

PUNDAPPA YANKAPPA PUJARI

v.

STATE OF KARNATAKA

(Criminal Appeal No. 1251 of 2006)

JULY 02, 2014

**[SUDHANSU JYOTI MUKHOPADHAYA AND  
RANJANA PRAKASH DESAI, JJ.]**

*Penal Code, 1860 – Murder – Acquittal by trial court – Conviction by High Court – On appeal, held: The evidence of three eye-witnesses are credible – They are corroborated by evidence of one another as well as by medical evidence – The case also does not fall under any exception – Hence, the accused is liable to be convicted u/s.302.*

**Dismissing the appeal, the Court**

**HELD: 1. The evidence on record, particularly the testimonies of eye-witnesses – PW-7, PW-8 and PW-9 are consistent, trustworthy and fully corroborates with one another, without giving any room to doubt their credibility. Their evidence is also fully supported by the testimony of PW-10 and PW-11. All the facts directly point to the guilt of accused No.1. Testimony of PW-1 is fully corroborated with medical evidence. Merely, due to some discrepancies in the statements of witnesses as to timings 1 & ½ hour does not go to the root of the case. [Paras 23, 24][1225-B-D]**

**2. Considering the facts and circumstances of the case and on careful examination of the act of the accused as proved by testimony of witnesses, the act of accused which resulted in death of the deceased neither comes within the ambit of the exceptions under Section 300 IPC nor within the scope of Section 304 IPC. Therefore, the Appellate Court rightly held that the act of**

A **accused No.1 thus falls within the ingredients of s.300 IPC punishable u/s. 302 IPC. [Para 26][1226-C-E]**

*Hem Raj and another v. State of Punjab* [2003]

**3 Suppl. SCR 466 : (2003) 12 SCC 241 ;**

*T. Subramanian v. State of Tamil Nadu* [2006] **1**

B **SCR 180 : (2006) 1 SCC 401, Haji Khan v. State of U.P. (2005) 13 SCC 353 – referred to.**

### CASE LAW REFERENCE

[2003] 3 Suppl. SCR 466 referred to                      Para 10

C [2006] 1 SCR 180                      referred to                      Para 11

(2005) 13 SCC 353                      referred to                      Para 12

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No(s). 1251 of 2006.

D From the Judgment and Order dated 16.06.2006 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 9 of 2000.

Krutin R. Joshi, Gunashekar, Rajesh Mahale, Advs. for the Appellant.

E V. N. Raghupathy, Lagnesh Mishra, Parikshit Angadi, Sanjay R. Hegde, Advs. for the Respondent.

The Judgment of the Court was delivered by

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

F 1. This appeal is directed against the judgment dated 16<sup>th</sup> June, 2006 passed by the High Court of Karnataka in Criminal Appeal No.9/2000. By the impugned judgment the High Court partly allowed the appeal preferred by the State of Karnataka, set aside the judgment of acquittal of the appellant  
G for the offence under Section 302 IPC, held the appellant guilty for the offence under Section 302 IPC and sentenced him to undergo life imprisonment.

H 2. The case of the prosecution is that the complainant – Giryavva, her sons, Shivalingappa, Adivappa, deceased

Mahantappa and Pundappa as well as accused No.1, A  
Pundappa Yankappa Pujari (appellant herein) and accused  
No.2 Siddappa Pundappa Pujari are the resident of Yankanchi  
village of Bagalkot's Taluk. The land of the deceased's family  
as well as the land of the accused is adjacent to one another.  
The deceased's land is on the northern side whereas the B  
accused's land is on the southern side. In between there is a  
band fixed with boundary stone. There was a dispute regarding  
fixing of boundary stone between the accused and the  
deceased's father Chandrappa Telagi. On 5<sup>th</sup> July, 1997 at C  
about 9 a.m., accused No.1 was in his land and was removing  
the boundary stone. The deceased-Mahantappa questioned  
as to why he was removing the boundary stone and an  
altercation took place between accused No.1 and deceased-  
Mahantappa. While the deceased was putting boundary stone D  
to the pit, accused No.1 assaulted him with an axe on his neck  
and caused severe fracture and injuries which resulted in  
profuse bleeding whereas, accused No.2 assaulted the  
deceased with a stick. Laxmavva (PW-7), who was grazing  
her sheep, on seeing the incident of assault, shouted.  
Immediately, Sangappa (PW-8), Chandrashekar (PW-9) E  
rushed to the spot and witnessed the incident of assault.  
Laxmawva (PW-7) rushed towards the village. On the way,  
she met Bhimappa (PW-10) and Ranganagouda (PW-11) and  
informed them about the incident, who in turn went to the place  
of incident. Further, she proceeded and informed the incident F  
to complainant-Giriyavva (PW-1), the mother of the deceased.  
Immediately, Giriyavva (PW-1) rushed to the place of incident  
and noticed the injuries. The deceased-Mahantappa was  
shifted to the village by Bhimappa (PW-10) and  
Ranganagouda (PW-11). From there, the injured was shifted G  
to Goverdhan Hospital, Bagalkot.

3. The injured was treated by Dr. Hanamant (PW-16) on  
5<sup>th</sup> July, 1997 and immediately, intimation was sent to Sub-  
Inspector of Police, Rural Police Station, Bagalkot as per Ex.P-

- A 12. The Sub-Inspector of Police, Sekharapa (PW-14) on receipt of Ex.P-12 proceeded to Hospital and enquired about the condition of the injured. The Doctor issued an endorsement as per Ex.P-9 stating that the injured was not in a position to give statement. Thereafter, Sub-Inspector of Police (PW-14)
- B received a written complaint Ex.P-1 from Giriavva, the mother of injured. A case in Crime No.95/1997 for the offence under Section 326, 324 and 307 read with Section 34 IPC was registered and an FIR as per Ex.P-13 was prepared and forwarded to the Magistrate. In the meantime, the Assistant
- C Sub-Inspector of Police, Gousasab (PW-13) received the death intimation report of the injured as per Ex.P-10. Accordingly, a requisition was forwarded to the Court as per Ex.P-11 seeking permission to alter the offence to one under Section 302 IPC. On the same day, the Sub-Inspector of Police proceeded to
- D the place of occurrence, prepared a spot panchnama as per Ex.P-2, seized the blood stained earth and sample earth-Material Objects (hereinafter referred to as the "MOs") – 1 and 2 and handed over further investigation to the Circle Inspector of Police, Pandurang (PW-17). The Circle Inspector of Police
- E took over further investigation. He recorded the statement of witnesses and arrested accused No. 1, Pundappa, seized the blood stained shirt under the mahazar and recorded his voluntary statement as per Ex.P-18. He sent accused No. 1, Pundappa to Hospital for medical examination and kept him
- F in custody. On 6<sup>th</sup> July, 1997, he proceeded to General Hospital, Bagalkot, prepared the inquest panchnama on the dead body of Mahantappa as per Ex.P-24 and recorded the statement of the witness. He seized the blood stained towel and chaddar – M.Os 4 and 5 under the panchnama Ex.P-15. At the instance
- G of the accused No. 1, he recovered M.O. 10-axe and M.O. 11-stick and prepared panchnama Ex.P-7. The dead body was subjected to postmortem examination. On the same day accused No.2 was arrested and produced by the Assistant Sub-Inspector of Police. The chargesheet was filed against
- H both the accused for the offence under Section 302/34 IPC.

4. Learned Sessions Judge secured the presence of the accused, framed charges under Section 302 read with Section 34 IPC. Both the accused pleaded not guilty and claimed to be tried. A

5. The prosecution in all examined 17 witnesses, marked 24 Exhibits, produced 11 M.Os. The defence, in their turn, got marked Exs.D-1 to D-6. The statement of the accused was recorded under Section 313 Cr.P.C. and the defence is one of total denial. The accused did not choose to lead any defence evidence. B

6. Learned Sessions Judge for the reason recorded in his judgment dated 15<sup>th</sup> December, 1998, acquitted both the accused for the offence under Section 302 read with 34 IPC. The said judgment of acquittal was questioned by the State before the High Court wherein the High Court passed the impugned judgment setting aside the order of acquittal with respect to accused No.1-appellant, convicting him under Section 302 IPC to undergo life imprisonment. C D

7. Learned counsel for the appellant submitted that the view taken by the Trial Court being reasonable, there was no occasion for Appellate Court to reverse the order of acquittal by expressing a different view on the same set of evidence. On the other hand, it was submitted on behalf of the respondent that the Trial Court had committed an error and had failed to assess the credibility and trustworthiness of the statements given by the eye-witnesses. E F

8. In view of the submissions made by the parties, the point that arises for determination is : whether the High Court is justified in interfering with the order of acquittal by reversing the judgment of the Trial Court. G

9. It is settled that if two views are reasonably possible from the very same evidence, the Appellate court on re-appreciation of the same evidence cannot impose its own view. The Appellate Court may re-appreciate the evidence when it is satisfied that the Trial Court has committed an error and H

- A has failed to consider the credibility and trustworthiness of the account given by the eye-witnesses. The evidence on record has to be read as a whole and it is not proper to reject one or other evidence on the ground of certain contradictions and omissions which do not go to the roots of the case. If the testimony of the eye-witnesses are found trustworthy and remained unchanged, ignorance of such testimony can be held to be perverse.

10. In ***Hem Raj and another vs. State of Punjab, (2003) 12 SCC 241***, this Court held as follows:

- C *“36. In this state of the evidence on record, we find that the view taken by the trial court is also a possible reasonable view of the evidence on record. The evidence adduced by the prosecution is rather inconsistent and creates a serious doubt about the truthfulness of the prosecution case. Even if it may be possible to take a different view, we cannot say that the view taken by the trial court is not a reasonable view of the evidence on record. It is well settled that if on the basis of the same evidence two views are reasonably possible and the trial court takes the view in favour of the accused, the appellate court, in an appeal against acquittal, will not be justified in reversing the order of acquittal, unless it comes to the conclusion that the view taken by the trial court was wholly unreasonable or perverse and it was not possible to take the view in favour of the accused on the basis of the evidence on record..”*

11. In ***T. Subramanian vs. State of Tamil Nadu, (2006) 1 SCC 401***, this Court observed:

- G *“17...Where two views are reasonably possible from the very same evidence, prosecution cannot be said to have proved its case beyond reasonable doubt.....”*

- H 12. In the circumstances where evidence of witness is not found to be wholly trustworthy the principle of severability

can be applied and that part of the evidence which is reliable  
may be accepted and the other part can be discarded. This  
Court in *Haji Khan vs. State of U.P., (2005) 13 SCC 353*,  
held:

*"That part of his evidence which inspires  
confidence may be accepted and the unreliable part  
discarded."*

Further it was also observed that:

*"9. From the evidence on record the Sessions  
Court and the High Court have rightly held that the  
prosecution has failed to establish the conspiracy  
theory, and that the motive to commit the crime has not  
been proved, but does this mean that the High Court  
could not have convicted the accused placing reliance  
on the statement of the eyewitnesses just because the  
prosecution failed to prove a particular theory. We do  
not think so. It is not necessary that if the prosecution  
theory of the conspiracy or the motive fails, the entire  
case would crumble to the ground. The High Court has  
found the version given by the witnesses trustworthy and  
found support to their statement from the medical  
evidence and lodging of the prompt FIR, apart from the  
fact that the appellant was apprehended on the spot or  
nearabout the spot of crime with the weapon which was  
used in commission of the crime. When the court finds  
that the evidence of the eyewitnesses is true and can  
be relied upon, absence of proof of motive or the  
conspiracy to commit the crime would not dislodge the  
prosecution from securing the conviction of the accused  
on the basis of reliable evidence."*

13. Laxmawwa (PW-7) in her examination-in-chief stated  
that she had gone to the land of Giriavva (PW-1), for watching  
the sheep at 10 a.m. At that time the deceased, Mahantappa  
had come to the land. Accused persons were present in the  
land. Accused No.1-Pundappa removed boundary stone.

- A Mahantappa asked accused No.1 as to why he had removed the boundary stone. Accused No.1 told Mahantappa that boundary stone shall lie there only. Mahantappa insisted that he will put the boundary stone at the place from where it was removed. Accused No.1-Pundappa challenged Mahantappa
- B to put boundary stone in its original place. When Mahantappa was putting the boundary stone in the pit, accused No.1-Pundappa assaulted Mahantappa with the axe on the neck. At that time accused No.2-Siddappa assaulted Mahantappa on his head with the stick. Accused No.1-Pundappa had assaulted
- C Mahantappa six to seven times with the axe on the neck and on the head. On seeing the incident Laxmawwa (PW-7) shouted, hearing his shouting, Charge Witnesses, CWs. 13, 14 and 15 (CWs. 14 and 15 are PW-8 and PW-9 respectively) came there. When she was returning back to the house, on
- D her way she met CWs.-17 and 19 (PW-10 & PW-11) and she narrated the incident to them. She proceeded further and informed the incident to Giriyavva (PW-1), mother of the Mahantappa. Giriyavva (PW-1) went to see her son Mahantappa, who was brought to Yankanchi village and from
- E Yankanchi village he was shifted to Bagalkot. Mahantappa died in the Hospital at Bagalkot at 3 p.m. Her statement was recorded by the Police.

- In her cross-examination she reiterated that she had seen the alleged incident. She stated that accused No.1 was found
- F sitting in his land. Mahantappa came there and took rounds in the land. Mahantappa came to the boundary by passing through his land. She was standing in the middle of the road. From there she heard the exchange of words and saw the incident taking place. She went near Mahantappa and had seen him.
- G At that time, both the accused persons were present there. During the cross-examination at one stage she stated that she had not seen who had removed the boundary stone but reiterated that when Mahantappa wanted to put the boundary stone in the pit, accused No.1-Pundappa objected for it and
- H quarrel took place. When Mahantappa was putting the stone

in the pit, accused No.1 and 2 have assaulted Mahantappa. Mahantappa fell down on the ground near the boundary stone. Mahantappa sustained bleeding injuries and the blood had fallen on the ground and near the boundary stone. When she enquired from Mahantappa, Mahantappa fell down, she shouted and when she left the spot, accused persons were still there. There is no reason to doubt the credibility and trustworthiness of the account given by this eye-witness.

14. Sangappa (PW-8), in his deposition stated that he along with CW-13-Pundappa and PW-9, Chandrashekhar had gone to the land of CW-24 Rangappa Sannappa Gouli for ploughing the land. At about 9 a.m. they heard the shoutings. They had seen Mahantappa being assaulted with the axe on his neck and head, two to three times. They had seen another person assaulting Mahantappa with the stick on his head. When they went there, they were threatened by the accused persons. He stated that Laxmavva (PW-7) was present there at that time. Laxmavva (PW-7) went to the village and on the way she met Bhimappa (PW-10) and Ranganagouda (PW-11) and narrated the incident to them. They had given water to Mahantappa and thereafter Mahantappa was shifted to Vankanchi village and from Yankanchi village, Mahantappa was shifted to Bagalkot for medical treatment.

In his cross-examination he stated that he left the village at 7 a.m. He went to the spot on hearing the shouting and at the spot he saw Mahantappa falling down due to assault. Thereafter, the accused persons stood there for five minutes. When they enquired with the accused persons as to why they had assaulted Mahantappa, accused No.1-Pundappa went towards Sindal village taking the axe and the stick. Accused No.2-Siddappa went to graze the sheeps.

15. Chandrasekhar (PW-9) in his statement stated that he along with Sangappa (PW-8) and CW-13 (Pundappa) had gone for ploughing the land of CW-24 (Rangappa) on that day at about 9 a.m. Accused No.1 and 2 had assaulted Mahantappa

A and Mahantappa fell down. Accused No.1 had assaulted Mahantappa with the axe and Accused No.2 had assaulted Mahantappa with stick. Laxmavva (PW-7) was present there at that time. Laxmavva (PW-7) went to the village and informed about the incident. Giriyavva (PW-1) and the villagers came there. Injured Mahantappa was shifted to the Hospital at Bagalkot at 2 p.m. and finally Mahantappa succumbed to the injuries in the Hospital.

C Chandrashekar (PW-9) disputed the suggestion that the land of Chandrashekar (PW-9) belonged to their ancestors previously. He also disputed the suggestion that there was any dispute between their ancestors and the accused persons regarding the land of the accused persons. In his cross-examination he reiterated that when they heard the exchange of words, the distance between them and those persons was about 10 feet. By the time they went there Mahantappa was found lying on the ground. After reaching the land, they have seen accused No. 1 assaulting Mahantappa with the axe. He denied the suggestion that the scene of offence was not visible from the place where they were ploughing.

E 16. Giriyavva (PW-1), mother of the deceased, is the complainant. She stated that on the fateful day her son, Mahantappa had gone to their land at about 7 a.m. for seeing the crop. The land of the accused persons is adjoining to their land. At about 10 a.m., she was present in her house. At that time, Laxmavva (PW-7) came and informed her that her son Mahantappa was assaulted by accused No.1-Pundappa and accused No.2-Siddappa. She went to the site of occurrence. Her son had sustained injuries on the head and on the back of the neck. Bhimappa (PW-10) and Ranganagouda (PW-11) had come to her land at that time. Bhimappa (PW-10) had brought her injured son, Mahantappa to the village Yankanchi. From Yankanchi village they came to Mugalolli village and then the injured Mahantappa was brought to Bagalkot and admitted in the Government Hospital at Bagalkot. Mahantappa died at H 3 p.m. in the Hospital at Bagalkot.

In her cross-examination she stated that on that day at 6 a.m. her husband left for Bagalkot. Laxmavva (PW-7) came and reported the incident to her in the house when she alone was present in the house. At about 9 a.m. Laxmavva reported the incident to her. Luxmavva(PW-7) did not accompany her to her land. She went to her land alone. Bhimappa (PW-10) and Ranganagouda (P-11) of their own accord came to her land by the time she reached, Bhimappa (PW-10) and Ranganagouda (P-11) were present in her land. She further stated that except her. Bhimappa (PW-10) and Ranganagouda (P-11), none else were present in her land. At that time Mahantappa was in a position to talk.

17. Bhimappa (PW-10) in his evidence, stated that he knows Giriyavva (PW-1), deceased Mahantappa, accused persons and also Ranganagouda (PW-11). He further stated that at about 9.30 a.m. Mahantappa was found having sustained injuries on his neck and stated that he covered a towel on the injuries of Mahantappa and shifted him from that place. The towel and chaddar are M.Os.4 and 5.

18. Coming to the evidence of Sangappa (PW-8) and Chandrasekhar (PW-9), we find that both of them have deposed that they heard the shouting when they came near the place of incident, they saw accused No.1 and accused No.2 assaulting Mahantappa with axe and with stick. Even though the witnesses were cross-examined at depth, no much evidence were elicited to discredit the testimony of Sangappa (PW-8) and Chandrasekhar (PW-9). It is apparent in the evidence of Bhimappa (PW-10) and Ranganagouda (P-11) that they came to the land of one Rangappa Gouli for ploughing at about 7 or 7.30 a.m. then they heard the screaming and rushed to the spot wherein they noticed the presence of Laxmavva (PW-7) who proceeded to the village side to inform the same to the complainant Giriyavva (PW-1).

19. It is true that there are certain discrepancies in mentioning the time of the incident. Laxmavva (PW-7) stated

A that the incident took place at about 11 a.m. whereas, Sangappa(PW-8) and Chandrasekhar (PW-9) stated that the incident of assault took place at 9 or 9.30 a.m. Such discrepancies cannot be a ground to disbelieve the statements of the witnesses if the difference is about one hour, as the  
B villagers generally suggest the approximate time.

20. The testimony of Laxmavva (PW-7), clearly indicates that on the day of the incident, she was grazing her sheep near the land of Giriyavva (PW-1). According to her evidence, accused No.1-Pundappa Yankappa Pujari was in his land  
C whereas, accused No.2 was grazing his sheep near Durgamma Temple. Thereafter, the deceased Mahantappa came to his land, which is adjacent to the land of accused persons. The deceased noticed the removal of the boundary stone, When the deceased went to put the stone in the same  
D pit, there was some altercation between them regarding fixing of the boundary stone at the very same place. It is clear from her evidence that while Mahantappa was putting the stone in the pit, the accused No.1 assaulted him with axe over his neck and head three or four times. As a result, he suffered with  
E multiple fracture injuries and collapsed. On seeing the incident, Laxmavva (PW-7) shouted. Then Sangappa (PW-8), and Chandrashekhar (PW-9) who were ploughing the land at a distance of about 10 feet in the land of one Rangappa, rushed to the spot. The testimony of Laxmavva (PW-7) clearly indicates  
F that it was accused No. 1, who inflicted blows with the axe on the neck and head of the deceased Mahantappa. Apart from that, though Laxmavva (PW-7) has been lengthily cross-examined, the defence failed to bring out some evidence that would lead to disbelieve her testimony with respect to the  
G incident of assault.

21. The testimony of Giriyavva (PW-1), mother of the deceased Mahantappa shows that she knows the accused persons. She stated that at about 10 a.m., while she was in the house, Laxmavva (PW-7) came and informed her that her  
H son Mahantappa was assaulted by accused No.1 Pundappa

and accused No.2 Sidappa with axe and stick respectively. Further, she stated that then she went to the land and saw Mahantappa lying on ground with injuries on the head and back of the neck. She also stated that by that time Bhimappa (PW-10), Ranganagouda (PW-11) also came to their land. Bhimappa (PW-10) shifted her son Mahantappa to the village and from there, he was brought to Bagalkot Hospital and admitted.

In the cross-examination, she clearly stated that on that day at 6 a.m. her husband had left for Bagalkot. Laxmavva (PW-7) came and reported the incident when she was alone in the house at about 10 a.m.

From the testimony of the complainant, Giriyavva (PW-1) it is clear that when she was in the house Laxmavva (PW-7) came about 10 a.m. and informed her about the incident of assault on Mahantappa by accused No.1 Pundappa. On a careful reading of the deposition of the complainant, it is clear that Mahantappa left house early in the morning towards the land to see the-crop after taking food. The fact that the deceased took food in the early morning is supported by the medical evidence. In the postmortem report, Dr. Hanamant (PW-16) has clearly stated that stomach is intact containing plenty of food particles more of rice. Therefore, the testimony of Giriyavva (PW-1) is fully corroborated with medical evidence of Dr. Hanamant (PW-16) in so far as the deceased Mahantappa leaving the house early in the morning.

22. The evidence of Dr. Hanamant (PW-16) shows that he examined Mahantappa on 5<sup>th</sup> July, 1997 at 1 p.m. and found the following six incised wounds:

1. *"Incised wound of 5x2x2 cms. bone deep in left parietal scalp are with blood clots."*
2. *Incised wound of in vertex placed long-itudinally of 5x2x2 cms. with fracture of underlying skull bone with blood clots.*

- A 3. *Incised wound behind the left ear of 7x3x2 cms. with lacerate of muscles underlying.*
4. *Incised wound in right part of occipital area of 5x3x2 cms with fracture of that bone with blood clots.*
- B 5. *Incised wound in right part of occipital area of 4x2x2 cms. with blood clots and bone deep.*
6. *Incised wound in right parietal scalp area of 2x1x1 cms with blood clots.*

C *He issued the wound certificate as per Ex.P16. It is also in evidence that on the death of Mahantappa, he conducted the post mortem and found the following injuries.*

*Head is completely shaved and there were 7 stitched scalp wounds are found all were opened and examined.*

- D 1. *Cut lacerated wound along with midline in vertex of 5x1x1 cms. with depressed fracture of right parietal bone.*
2. *Cut lacerated wound placed obliquely in right parietal scalp area.*
- E 3. *Cut lacerated wound of 5x2x1 cms. in upper part of occipital area placed transversely.*
4. *Cut lacerated wound behind the left ear of 4x1x1 cms. placed obliquely.*
- F 5. *At the hair line at the hape of neck cut lacerated would placed transversely of 5x2x2 cms. bone deep.*
6. *Cut lacerated would in left part of occipital area of 5x2x1 ccms bone deep placed obliquely.*
7. *Transverse cut lacerated would in right part of occipital region of 5x2x2 cms. with fracture of that bone.*
- G 8. *Abrasion of 2x2 cms. over right malar region dark brown colour.*
9. *Abrasion on right forehead of 4x3 cms dark brown colour."*
- H

Thus from the nature of incised injuries found on the scalp, it is clear that death of Mahantappa was due to injury to the brain as a result of wounds caused to the head probably by multiple hits by heavy sharp edged weapon and the same is marked as Ex.P-17. There is no dispute regarding the cause of death that the deceased met with homicidal death.

23. The aforesaid medical evidence also corroborates the statements of Laxmavva (PW-7), Sangappa (PW-8) and Chandrasekhar (PW-9).

24. Normally, the ploughing of the land is being done in the morning and in the evening till sun set. This is the normal practice. Therefore, the presence of Sangappa (PW-8) and Chandrasekhar (PW-9) witnessing the incident is proved by the testimony of Laxmavva (PW-7). Merely, due to some discrepancies in the statements of witnesses as to timings 1 & ½ hour does not go to the root of the case. The evidence on record, particularly the testimonies of eye-witnesses - Laxmavva (PW-7), Sangappa (PW-8) and Chandrasekhar (PW-9) are consistent, trustworthy and fully corroborates with one another, without giving any room to doubt their credibility. Their evidence is also fully supported by the testimony of Bhimappa (PW-10 and Ranganagouda (PW-11), who went to the spot after coming to know of the incident from Laxmavva (PW-7). All the above facts directly point to the guilt of the accused No.1.

25. We have noticed that there exists a boundary dispute between the accused persons as well as the family of the deceased. This is clear from the testimony of Somappa (PW-2), who has categorically stated that 10 to 15 days prior to the incident, Chandrappa (father of the deceased) and accused persons approached them regarding the boundary dispute of their lands. He himself, Sonnappa (PW-3), CWs-23 and 24 had advised both the parties and fixed the boundaries of their lands. Thereafter, accused No.1 Pundappa got his land measured by a private surveyor. The private surveyor confirmed the

- A boundary fixed by the elderly persons. It is in the evidence of Laxmavva (PW-7) that while she was grazing the sheep near the land of Giriyavva (PW-1), there was altercation between the deceased Mahantappa and accused No.1 regarding fixing of the boundary stone. It is also seen from her evidence that the boundary stone was found removed by accused No.1 and deceased Mahantappa attempted to refix the stone at the same place. On this the accused No.1 assaulted the deceased Mahantappa with axe over his head and back of the neck resulting in fracture, which had led to his death subsequently in the Hospital.

26. Considering the facts and circumstances of the case and on careful examination of the act of the accused as proved by testimony of witnesses, we are of the opinion that the said act of accused which resulted in death of Mahantappa neither comes within the ambit of the exceptions under Section 300 IPC nor within the scope of Section 304 IPC. It is not an act done under grave and sudden provocation or in good faith or not an act, which he in good faith believes to be lawful and necessary for due discharge in his duty or not an act committed without premeditation in sudden fight. Therefore, the Appellate Court rightly held that the act of the accused No.1 thus falls within the ingredients of Section 300 IPC punishable under Section 302 IPC.

27. We find no ground to interfere with the impugned judgment. In absence of any merit, the appeal is dismissed.

Kalpana K. Tripathy

Appeal dismissed.