

THOTI MANOHAR

v.

STATE OF ANDHRA PRADESH  
(Criminal Appeal No. 1739 of 2007)

MAY 15, 2012

[DR. B. S. CHAUHAN AND DIPAK MISRA, JJ.]

*PENAL CODE, 1860:*

*ss. 302, 302/34, 324, 326 and 452 - Murder - Common intention - Two brothers and their cousin convicted by trial court - Cousin acquitted by High Court of the charge u/s 302/34 - Appeal by one of the convicts - Held: The material evidence clearly shows that the appellant along with his brother had the previous day threatened the deceased with dire consequences and had inimical relationship with the deceased and his family - On the day of occurrence both armed with deadly weapons went to the house of deceased and dragged him - Though the appellant did not give the blow, but his participation from the beginning till the end would clearly show that he shared the common intention with his brother - He had assaulted the other witnesses who tried to intervene - High Court rightly upheld his conviction.*

*EVIDENCE:*

*Evidence of related witnesses - Held: All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution - If on such scrutiny, their testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon - In the instant case, the occurrence in part took place inside the house and the rest of it slightly outside the premises of the deceased - Under these circumstances,*

A *the family members and the close relatives are bound to be the natural witnesses - They intervened and sustained injuries - They are the most natural witnesses and there is nothing on record to doubt their presence at the place of occurrence.*

B *Oral evidence - Discrepancies in - Held: The discrepancies pointed out are minor in nature - Giving undue importance to them would amount to adopting a hyper-technical approach - The court, while appreciating the evidence, should not attach much significance to minor discrepancies, which do not shake the basic version of the prosecution case, and, as such, are to be ignored - As regard non-explanation of injuries of the accused, the same were superficial in nature - Besides, non-explaining of injuries of the accused persons is always not fatal to the case of the prosecution.*

D **The appellant (A-2) along with his real brother (A-1) and a distant cousin (A-3), was prosecuted for causing death of one 'KM' the father of PW-1 and causing injuries to him and other members of his family. The prosecution**

E **case was that A-1 had developed illicit relationship with the cousin sister of the 'KM' and because of this, she was sent to Bangalore. This enraged A-1 and he started picking up quarrels with 'KM' and his family. On 24.9.2009, A-1 and A-2 drove their cows into the crop of 'KM'. When**

F **PW-1 tethered the said cows in his house, A-1 and A-2 went there assaulted his family members, threatened them with dire consequences and took away the cattle. 'KM' and PW-1 approached the elders of the village including PWs 7 and 12, who secured the presence of A-**

G **1 and A-2 and told the parties that there would be a mediation on 26.9.2002. However, at about 11.00 a.m. on 25.9.2002, the three accused armed with deadly weapons entered the house of 'KM'; A-1 and A-2 dragged 'KM' and PW1 out of the house; A-1 assaulted 'KM' with iron rod, who became unconscious and fell down. When PW-6, the**

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younger brother of 'KM' intervened, A-2 struck him with billhook and A-3 also was stated to have assaulted him with iron rod. When PWs 2, 3, 4 and 5 intervened, they were also assaulted by the accused persons. All the injured were taken to the hospital where 'KM' was declared dead. The trial court convicted A-1 u/s 302 IPC and A-2 and A-3 u/s 302/34 IPC. All the accused were also convicted u/ss 452 and 324 IPC. A-2 was further convicted u/s 326 IPC. On appeal, the High Court interfered only to the extent that it acquitted A-3 of the offence punishable u/s 302/34 IPC.

Dismissing the appeal, the Court

**HELD:**

1.1 PW-1 has testified that on 24.9.2002, A-1 and A-2 had led their cows to graze in the sugarcane field of the deceased; he drove the cows to his house and tied them; A-1 and A-2 came and assaulted the deceased and him and threatened them with dire consequences before taking the cows back. He also stated regarding the decision to resolve the controversy by convening a Panchayat on 26.9.2002. The said version of PW-1 has received corroboration from PWs-2 to 6 and 10. Nothing has really been brought out to create a slightest doubt on that aspect. With this part of the occurrence, it is appropriate to connect the real genesis of the animosity, i.e., cousin sister of the deceased with whom A-1 had an illicit relationship and she was sent to Bangalore. P.W.1 as well as PWs-3, 4, 5 and 10, have categorically deposed about this aspect. In the cross-examination at the instance of A-1 and A-2 there was not even a proper suggestion to PW-1 in that regard. Thus, the genesis for the cavil and the subsequent disputes have been established beyond any reasonable doubt. [para 18] [1143-F-H; 1144-A-F]

A 1.2 As regards the incident on 25.9.2002, it is in the evidence of PW-1 that at about 11.00 a.m., A-1 and A-2, armed with weapons, came to his house and dragged the deceased; A-1 assaulted the deceased with an iron rod on his head, neck and all parts of the body. He has admitted that A-3 was a distant cousin and no role has been ascribed to him in the previous occurrence. It is also in his testimony that A-3 had not gone near the deceased. PW-2, another eye witness to the occurrence, has testified that A-1 had assaulted the deceased with the iron rod on the head, chest and other parts of his body. She also has not ascribed any role to A-3. PW-3, the wife of the deceased, has categorically deposed that A-1 had assaulted her husband. She has graphically stated the active role played by A-2. PW-4, who is another injured witness, has deposed about the assault by A-1 and the beatings by A-2 to other injured persons who intervened. Similar is the evidence of other injured eye witnesses. Additionally, the oral testimony has received corroboration from the medical evidence in material particulars. [para 19-22] [1144-F-H; 1145-A-C]

E 1.3 With regard to the injuries sustained by the accused having not been explained, it is worth noting that the injuries are superficial in nature, the accused were not sent for medical examination and further there is no suggestion whatsoever as regards the injuries sustained by them to any of the witnesses. The story built up as regards the fight between the two groups does not remotely appeal to common sense and, more so, in the absence of any evidence. Besides, non-explaining of injuries of the accused persons is always not fatal to the case of the prosecution. [para 23] [1145-D-G]

*Sri Ram v. State of M.P.* 2003 (6) Suppl. SCR 129 = 2004 (9) SCC 292 - relied on

H 1.4 So far as the plea that all the witnesses, being

relatives, are interested witnesses is concerned, it is significant to note that the occurrence in part took place inside the house and the rest of it slightly outside the premises of the deceased. Under these circumstances, the family members and the close relatives are bound to be the natural witnesses. They intervened and sustained injuries. Their sustaining of injuries has got support from the ocular evidence as well as the medical evidence. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, their testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. The evidence of the injured witnesses who are close relatives to the deceased have really not embellished or exaggerated the case of the prosecution. They are the most natural witnesses and there is nothing on record to doubt their presence at the place of occurrence. By no stretch of imagination, it can be stated that the presence of the said witnesses at the scene of the crime and at the time of occurrence was improbable. Their version is consistent and nothing has been suggested to bring any kind of inherent improbabilities in their testimonies. [para 24,26 and 29] [1146-C-D; 1147-E-G; 1148-F-G]

*Dalip Singh v. State of Punjab* 1954 SCR 145; and *Masalti v. State of U.P.* 1964 SCR 133 = 1965 AIR 202; *Hari Obula Reddi and others v. The State of Andhra Pradesh* 1981 AIR 82; *Kartik Malhar v. State of Bihar* 1995 (5) Suppl. SCR 239 = 1996 (1) SCC 614; and *Pulicherla Nagaraju alias Nagaraja Reddy v. State of Andhra Pradesh* 2006 (4) Suppl. SCR 633 = 2006 AIR 3010 - relied on

1.5 As regards the discrepancies pertaining to time,

A situation of the land, number of persons, etc., they are absolutely minor in nature. Giving undue importance to them would amount to adopting a hyper-technical approach. The court, while appreciating the evidence, should not attach much significance to minor  
 B discrepancies, which do not shake the basic version of the prosecution case, and, as such, are to be ignored. [para 30] [1149-B-C]

*State of U.P. v. M.K. Anthony* 1985 AIR 48 ; *Appabhai and another v. State of Gujarat* 1988 AIR 696; *Rammi alias Rameshwar v. State of Madhya Pradesh* 1999 (3) Suppl. SCR 1=1999 AIR 3544; *State of H.P. v. Lekh Raj and another* 1999 (4) Suppl. SCR 286 = 2000 (1) SCC 247; *Laxman Singh v. Poonam Singh* 2003 (3) Suppl. SCR 528= 2004 (10) SCC 94; *Dashrath Singh v. State of U.P.* 2004 (3) Suppl. SCR 561 = 2004 (7) SCC 408; *State of Punjab v. Jagir Singh Baljit Singh and Karam Singh* 1974 (1) SCR 328 =1973 AIR 2407 - relied on

1.6 With regard to the plea that the appellant has  
 E been erroneously convicted with the aid of s.34 of the IPC, the High Court has noticed that A-1 and A-2 are real brothers and they have definite roles as regards the previous incident; and A-2 was intervened by the witnesses from assaulting the deceased. The material  
 F evidence on record clearly shows that A-1 and A-2 had threatened the deceased with dire consequences. The appellant had an inimical relationship with the deceased and his family as the previous occurrences would show. Despite a consensus being arrived at that there would be  
 G a panchayat on 26.9.2002, they, armed with deadly weapons, went to the house of the deceased and dragged him. The previous meeting of minds with pre-arranged plan or prior concert as has been held in number of authorities is difficult to establish by way of  
 H direct evidence. They are to be inferred from the conduct

and circumstances. As is evincible, the weapons the two  
accuse two accused carried were lethal in nature. The  
deceased was absolutely helpless and not armed with  
any weapon. True it is that A-2 did not give the blow, but  
his participation from the beginning till the end would  
clearly reveal that he shared the common intention with  
his brother. He had assaulted the other witnesses who  
had tried to intervene. Thus, though he might not have  
inflicted the injury, yet it can safely be concluded that he  
shared the common intention making him jointly liable.  
[para 32 and 37] [1150-D-E, F-H; 1152-E-H; 1153-A-C]

*Ram Tahal and others v. The State of U.P.* 1972 (2) SCR  
423=1972 AIR 254 ; *Rajesh Govind Jagesha v. State of  
Maharashtra* 1999 (4) Suppl. SCR 277 = 2000 AIR 160 ;  
*Bishna alias Bhiswadeb Mahato and others v. State of West  
Bengal* 2005 (4) Suppl. SCR 892=2006 AIR 302; and *Manik  
Das and others v. State of Assam* 2007 (7) SCR 863= 2007  
AIR 2274 - relied on.

**Case Law Reference:**

2003 (6) Suppl. SCR 129	relied on	para 23	E
1954 SCR 145	relied on	para 24	
1964 SCR 133	relied on	para25	
1981 AIR 82	relied on	para 26	F
1995 (5) Suppl. SCR 239	relied on	para 27	
2006 (4) Suppl. SCR 633	relied on	para 28	
1985 AIR 48	relied on	para 30	G
1988 AIR 696	relied on	para 30	
1999 (3) Suppl. SCR 1	relied on	para 30	
1999 (4) Suppl. SCR 286	relied on	para 30	H

A	2000 (1) SCC 247	relied on	para 30
	2003 (3) Suppl. SCR 528	relied on	para 30
	2004 (3) Suppl. SCR 561	relied on	para 30
B	1974 (1) SCR 328	relied on	para 30
	1972 (2) SCR 423	relied on	para 33
	1999 (4) Suppl. SCR 277	relied on	para 34
	2005 (4) Suppl. SCR 892	relied on	para 35
C	2007 (7) SCR 863	relied on	para 36

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1739 of 2007.

D From the Judgment & Order dated 6.3.2007 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 603 of 2005.

Tara Chandra Sharma, Uma Datta for the Appellant.

E D. Mahesh Babu, Suchitra H., for the Respondent.

The Judgment of the Court was delivered by

F **DIPAK MISRA, J.** 1. The present appeal, by special leave under Article 136 of the Constitution of India, is directed against the judgment of conviction and order of sentence dated 6.3.2007 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 603 of 2005 whereby the Division Bench of the High Court partly allowed the appeal by acquitting the accused No. 3 (A-3), namely, Thoti G Sivaram, for the offence punishable under Section 302 read with H accused No. 1 (A-1) was convicted for the offences punishable

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under Sections 452, 302, 326 and 324 of the IPC, the accused No. 2 (A-2) was found guilty of the offences under Sections 452, 302 read with 34, and 324 and 326 of the IPC, and the accused No. 3 (A-3) was convicted under Sections 452, 302 read with Section 34, and 324 of the IPC and, accordingly, sentenced to rigorous imprisonment and fine which we shall state at a later stage.

2. The broad essential facts of the prosecution case are that A-1 and A- 2 are real brothers and A-3 is their cousin. A-1, Thoti Ekambaram, had developed illicit relationship with Dhanamma, the cousin sister of the deceased, Kuppuswamy Modali. The deceased, his brother Damodaran and other family members had an apprehension that if Dhanamma continued such kind of intimacy with A-1, she would not be in a position to perform the marriage of her daughter. The said apprehension compelled them to send Dhanamma and her daughter to Bangalore where Dhanamma lived with her son. This act of the deceased and his family members stirred up anger in the heart of A-1 and a sense of revenge ruled his thought. The accused waited for the opportunity to pick up quarrels and triggered altercations on every trivial issue with the deceased and his family. The trivial cavil slowly gave rise to a major incident and on one day, A-1 and others allowed their cattle into the sugarcane fields of the deceased who wantonly grazed there and spoiled the crops. As the factual matrix would undrape, on 24.9.2002 at about 3.00 p.m., A-1 and A-2 drove their cows again for grazing the crop of the deceased. On seeing the same, Sekhar, son of the deceased, brought those cattle to his house and tied them. At about 4.00 p.m., A-1 and A-2 went to the house of the deceased, picked up a quarrel, assaulted them and took away their cattle. They also threatened them with dire consequences. Being disturbed, Kuppuswamy Mudali (deceased) and his son Sekhar (PW 1) approached the elders of the village, namely, Gunasekhar and Amudalaputtur Kesava Reddy (PWs-7 and 12) and others, for convening a panchayat so that such unwarranted actions were not repeated. The said

A elders secured the presence of A-1 and A-2, the deceased and his son and told all of them that there would be a mediation on 26.9.2002 and sincere efforts should be made to put the controversy to rest.

B 3. The case of the prosecution as further uncurtained is that on 25.9.2002, at about 11.00 a.m., when Sekhar, the deceased and Jayamma, wife of the deceased (PW-3), were in their house, A-1 and A-3 armed with iron rods and A-2 armed with billhook trespassed into the house of the deceased. A-1 and C A-2 caught hold of him and his son and dragged them out of the house. A-1, Thoti Ekambaram, assaulted the deceased with iron rods on his head, neck and all over his body and caused injuries as a consequence of which he fell down and lost his consciousness. At that juncture, Arunachalam, PW-6, the D younger brother of the deceased, intervened. Thoti Manohar, A-2, struck him with the billhook on his face as a result of which he sustained injuries. A-3 also assaulted him with iron rod on his chest. Rukminamma, PW-2, intervened and was assaulted by A-2. Jayamma, PW-3, was assaulted by A-1. Similarly, E when Pargunam, PW-4, and Damodaran, PW-5, intervened, they were also beaten up by the accused persons. All the injured persons were taken to the Government hospital, Chittoor in a jeep for necessary treatment. In the hospital, Kuppuswamy Modali was declared dead. The other remaining injured were admitted in the hospital for treatment.

F 4. The narration in continuum is that Sekhar, PW-1, lodged an FIR at Police Station, Gangadhara, Nellore and Crime No. 70 of 2002 was registered under Sections 452, 302 and 324 read with Section 34 of the IPC against the accused persons. G After the criminal law was set in motion, on 29.9.2002, the Circle Inspector of Police, P.W. 20, arrested A-1 and A-2 who led the said police officer to the sugarcane fields from where the weapons used in the crime were recovered and seized in the presence of panch witnesses. On 3.10.2002, A-3 was H arrested. The concerned Investigating Officer recorded the

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statements of the witnesses and, after completion of other formalities, placed the charge-sheet before the concerned Magistrate who committed the matter to the Court of Session. A

5. The accused pleaded not guilty and claimed to be tried.

6. Be it noted, initially, the learned Additional District and Sessions Judge (Fast Track Court, Chittoor) was in-charge of the trial of the case but, thereafter, by direction of the High Court in Criminal M.P. No. 6915/2003, the matter was transferred to the Sessions Judge, Chittoor. B

7. The prosecution, to establish the charges against the accused persons, examined 20 witnesses, exhibited 23 documents, namely, Exh. P-1 to P-23 and got MOs-1 to 9 marked. C

8. The defence chose not to adduce any evidence. However, the contradictions and omissions found in the evidence of some of the prosecution witnesses were marked as Exh. D-1 to D-5. D

9. The learned Sessions Judge appreciated the evidence of PW-1, Sekhar, the informant, PW-2, Rukmanamma, wife of Arunachalam, PW-3, Jayamma, mother of PW-1, PW-4 Parganam, PW-5, Damodaran and PW-6, Arunachalam, the injured eye witnesses who had supported the factum of assault on the deceased as well as on them; relied on the testimony of Gunasekhar, PW-7, S. Suri, PW- 8, and the then Circle Inspector of Police, PW-20, who conducted the investigation to accept the reliability of seizure of weapons in accordance with Section 27 of the Evidence Act, and further placed reliance on the evidence of PWs-10, 11, 12 and 14 which threw light on the illicit relationship of Dhanamma and her being sent to Bangalore which formed the genesis of bad blood and the course adopted by the deceased and his relatives to approach the elderly persons to convene a panchayat. The learned Sessions Judge also relied on the testimony of PW-9, Dr. Sai E  
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A Rani, who conducted the post mortem, PW-16, Dr. M. Krishnaveni, PW-17, Dr. Vijaya Gowri and PW-18, another medical officer, who examined the injured witnesses and gave certificates which were brought on record.

B 10. We may note here that the other witnesses are basically formal witnesses. It is also apt to state that only Govinda Reddy, PW 15, did not support the case of the prosecution.

C 11. Considering the evidence and the material brought on record, the learned Sessions Judge came to hold that the prosecution had been able to establish the charge under Section 452 of the IPC against A-1 to A-3, prove the offence under Section 302 of the IPC against A-1 to the hilt and bring home the charge for the offence under Section 302 read with D Section 34 of the IPC against A-2 and A-3, and under Section 326 of the IPC against A-2. That apart, the learned trial judge found that the offence under Section 324 of the IPC against A-1 to A-3 was proven and, accordingly, convicted them for the said offences. As far as the sentence is concerned, A-1 was E convicted to undergo life imprisonment for the offence under Section 302 of the IPC and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for six months, rigorous imprisonment for two years under Section 452 of the IPC and to pay a fine of Rs.5,000/-, in default, to suffer simple F imprisonment for one month and rigorous imprisonment for one year for the offence under Section 324 of the IPC. Similar sentence was imposed on A-2 for the offences under Sections 452, 302 read with Sections 34, and 324 of the IPC. As far as the offence under Section 326 is concerned, he was sentenced to undergo rigorous imprisonment for a period of three years G and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. As far as A-3 is concerned, the sentence remained the same for the offences under Section 302 read with Section 34, and 452 and 324 of the IPC.

H 12. Being dissatisfied with the judgment of conviction and

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the order of sentence, all the accused persons preferred appeal before the High Court. A

13. Before the appellate court, it was contended that the learned trial Judge has grossly erred by placing reliance on the evidence of PWs-1 to 8, 10 and 12 despite the incurable discrepancies pertaining to the place and time of occurrence and further the learned trial Judge had totally erred by giving credence to the version of the witnesses who are relatives of the deceased and were absolutely interested to implicate the accused. That apart, it was canvassed that there was no circumstance on record to come to a definite conclusion that A-2 and A-3 shared a common intention with A-1 to do away with the life of the deceased inasmuch as they neither caused injury on the body of the deceased nor did they instigate or exhort A-1 to commit the murder and, therefore, they were only liable for their individual acts and to be convicted and sentenced for the offences committed by them. The said submissions were controverted by the public prosecutor contending that A-2 and A-3 came armed with deadly weapons to the house of the deceased and dragged him from his house and attacked him. That apart, submitted the learned public prosecutor before the appellate court, that they had earlier threatened the deceased with dire consequences and thus, the cumulative effect of the circumstances would go a long way to reveal that there was a common intention to extinguish the life spark of the deceased. B  
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14. The High Court referred to the inquest report of the deceased, the injury reports of the injured persons, the human blood as found from the report of serologist contained in Exh. P-23, analysed the credibility and credentiality of the testimony of the eye witnesses and placed reliance on the seized articles and noted the consistency of the ocular evidence and the corroboration it had received from the medical evidence, the detailed narration of the assault on the witnesses by the assailants' group, the non involvement of A-3 with the previous incident and threat given and the role ascribed to him and came G  
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- A to hold that there was no material to infer the common intention as far as A-3 was concerned and, accordingly, acquitted A- 3 for the offence punishable under Section 302 read with Section 34 of the IPC but sustained the conviction and sentence in respect of other offences. As far as the conviction and sentence  
B of A-1 and A-2 are concerned, that was maintained.

15. We have heard the learned counsel for the parties and perused the documents on record.

- C 16. It is submitted by the learned counsel for the appellant that there is material contradiction about A-1 and A-2 letting their cows graze in the sugarcane field of the deceased inasmuch as different versions have been given by PW-1, the informant, and PW-20, the Circle Inspector of Police who conducted the investigation. It is urged by him that the High  
D Court has fundamentally erred by holding that there was intention on the part of A-1 to cause death of the deceased. The learned counsel would further contend that the deceased was the aggressor and the injuries found on A-1 and A-2 have not been explained as a consequence of which the case of the  
E prosecution does not deserve acceptance. It is his further submission that when the High Court had acquitted A-3 on the foundation that he did not share the common intention, on the same charge the appellant – A-2 should also have been acquitted and, therefore, this Court should acquit him of the  
F offence punishable under Section 302 read with Section 34 of the IPC. It is proponed by him that all the eye witnesses are interested witnesses and they have deliberately implicated the accused persons and further the prosecution has not made any endeavour to produce any independent witness.

- G 17. The learned counsel for the State, in oppugnation, would submit that the accused were the aggressors and the same is absolutely demonstrable from the evidence brought on record and it does not remotely suggest any other version. After taking us through the evidence of the witnesses, he has  
H contended that the prosecution witnesses are natural and

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truthful and there is no reason to discard their version. In fact, they have given the true version of the occurrence. It is urged by him that the contention that the injuries on the accused persons have not been explained by the prosecution and hence, its version deserves rejection has no legs to stand upon inasmuch as the injuries are absolutely superficial, minor and in any case, they do not affect the prosecution case in its entirety, especially when the evidence adduced by the prosecution is clear, cogent and credible. The learned counsel would further contend that the case put forth by the prosecution in court is in conformity with the facts disclosed in the First Information Report. It is graphically clear from the testimony of the witnesses, the weapons used in the assault that have been seized, the blood- stained clothes which have been recovered and the evidence of the doctors who had examined the injured witnesses and conducted the post mortem that the prosecution has proved its case beyond reasonable doubt. It is further canvassed by him that the plea on behalf of appellant that Section 34 of the IPC is not attracted, regard being had to the fact that the said accused had not inflicted any injury on the deceased and hence, had not shared the common intention, is absolutely unacceptable on apposite appreciation of the circumstances and the evidence brought on record which clearly establish the sharing of common intention.

18. Firstly, we shall proceed to deal with the earlier part of the incident. PW-1, K. Sekhar, has testified that on 24.9.2002, A-1 and A-2 had led their cows to graze in the sugarcane field of the deceased. He has stated how he drove the cows to his house and tied them and how A-1 and A- 2, the real brothers, came and assaulted the deceased and himself and threatened them with dire consequences before taking the cows back. He has also mentioned that both the accused had pelted stones at them. Regarding the visit to the elders, summon to the accused and decision to resolve the controversy by convening a Panchayat on 26.9.2002, the same has been clearly stated by him. The said version of PW-1 has

A received corroboration from PWs-2 to 6 and 10. Nothing has really been brought out to create a slightest doubt on that aspect. A contradiction which is sought to be highlighted is that there is no mention that the cows were led from the barren land of the accused to the sugarcane field of the deceased. The assertions that the cows belonged to A-1 and A-2; that they went to the field of the deceased and destroyed the crops; that they were driven by PW-1 to his house; that A-1 and A-2 reached the house of the deceased, pelted stones, assaulted and forcibly drove back their cows have been clearly established. With this part of the occurrence, it is appropriate to connect the real genesis of the animosity, i.e., Dhanamma with whom A-1 had an illicit relationship and she was sent to Bangalore. P.W.1 as well as PWs-3, 4, 5 and 10, have categorically deposed about this aspects. In the cross-examination at the instance of A-1 and A-2 there was not even a proper suggestion to PW-1 in that regard. As far as PW-4 is concerned, there is further assertion in the cross-examination that there was illicit intimacy between A-1 and Dhanamma which hurt the feelings of the family. Similar is the evidence of other witnesses. To destroy the said aspect of the evidence, it was suggested that as a marriage alliance broke between the daughter of Dhanamma and another, she was sent to Bangalore. The core part of the testimony has really not been shaken. Thus, the genesis for the cavil and the subsequent disputes have been established beyond any reasonable doubt.

19. Coming to the incident on 25.9.2002, it is in the evidence of PW-1 that at about 11.00 a.m., while the deceased, he and his mother were at their residence, A-1 and A-2 came armed with weapons and trespassed into the house. A-1 and A-2 dragged the deceased and A-1 assaulted the deceased with an iron rod on his head, neck and all parts of the body. He has admitted that A-3 Sivaram was a distant cousin and no role has been ascribed to him in the previous occurrence. It is also in his testimony that A-3 had not gone near the deceased.

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20. PW-2, another eye witness to the occurrence, has testified that A-1 had assaulted the deceased with the iron rod on the head, chest and other parts of his body. She has not ascribed any role to accused No. 3. A

21. PW-3 is the wife of the deceased. She has categorically deposed that A-1 had assaulted her husband. She has graphically stated the active role played by A-2. B

22. PW-4, who is another injured witness, has deposed about the assault by A-1 and the beatings by A-2 to other injured persons who intervened. Similar is the evidence of other injured eye witnesses. Additionally, the earlier testimony has received corroboration from the medical evidence in material particular. C

23. Now, we shall proceed to dwell with the criticism on the base of which the case of the prosecution is sought to be demolished. The learned counsel for the appellant would submit that the injuries sustained by the accused have not been explained. On a perusal of the evidence of PW-20, the Investigating Officer, it appears that when he arrested A-1 and A-2, there were certain injuries on their person and they stated that they had received the injuries at the hands of the deceased. It is worth noting that the injuries are superficial in nature, the accused were not sent for medical examination and further there is no suggestion whatsoever as regards the injuries sustained by them to any of the witnesses. The story built up as regards the fight between the two groups does not remotely appeal to common sense and, more so, in the absence of any evidence, it is like building a castle in Spain. Quite apart from the above, non-explaining of injuries of the accused persons is always not fatal to the case of the prosecution. In this context, we may usefully refer to *Sri Ram v. State of M.P.*<sup>1</sup> wherein it has been held that mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases and the said principle applies to cases where the injuries D  
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1. (2004) 9 SCC 292.

A sustained by the accused are minor and superficial or where  
 the evidence is so clear and cogent, so independent and  
 disinterested and so probable, consistent and creditworthy that  
 it far outweighs the effect of the omission on the part of the  
 prosecution to explain the injuries. Hence, we repel the said  
 B submission of the learned counsel for the appellants.

24. The second submission of the learned counsel for the  
 appellant is that all the witnesses, being relatives, are  
 interested witnesses. The occurrence in part took place inside  
 C the house and the rest of it slightly outside the premises of the  
 deceased. Under these circumstances, the family members  
 and the close relatives are bound to be the natural witnesses.  
 They intervened and sustained injuries. Their sustaining of  
 injuries has got support from the ocular evidence as well as the  
 D medical evidence. The same has been dislodged and if we  
 allow ourselves to say so, not even a fragile attempt has been  
 made to dislodge the same. By no stretch of imagination, it can  
 be said that they are chance witnesses. In the obtaining factual  
 matrix, they are the most natural witnesses. In this context, we  
 may refer with profit the decision of this Court in *Dalip Singh*  
 E *v. State of Punjab*<sup>2</sup>, wherein Vivian Bose, J., speaking for the  
 Court, observed as follows: -

“We are unable to agree with the learned Judges of the  
 High Court that the testimony of the two eye-witnesses  
 F requires corroboration. If the foundation for such an  
 observation is based on the fact that the witnesses are  
 women and that the fate of seven men hangs on their  
 testimony, we know of no such rule. If it is grounded on the  
 reason that they are closely related to the deceased we  
 G are unable to concur. This is a fallacy common to many  
 criminal cases and one which another Bench of this Court  
 endeavoured to dispel in *Rameshwar v. The State of*  
*Rajasthan* (1952) SCR 377 at p. 390 = (AIR 1952 SC 54  
 at page 59).”

H <sup>2</sup>. AIR 1953 SC 364.

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In the said case, it was further observed that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true that when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

25. In *Masalti v. State of U.P.*<sup>3</sup>, it has been ruled that normally close relatives of the deceased would not be considered to be interested witnesses who would also mention the names of the other persons as responsible for causing injuries to the deceased.

26. In *Hari Obula Reddi and others v. The State of Andhra Pradesh*<sup>4</sup>, a three-Judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It can not be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.

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3. AIR 1965 SC 202.

4. AIR 1981 SC 82.

A 27. In *Kartik Malhar v. State of Bihar*<sup>5</sup>, it has been opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term 'interested' postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

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C  
D  
E 28. In *Pulicherla Nagaraju alias Nagaraja Reddy v. State of Andhra Pradesh*<sup>6</sup>, while dealing with the liability of interested witnesses who are relatives, a two-Judge Bench observed that it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased, if it is otherwise found to be trustworthy and credible. The said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, then it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted.

F  
G 29. Tested on the anvil and touchstone of the aforesaid principles, we find that the evidence of the injured witnesses who are close relatives to the deceased have really not embellished or exaggerated the case of the prosecution. They are the most natural witnesses and there is nothing on record to doubt their presence at the place of occurrence. By no stretch of imagination, it can be stated that the presence of the said witnesses at the scene of the crime and at the time of occurrence was improbable. Their version is consistent and nothing has been suggested to bring any kind of inherent improbabilities in their testimonies.

30. The learned counsel for the appellant has endeavoured

5. (1996) 1 SCC 614.

H 6. AIR 2006 SC 3010.

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hard to highlight certain discrepancies pertaining to time, A  
situation of the land, number of persons, etc., but in our  
considered opinion, they are absolutely minor in nature. The  
minor discrepancies on trivial matters not touching the core of  
the matter cannot bring discredit to the story of the prosecution.  
Giving undue importance to them would amount to adopting a B  
hyper-technical approach. The Court, while appreciating the  
evidence, should not attach much significance to minor  
discrepancies, for the discrepancies which do not shake the  
basic version of the prosecution case are to be ignored. This  
has been so held in *State of U.P. v. M.K. Anthony*<sup>7</sup>; *Appabhai* C  
*and another v. State of Gujarat*<sup>8</sup>; *Rammi alias Rameshwar v.*  
*State of Madhya Pradesh*<sup>9</sup>; *State of H.P. v. Lekh Raj and*  
*another*<sup>10</sup>; *Laxman Singh v. Poonam Singh*<sup>11</sup> and *Dashrath*  
*Singh v. State of U.P.*<sup>12</sup> No evidence can ever be perfect for  
man is not perfect and man lives in an imperfect world. Thus, D  
the duty of the court is to see with the vision of prudence and  
acceptability of the deposition regard being had to the  
substratum of the prosecution story. In this context, we may  
reproduce a passage from the decision of this Court in *State*  
*of Punjab v. Jagir Singh Baljit Singh and Karam Singh*<sup>13</sup>, E  
wherein H.R. Khanna, J., speaking for the Court, observed  
thus:-

“A criminal trial is not like a fairy tale wherein one is  
free to give flight to one’s imagination and phantasy. It  
concerns itself with the question as to whether the accused F  
arraigned at the trial is guilty of the crime with which he is  
charged. Crime is an event in real life and is the product

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7. AIR 1985 SC 48.

8. AIR 1988 SC 696.

9. AIR 1999 SC 3544.

10. (2000) 1 SCC 247.

11. (2004) 10 SCC 94.

12. (2004) 7 SCC 408.

13. AIR 1973 SC 2407.

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H

A of interplay of different human emotions. In arriving at the  
conclusion about the guilt of the accused charged with the  
commission of a crime, the court has to judge the evidence  
by the yardstick of probabilities, its intrinsic worth and the  
animus of witnesses. Every case in the final analysis would  
B have to depend upon its own facts. Although the benefit  
of every reasonable doubt should be given to the accused,  
the courts should not at the same time reject evidence  
which is ex facie trustworthy on grounds which are fanciful  
or in the nature of conjectures.”

C 31. In view of our aforesaid analysis, we are unable to  
accept the submission of the learned counsel for the appellant  
that the evidence of the eye witnesses should be rejected solely  
on the ground that they are close relatives and interested  
witnesses.

D 32. The next plank of submission which has been  
ambitiously and zealously pyramided by the learned counsel for  
the appellant is that the appellant has been erroneously  
convicted with the aid of Section 34 of the IPC. It is worth noting  
E that the High Court has acquitted A-3 on the ground that he did  
not share the common intention. Certain distinct features have  
been emphasised by the High Court. They are (i) he is a distant  
cousin of A-1 and A-2 and belongs to a different village; (ii) he  
had no role to play with the genesis of the occurrence and the  
subsequent cavil; (iii) he had neither participated in the dragging  
F of the deceased nor did he assault on his body; (iv) he was at  
a distance (v) A-1 and A-2 are real brothers and they have  
definite roles as regards the previous incident; and (vi) A-2 was  
intervened by the witnesses from assaulting the deceased. The  
material evidence on record clearly shows that A-1 and A-2 had  
G threatened the deceased with dire consequences. Though they  
had gone to the elders on 24.9.2002 and the Panchayat was  
to be convened on 26.9.2002, yet on 25.9.2002 at 11.00 a.m.,  
armed with lethal weapons, they went to the house of the  
deceased.

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33. In *Ram Tahal and others v. The State of U.P.*<sup>14</sup>, while dealing with the applicability of Section 34 of the IPC, a two-Judge Bench observed there is no doubt that a common intention should be anterior in time to the commission of the crime showing a pre-arranged plan and prior concert, and though it is difficult in most cases to prove the intention of an individual, yet it has to be inferred from the act or conduct or other relevant circumstances of the case. This inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and concert with which the beating was given or the injuries caused by one or some of them, the acts done by others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence, for instance, that all of them had left the scene of the incident together, and other acts which all or some may have done as would help in determining the common intention. In other words, the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted.

34. In *Rajesh Govind Jagesha v. State of Maharashtra*<sup>15</sup>, a two-Judge Bench has held that the existence of common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention, even the participation in the commission of the offence need not be proved in all cases.

35. In *Bishna alias Bhiswadeb Mahato and others v. State of West Bengal*<sup>16</sup>, it has been held that for the purpose of attracting Section 34 of the IPC, specific overt act on the part of the accused is not necessary. He may even wait and watch. Inaction on the part of an accused may sometime go a long

14. AIR 1972 SC 254.

15. AIR 2000 SC 160.

16. AIR 2006 SC 302.

A way to achieve a common intention or an object with others.

36. In *Manik Das and others v. State of Assam*<sup>17</sup>, it has been held as follows:-

B “The Section does not say “the common intention of all”,  
 nor does it say “and intention common to all”. Under the  
 provisions of Section 34 the essence of the liability is to  
 be found in the existence of a common intention animating  
 the accused leading to the doing of a criminal act in  
 furtherance of such intention. As a result of the application  
 C of principles enunciated in Section 34, when an accused  
 is convicted under Section 302 read with Section 34, in  
 law it means that the accused is liable for the act which  
 caused death of the deceased in the same manner as if  
 it was done by him alone. The provision is intended to  
 D meet a case in which it may be difficult to distinguish  
 between acts of individual members of a party who act in  
 furtherance of the common intention of all or to prove  
 exactly what part was taken by each of them. As was  
 observed in *Ch. Pulla Reddy and Ors. v. State of Andhra*  
 E *Pradesh* (AIR 1993 SC 1899). Section 34 is applicable  
 even if no injury has been caused by the particular accused  
 himself. For applying Section 34 it is not necessary to  
 show some overt act on the part of the accused.”

F 37. Coming to the case at hand, the appellant had an  
 inimical relationship with the deceased and his family as the  
 previous occurrences would show. Despite a consensus being  
 arrived at that there would be a panchayat on 26.9.2002, they,  
 armed with deadly weapons, went to the house of the deceased  
 and dragged the deceased. The previous meeting of minds with  
 G pre-arranged plan or prior concert as has been held in number  
 of authorities is difficult to establish by way of direct evidence.  
 They are to be inferred from the conduct and circumstances.  
 As is evincible, the weapons they carried were lethal in nature.

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H 17. AIR 2007 SC 2274.

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The deceased was absolutely helpless and not armed with any weapon. It was most unexpected on their part as normally it was expected that there would be a panchayat on the next day. The two brothers, A-1 and A-2, dragged the deceased outside the house and A-1 gave the blows. True it is that A-2 did not give the blow, but his participation from the beginning till the end would clearly reveal that he shared the common intention with his brother. He had assaulted the other witnesses who had tried to intervene. Thus, though he might not have inflicted the injury, yet it can safely be concluded that he shared the common intention making him jointly liable.

38. In view of our preceding analysis, we do not find any merit in this appeal and, accordingly, the same stands dismissed.

R.P.

Appeal dismissed. D