist from Tadipatri Mandal, deposed that 3½ acres of land owned by him was compulsorily acquired by the Government for a public purpose. No compensation for the acquisition was however paid to him. It was in that connection that the witness had approached A1 for help before the RDO H

at Anantpur. According to the witness A1 and A3 apart from Krishna Reddy, Gopal Reddy and one Ranga Reddy reached Anantpur and went to the house of Paritala Ravindra to attend a meeting organized at his residence. After the meeting, they went to a hotel and then to the R&B Bungalow at Anantpur to meet the Hon'ble Minister Sri Nimmala Kristappa. After A1 had spoken to the Minister for a few minutes they went to the office of RDO where they met some persons including Radhakumari, DW2 who had come there in connection with the grant of a fair price shop licence. Accused No.1 entered the RDO office and talked to one Allabakash, the clerk in the said office, who dealt with payment of compensation and from there they went to Panchayatraj office and then to the office of Superintendent of Police when Jagadeeswara Reddy, DW4 informed them about the murder of Pulla China Reddy. According to the witness, the police detained A3 in the SP office itself. Thereafter the witness returned to his village. There are in deposition of this witness certain striking features that need to be noticed. The witness had neither any notice nor any other record suggesting acquisition of land owned by him which was said to be the reason for his alleged visit to Anantpur. Secondly, A1 and A3 had according to the witness gone to the office of the RDO and talked to one Allabaksh posted as a clerk there. No application to the RDO or any other authority for that matter was made either by the witness or by the accused on his behalf. Surprisingly the witness does not even talk to Allabaksh the clerk although it was his case in connection with which the accused had accompanied him to that office. So also there was no evidence to corroborate the version given by the witness that there was any meeting at the house of Partitala Ravindra, nor any evidence to show that any Minister had visited Anantpur on that day.

37. Radhakumari DW2 in her deposition stated that she had studied up to 10th standard and had made an application for the grant of a fair price shop licence. On the date of the incident she is said to have come to Anantpur in connection

A with an interview for the grant of the licence and met A1 in the RDO office along with DW1 Thirapalu. The witness further claimed that she was selected for the grant of licence in pursuance of the interview held on 31st July, 2001.

B 38. In her cross examination the witness admitted that she did not receive any appointment letter for the fair price shop dealership at Sajjaladinne. She denied the suggestion that no interview was fixed for 31st July, 2001 before the RDO Anantpur. The witness admitted that the dealership was cancelled but denied that the cancellation was because of C malpractices alleged against her. What is significant is that the witness did not have any supporting material like a copy of the application for the grant of fair price shop licence or a copy of the interview call inviting her for interview on 31st July, 2001 or a copy of the letter informing her that she was selected and D appointed pursuant to the said interview. In the absence of any evidence to corroborate the version of the witness that she was indeed at Anantpur on 31st July, 2001, the courts below were justified in rejecting the same.

E 39. Prem Nagi Reddy, DW3 also claims to be at Anantpur on 31st July, 2001. He was there in connection with a Review meeting allegedly fixed by the High Command of TDP. The meeting was held in the House of Paritala Ravindra at Anantpur. A1 and A3 and few others accompanied them to SP office at F about 5 pm.

40. In cross-examination the witness admitted that he was a prominent TDP leader and had contested, though unsuccessfully, the assembly elections against Shri J.C. Diwakar Reddy thrice. That the deceased Chinna Pulla Reddy G was a close associate of Diwakar Reddy and that Pulla Reddy was a senior congress party leader in Tadipatri Mandal was also admitted by this witness. That A1 and A3 had contested MPTC elections as TDP candidates and got defeated at the hands of the congress party candidate was also admitted just H as he admitted that there was no record to prove that a TDP

review meeting on 31st July, 2001 was held at Anantpur. The witness also admitted having been convicted in crime No. 17 of 1999 under Section 324 r/w Section 140 IPC and having been sentenced to undergo rigorous imprisonment for one year and a fine but acquitted by the Appellate Court. He expressed ignorance about his being an accused in crime no.58 of 1988 under Section 307 r/w 149 IPC, Sections 3 and 5 of E.S. Act and Section 25(1)(b)(a) of Arms Act of Yadiki P.S. He admitted that he was an accused person in crime No.59 of 1992 under Sections 3 and 5 of E.S. Act registered in police Station Tadipatri, Crime No.1 of 1993 under Section 7(1) (a) of Crl. Law Amendment of Act, Crime No.127 of 1994 under Section 136 of R.P. Act and Crime No.4 of 1996 under Section 307 r/w Sections 149 IPC and 3 & 5 of E.S. Act registered in town Police Station Tadipatri.

41. The courts below have rejected the testimony of this witness also and in our opinion rightly so. The close affiliation of this witness to the party to which they belong and his antecedents, suggesting involvement in several criminal cases registered against him, was reason enough for the courts to disbelieve his version also and consequently reject the plea of alibi raised by the accused in their defence.

42. In the circumstances we see no reason to interfere with the view taken by the courts below. These appeals accordingly fail and are hereby dismissed.

R.P. Appeals dismissed.