PULICHERLA NAGARAJU @ NAGARAJA REDDY

v.

STATE OF ANDHRA PRADESH

AUGUST 18, 2006

[G.P. MATHUR AND R.V. RAVEENDRAN, JJ.]

Code of Criminal Procedure, 1973:

Section 378—Appeal against acquittal—Reversal of acquittal—Power of High Court—Scope and ambit of—Held: The power of the High Court in an appeal from acquittal is no different from its power in an appeal from conviction—It can review and consider the entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court—The crux of the matter, however, is whether the High court is able to give clear reasons to dispel the doubt raised and reject the reasons given by the trial court.

Penal Code, 1860: Sections 302, 304 Part II and 324.

Murder—Culpable homicide—Offences falling under S. 302 and S. 304 Part I or II—Distinction between—Factors to be considered—Long standing enmity between the families of two brothers—Accused attacked father and son—Within about half an hour, the deceased went towards the house of the accused to question him about his high-handed acts—Accused along with others came from his house armed with a stick and a Barisa—Accused stabbed the deceased near his throat with the Barisa—Deceased collapsed—Trial court acquitted the accused by extending him benefit of doubt—But High Court reversed the finding of acquittal and convicted the accused under S. 302—Correctness of—Held: The deceased was not armed with any weapon—There was no indication that he intended to cause any physical harm to the accused, or that he intended to retaliate for the earlier incident—There was no provocation, sudden quarrel or fight—The stabbing was with great force, causing an injury on a vital part of the body, sufficient in the ordinary course of nature to cause death—Hence conviction of accused under S. 302 justified.

Criminal Trial:

A *Witnesses—Interested or partisan witnesses—Evidentiary value of—Trial court acquitted the accused by extending him benefit of doubt—The trial court had rejected the evidence of PW—1 and PW—2 merely because they were interested witnesses being the brother and father of the deceased—However, the High Court held that the rejection of the evidence was unjustified and perverse and convicted the accused—Correctness of—Held: The evidence* B *of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible—It only requires scrutiny with more care and caution—If the evidence is found to be reliable and probable, it can be acted upon—Hence conviction justified.*

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According to the prosecution, there were disputes between the families of PW-2 and Accused No. 1. In an earlier incident, accused-appellants Nos. 1, 2 and 3 came to the house of PW-2 and threatened him with dire consequences. In the second incident, PW-2 and his son PW-1 were attacked by appellant-accused No. 3 and his father accused No. 1. Within about half an D **hour of the second incident, the deceased went towards the house of the accused persons to question them about their high-handed acts.**

It was the further case of the prosecution that accused Nos. 1, 2 and 3 along with others came from their house armed with a stick and a Barisa. Accused Nos. 1 and 2 caught hold of the deceased, who was unarmed, and E **accused No. 3 stabbed the deceased near his throat with the Barisa. The deceased collapsed.**

The trial court acquitted all the accused persons by extending them the benefit of doubt. It held that the evidence of the two eye-witnesses (PW-1 and F **PW-2) is not trustworthy and could not be relied upon as they were close relatives of the deceased, having previous enmity and grudge against the accused persons and who were interested in falsely implicating the accused.**

The High Court allowed the appeal holding that rejection of the evidence of PW-1 and PW-2 by the trial court was unjustified and perverse. G **Accordingly, the High Court convicted the appellant-accused No. 3 under Section 302 of the Penal Code, 1860. Hence the appeal.**

Dismissing the appeal, the Court

HELD: 1.1. It is now well-settled that the power of the High Court in an H **appeal from acquittal is no different from its power in an appeal from conviction.**

It can review and consider the entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court. However, if the High Court decided to depart from the conclusions reached by the trial court, it should pay due attention to the grounds on which acquittal was based and state the reasons as to why it finds the conclusions leading to the acquittal unacceptable. It should also bear in mind that (i) the presumption of innocence in favour of the accused is fortified by the findings of the trial court; (ii) the accused is entitled to benefit of any doubt; and (iii) the trial court had the advantage of examining the demeanour of the witnesses. The crux of the matter, however, is whether the High court is able to give clear reasons to dispel the doubt raised and reject the reasons given by the trial court. [643-F-G-H; 644-A]

Sher Singh v. *State of U.P.*, AIR (1967) SC 1412, *Dargahs* v. *State of U.P.*, AIR (1973) SC 2695, *Ravinder Singh* v. *State of Haryana*, AIR (1975) SC 856 and *Labh Singh* v. *State of Punjab*, AIR (1976) SC 83, relied on.

1.2. In this case, the trial court had rejected the evidence of PW-1 and PW-2 merely because they were interested witnesses being the brother and father of the deceased. But it is well-settled that the evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, 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. [644-B-C-D]

Hari Obula Reddi v. *State of Andhra Pradesh*, [1981] 3 SCC 675, *Ashok Kumar Pandey* v. *State of Delhi*, [2002] 4 SCC 76 and *Bijoy Singh* v. *State of Bihar*, [2002] 9 SCC 147, relied on.

2.1. The evidence shows that there was a long standing enmity between the families of the two brothers (A-1 and PW-2). Neither the deceased nor PW-1 and PW-2 were armed with any weapon. There was no indication that they intended to cause any physical harm to the accused, or that they intended to retaliate for an earlier incident. The nature and size of the weapon used by the appellant (barisa, which is a big size dagger), the force with which the weapon was used, the part of the body where the injury was caused - just below

A the neck, a vital part of the body, the nature of the injury - stab wound, resulting in instantaneous collapse leading to death, leave no room to doubt that the intention of the appellant was to cause the death or, at all events, cause bodily injury, which is sufficient in the ordinary course of nature to cause death. [645-C-E-F]

B 2.2. It is not possible to accept the contention that whenever death is on account of a single blow, the offence is one under Section 304 and not under Section 302. [646-E]

Virsa Singh v. *State of Punjab,* AIR (1958) SC 465, *Gudar Dusdh* v. *State*
C *of Bihar,* AIR (1972) SC 952, *Vasanta* v. *State of Maharashtra,* [1984] Supp. SCC 648, *Jai Prakash* v. *State (Delhi Administration),* [1991] 2 SCC 32, *Jagrup Singh* v. *State of Haryana,* AIR (1981) SC 1552 and *State of Karnataka* v. *Vedanayagam,* [1995] 1 SCC 326, relied on.

Laxman Kalu Nikalje v. *State of Maharashtra,* AIR (1968) SC 1390,
D *Randhir Singh* v. *State of Punjab,* AIR (1982) SC 55, *Tholan* v. *State of Tamil Nadu,* AIR (1984) SC 759 and *Bagdiram* v. *State of Madhya Pradesh,* [2004] 12 SCC 302, held inapplicable.

3. The Court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section
E 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At
F the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302 are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide
G not amounting to murder are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances; (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act
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was in the course of a sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. [649-D, E, F, G, H; 650-A-B]

4.1. In this case the appellant was carrying a Barisa, a dangerous weapon. There was previous enmity. There was an earlier incident, about half an hour earlier when the father and brother of the deceased had been attacked by the appellant and his father. The deceased was unarmed. There was no provocation, sudden quarrel or fight. There was no indication of any cause for an apprehension on the part of the appellant that the deceased may attack him. The stabbing was with great force, causing an injury on a vital part of the body, sufficient in the ordinary course of nature to cause death. [65-C-D]

4.2. The intention to cause death or, at all events, the intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death was made out. The circumstances to bring the case under Exception (4) to Section 300 do not exist. [650-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 945 of 2004.

From the Judgment and Order dated 28.8.2003 of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No. 1211 of 2001.

A.T.M. Rangaramanujan, Gouri Karuna Das, Anu Gupta, Rajesh Singh, K. Uma Shanker and Rani Jethmalani for the Appellant.

D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

RAVEENDRAN, J. This appeal by special leave is against the judgment dated 28.8.2003 of the Andhra Pradesh High Court in Criminal Appeal No.1211 of 2001 reversing the judgment of acquittal dated 7.2.2000 passed by the First

A Addl. Sessions Judge, Chittoor in S.C. No.361 of 1999.

2. The prosecution case, in brief, is as under :

(2.1.) P. Narasimha Reddy (PW-2) and P. Govinda Reddy (Accused No.1) are brothers. P. Dilli Babu Reddy (PW-1) and Purushotham Reddy (deceased) B are the sons of Narasimha Reddy. Ranamma (Accused No.2) is the wife of Govinda Reddy. Nagaraja Reddy (Accused No.3). Balakrishna Reddy @ 'Balu' and Chandrababu Reddy @ 'Babu' are the sons of Govinda Reddy and Ranamma. (Balu and Babu were juveniles at the relevant time). Both families were residents of Bangareddipalli Diguva Indlu, a hamlet falling under the Gangadhara Nellore Panchayat in Chittoor District. The house of Narasimha C Reddy and house of Govinda Reddy were separated by the land of Chinnakka.

(2.2) Narasimha Reddy, after his marriage, having differences with his parents had shifted to his father-in-law's place and then to Madras. Ultimately, he came back to his native village. In the meanwhile, Govinda Reddy and two D other brothers namely Krishna Reddy and Venkateswarulu Reddy had continued to live with their father Bakki Reddy. Bakki Reddy and Venkateswarulu Reddy had died and Krishna Reddy was residing in a different town. Govinda Reddy was in possession and enjoyment of the family properties. There were disputes between the families of Narasimha Reddy and Govinda Reddy in regard to property.

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(2.3) On 24.4.1999, Narasimha Reddy (PW-2) brought some plastic pipes to his house in a hired tractor. Accused 1, 2 and 3 (Govinda Reddy, his wife and son Nagaraja Reddy) came to the house of Narasimha Reddy and raised a quarrel stating that the tractor unauthorizedly passed through their land and threatened Narasimha Reddy with dire consequences. This was the first F incident.

(2.4) On 25.4.1999 at about 6 p.m., Govinda Reddy with his wife (A2) and sons (A3 and two juveniles) removed a part of the fence surrounding Narasimha Reddy's property. When Narasimha Reddy and his son Dilli Babu Reddy G rushed to the place and questioned why they were removing the fence, Accused 1, 2 and 3 started abusing them. Govinda Reddy (A1) exhorted his wife and sons to kill Narasimha Reddy and Dilli Babu Reddy. Nagaraja Reddy (A-3) dealt a blow on the right side of Dilli Babu Reddy's head with the upper side of a 'Barisa' (a long dagger with a long handle). Then, Govinda Reddy (A1) dealt a blow on the right middle finger of Narasimha Reddy with a sickle. H Both Narasimha and Dilli Babu Reddy sustained bleeding injuries. The

neighbouring land owners and others working in the adjoining fields rushed and separated the two groups. This was the second incident. A

(2.5) Within about half an hour of the second incident, Purushotham Reddy (first son of Narasimha Reddy) returned home. Narasimha Reddy and Dilli Babu Reddy narrated to him what had happened. Immediately, Purushotham Reddy, followed by his father (PW-2) and brother (PW-1), went towards the house of Govinda Reddy to question them about their high-handed acts. When Purushotham Reddy entered the land Chinnaka which was situated between the lands (houses) of the two brothers, accused 1, 2, & 3 (Govinda Reddy, Ranamma and Nagaraja Reddy) along with two juvenile sons of Accused No.1 (Balu and Babu) came from their house. Govinda Reddy was armed with a stick with nails, Ranamma was armed with stout stick, Nagaraja was armed with a Barisa. Govinda Reddy exhorted his wife and sons to kill Purushotham Reddy. Balu and Babu threw mud balls at Narasimha Reddy and Dilli Babu Reddy, who were following Purushotham Reddy. Govinda Reddy and Ranamma caught hold of Purushotham Reddy and Nagaraja (A-3) stabbed Purushotham Reddy near his throat with the Barisa. Purushotham Reddy collapsed. Govinda Reddy and his wife and children ran away. This was the third incident. It occurred around 7.30 P.M. This incident was witnessed by Gurava Reddy (PW-3), Gungulu Reddy (PW-4), Perumal's son Dilli Babu (PW-5) and P. Ravi (PW-6) and Sarojamma. But they did not interfere. B C D

(2.6) Thereafter, Dilli Babu Reddy (PW-1) got a complaint (Ex.P-1) written and presented it at the Gangadhara Nellore Police Station (which was at a distance of about 4 km. from the place of incident) around 9.00 P.M. The police sent Narasimha Reddy and Dilli Babu Reddy for treatment to Primary Health Centre for examination and treatment. E

3. T. Sundaramurthy, Sub-Inspector of Gangadhara Nellore Police Station (PW-15), received the complaint and registered the case in Crime No.35 of 1999 under sections 147, 148, 307 and 302 read with section 149 IPC, prepared the FIR and recorded the statements of PW-1 and PW-2. He also seized the blood-stained clothes of PW-1 from him under a Mahazarnama. The next day, K. Srinivasa Gopal, Inspector of Police, Chittoor Rural Circle (PW-16), took up the investigation and recorded the statements of some other witnesses. On 26.4.1999, at about 9.00 A.M., inquest was conducted over the dead-body and it was sent for autopsy. He arrested accused 1 & 2 as also their juvenile sons Balu and Babu on 28.4.1999 at about 3 p.m. in the presence of PW-9 (Pancha) and recorded their confession statements and on the same day at 6.00 P.M. F G H

A in pursuance of the information, disclosed in the confession statement of Govinda Reddy, recovered the Barisa (MO.1) from a sugarcane garden shown by Govinda Reddy. PW-16 also arrested Nagaraja Reddy (A-3) on 1.5.1999 around 9 A.M. in the presence of Panchas (PW-10 and another). Nagaraja Reddy made a confession statement (Ex. P-25) and took them to the house of one Subha Reddy and produced a blood-stained shirt (MO-8).
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4. The IV Additional Judicial Magistrate, First Class, took the case on file and committed accused 1, 2, & 3 to the Court of Sessions, Chittoor. Balu and Babu, the juvenile sons of accused No.1 were subjected to a separate proceeding before the Juvenile Court. In the Sessions trial, the prosecution
C examined 15 witnesses. Dilli Babu Reddy and his father Narasimha Reddy (PW-1 & PW-2) were the injured eye-witnesses. PW-3 to PW-6 who were examined as eye-witnesses turned hostile and stated that they did not know anything about the incident. PW-11 (Dr. S.Narasimhulu) examined Dilli Babu Reddy (PW-1) and Narasimha Reddy (PW-2) at the Primary Health Centre and issued certificates in regard to their injuries as per Ex.P-13 and P-14. Dr.
D P.Venkataswamy (PW-12), Civil Assistant Surgeon, Government Head-Quarters Hospital, Chittoor, conducted the post-mortem over the dead-body of Purushotham Reddy and issued a post-mortem certificate as per Ex.P-15. PW-15 and PW-16 were the Police Officers. PW-7 to PW-10, PW-13 and PW-14 were the witnesses to the inquest, and the Mahazars relating to arrest and
E seizure. PWs.7, 9, 13 and 14 turned hostile.

5. On considering the evidence, the trial court by judgment dated 7.2.2000 acquitted all the accused by extending them the benefit of doubt. It held that the evidence was not trustworthy for the following reasons :

F (a) All the four independent eye-witnesses (PW-3, 4, 5 & 6) turned hostile and denied knowledge of the incident.

(b) Four out of the six Mahazar witnesses (PWs. 7, 9, 13, and 14) also turned hostile and did not support the case of the prosecution.

(c) The evidence of the two eye-witnesses (PW-1 and PW-2) could
G not be relied on as they were close relatives of the deceased, having previous enmity and grudge against the accused and who were interested in falsely implicating the accused. Their evidence was also inconsistent with the allegations in the complaint (Ex. P1) lodged by PW-1.

H 6. The said judgment was challenged by the State. The State's appeal

was allowed by the High Court. It held that the rejection of the evidence of PW-1 and PW-2 by the trial court was unjustified and perverse, for the following reasons :

(a) The evidence of PWs. 1 and 2, who were eye-witnesses, could not be rejected merely on the ground that they were interested or partisan, as their evidence was otherwise found to be credible.

(b) The second incident which occurred at about 6.00 to 7.00 P.M. wherein PW-1 and PW-2 were attacked and injured and the third incident within about half an hour thereof when Purushotham Reddy was killed should be considered as having occurred during the course of the same transaction in the sense that the latter incident was a continuation and consequence of the earlier incident. Therefore, PW1 and PW2 were in the position of injured eye-witnesses and not chance witnesses. Their presence at the time and place of the incident was natural and properly explained.

(c) Nothing was elicited in the cross-examination of PW-1 and PW-2 to disbelieve their evidence about the incidents, in particular the manner in which they were attacked and injured by accused 1 and 3 and the manner in which Purushottam Reddy was killed by Nagaraja Reddy (A-3).

(d) Though the incident took place at 7.30 P.M. and there were no light, the evidence of PWs.1 and 2 that could see the accused clearly in the moonlight ought to be accepted. Being close relatives, they had no difficulty in identifying the accused particularly as the accused had chased them to some distance after killing the deceased.

(e) There was no inconsistency between the testimony of PWs.1 and 2 and the allegations in the complaint. (Ex. P1).

(f) The evidence of PW-1 and PW-2 established that A-1 to A-3 caught the deceased and A-3 stabbed him near the throat with MO1 - Barisa (long dagger). The medical evidence corroborated that the injury was caused of a weapon like MO1. The blood-stained shirt of A-3 (MO8) was found and seized in pursuance of the confession statement made by A-3 on his arrest before the Investigating Officer which was corroborated by the evidence of PW-10.

A 7. The High Court held that the evidence of PW-2 showed that A-1 and A-2 were not armed with any weapons when the deceased was attacked and that they (A-1 and A-2) did not cause or attempt to cause any injury to the deceased. It concluded that the killing of Purushotham Reddy was not on account of any pre-planned attack by accused 1 to 3 and that it appeared that A-3 had attacked the deceased thinking that the deceased was coming to B attack him. The High Court also observed that if A-1 and A-2 had wanted to kill the deceased, they would have also attacked the deceased, but they did not do so, and that therefore, A-1 and A-2 did not share any common intention with A-3. As a consequence, the High Court held that the charge under section 302 was proved against A-3 and that the charge under section C 302 read with section 34 IPC was not proved against A1 and A2. The High Court also did not accept that A-1 and his family members constituted an unlawful assembly and therefore, charge under section 148 IPC was also not established. In regard to the injuries caused to PW-1 and PW-2, the High Court held that the prosecution had failed to prove the case against A-2 (Ranamma) but had proved its case against A-1 and A-3 under section 324 D IPC. Having regard to the overall circumstances and the simple nature of injuries, the High Court was of the view that the imposition of a fine in that behalf would meet the ends of justice.

8. Accordingly, the High Court convicted A-3 under section 302 IPC and E sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-. It convicted A-1 and A-3 under section 324 IPC for causing injuries to PW-1 and PW-2 and sentenced each of them to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment of six months.

9. The said judgment of the High Court reversing the acquittal by the F trial court is challenged by A-3 in this appeal by special leave. The learned counsel for the appellant urged the following contentions before us :

(a) The High Court should not have interfered with the judgment of acquittal by the Sessions Court merely because another view was possible on re-appreciation of the evidence. High Court wrongly G relied on the evidence of PW-1 and PW-2 who were partisan witnesses interested in falsely implicating the accused.

(b) The evidence of PW-1 and PW-2 were inconsistent with the allegations in the FIR based on the complaint (Ex. P1) given by PW-1 within one and half hours of the incident. In Ex.P-1, it was H stated that five members, that is Govinda Reddy, Ranamma,

Nagaraja Reddy, Balu and Babu attacked Purushotham Reddy with sticks, knives and daggers, and Nagaraja Reddy murdered Purushotham Reddy by stabbing him with a dagger on his throat. If the five of them had really attacked Purushotham Reddy with sticks, knives and daggers, there should be corresponding injuries on the body of the deceased. But the post-mortem report and the evidence of Dr. Venkataswamy (PW-12) show that the deceased had sustained only one incised injury over the right clavicle. The Doctor (PW-12) clearly stated that except the said injury, he did not find any injury on any other part of the body of the deceased. When there was only one injury which corresponded to the dagger attack by Nagaraja Reddy, the allegation in the complaint that Govinda Reddy, Ranamma, Nagaraja Reddy, Balu and Babu together attacked the deceased with sticks, knives and daggers is obviously false. This demonstrated that PW-1 had tried to falsely implicate the entire family of Govinda Reddy (five members) on account of the previous enmity between the two families. The case of the prosecution based on the said complaint was therefore liable to be rejected.

(c) At all events, as the High Court having recorded a finding that "It is not a case of pre-planned attack by the accused. It appears that the thinking that the deceased was coming to attack in, A-3 attacked him", ought to have held that the act was a culpable homicide not amounting to murder punishable under section 304 Part II IPC.

Re : Contention (i) :

10. It is now well settled that the power of the High Court in an appeal from acquittal is no different from its power in an appeal from conviction. It can review and consider the entire evidence and come to its own conclusions by either accepting the evidence rejected by the trial court or rejecting the evidence accepted by the trial court. However, if the High Court decided to depart from the conclusions reached by the trial court, it should pay due attention to the grounds on which acquittal was based and state the reasons as to why it finds the conclusions leading to the acquittal, unacceptable. It should also bear in mind that (i) the presumption of innocence in favour of the accused is fortified by the findings of the trial court; (ii) the accused is entitled to benefit of any doubt; and (iii) the trial court had the advantage of

A examining the demeanour of the witnesses. The crux of the matter, however, is whether the High Court is able to give clear reasons to dispel the doubt raised, and reject the reasons given by the trial court [See : *Sher Singh* v. *State of U.P.*, AIR (1967) SC 1412; *Dargahs* v. *State of U.P.*, AIR (1973) SC 2695; *Ravinder Singh* v. *State of Haryana*, AIR (1975) SC 856 and *Labh Singh* v. *State of Punjab*, AIR (1976) SC 83].

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11. In this case, we find that the trial court had rejected the evidence of PW-1 and PW-2 merely because they were interested witnesses being the brother and father of the deceased. But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan C or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, 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 D testimony should have corroboration in regard to material particulars before it is accepted. [vide *Hari Obula Reddi* v. *State of Andhra Pradesh*, [1981] 3 SCC 675, *Ashok Kumar Pandey* v. *State of Delhi*, [2002] 4 SCC 76 and *Bijoy Singh* v. *State of Bihar*, [2002] 9 SCC 147]. Nothing had been elicited in the cross-examination of PW-1 and PW-2 to discredit their evidence. Their evidence E finds corroboration in Ex.P-1 and the evidence of the Doctors (PW-11 and PW-12) and the MOs seized on the disclosures made by A-1 and A-3. Therefore, the High Court rightly held that the evidence of PW-1 and 2 could not be rejected, even though they were closely related to the deceased and inimically disposed towards the accused. There is no infirmity in the decision of the High Court by re-appreciating the evidence and reaching independent F conclusions.

Re : Contention (ii) :

12. This contention is based on the assumption that in his complaint (Ex.P-1), PW-1 had stated that accused No. 1 and his four family members G attacked the deceased with sticks, knives and daggers. The learned counsel for the State submitted that the words 'attacked with sticks, knives and daggers' in the English translation of Ex.P1 is incorrect and that the complaint (Ex.P1) in Telugu uses the word 'dourjanyam' which is wrongly translated as 'attacked'. The use of the word 'dourjanyam' in the complaint does not refer H to physical assault but action which is intended to intimidate, threaten and

frighten anyone. We are, therefore, satisfied that the complaint does not allege that Govinda Reddy, his wife and three children physically assaulted the deceased with sticks, knives and daggers, but only alleges that accused and his family members approached the deceased Purushotham Reddy with sticks, knives and daggers in an intimidating and threatening manner. Therefore, the absence of any other injury except the dagger injury caused by Nagaraja Reddy (A-3) is consistent with allegations in Ex. P-1.

Re : Contention No.(iii)

13. The third contention relates to the question whether the offence is a murder punishable under Section 302, or culpable homicide not amounting to murder, punishable under Section 304 Part II. The evidence shows that there was a long standing enmity between the families of the two brothers (A-1 and PW-2). There was a quarrel on 24.4.1999 in respect of PW-2 taking a tractor through the land of A-1. There was another quarrel when A-1 allegedly removed the fence and PW-1 and PW-1 questioned A-1 as to why he removed fencing, which led to an altercation between A-1 and A-3 on the one hand and PW-1 and PW-2 on the other about half an hour before the stabbing of the deceased, which resulted in injuries to PW-1 and PW-2. After the second incident, Purushotham Reddy followed by PW-1 and PW-2 was going towards A-1's house to protest against A-1 and the appellant causing injuries to PW-1 and PW-2. Neither Purushottam Reddy nor PW-1 and PW-2 were armed with any weapon. There was no indication that they intended to cause any physical harm to the accused, or that they intended to retaliate for the earlier incident. The nature and size of the weapon used by the appellant (barisa, which is a big size dagger), the force with which the weapon was used, the part of the body where the injury was caused - just below the neck, a vital part of the body, the nature of the injury - stab wound measuring 3 cm x 5 cm x 12 cm, resulting in instantaneous collapse leading to death, leave no room to doubt that the intention of the appellant was to cause the death or, at all events, cause bodily injury, which is sufficient in the ordinary course of nature to cause death.

14. It is true that the High Court disbelieved the prosecution case that A2 (mother of appellant) or the two juvenile brothers of the appellant had participated in either of the incidents, though their presence was not ruled out. But that will not assist the appellant to contend that he was not guilty. Considerable reliance was placed by the learned counsel for the appellant on the observation of the High Court that the deceased was stabbed by the

A appellant, not in pursuance of any pre-planned attack, but being under the impression that the deceased was coming to attack him. But this observation was made in the context of recording a finding that A-1 and A-2 did not share any common intention with the appellant. The said observation cannot be read out of context to make out a case that the appellant acted in self defence. Such a plea is neither put forth in the statement under Section 313 nor
B brought out in the cross examination of any of the prosecution witnesses.

15. Learned counsel for the appellant referred to the circumstance that there was only one stab injury on the deceased, to contend that there was no pre-meditation and the attack was 'in a sudden fight in the heat of
C passion', and that the appellant had not acted in a cruel or unusual manner or taken undue advantage of the situation. He submitted that the High Court ought to have given benefit of Exception 4 to Section 300 to appellant and held him guilty under Section 304 Part II. He relied on the decisions of this Court in *Laxman Kalu Nikalje* v. *State of Maharashtra,* AIR (1968) SC 1390, *Randhir Singh* v. *State of Punjab,* AIR (1982) SC 55, *Tholan* v. *State of Tamil*
D *Nadu,* AIR (1984) SC 759 and *Bagdiram* v. *State of Madhya Pradesh,* [2004] 12 SCC 302 in support of his contention.

16. We cannot accept the contention that whenever the death is on account of a single blow, the offence is one under Section 304 and not Section 302. We will briefly refer to the cases relied on by the appellant.
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(16.1) In *Laxman Kalu Nikalje* (supra), the accused had gone to his father-in-law's house to take his wife back to his house. His father-in-law delayed the departure of his wife by a day. The delay upset the accused and he was in a foul mood. When his brother-in-law made some remark, he
F responded by whipping out his knife and giving a blow on the chest of his brother-in-law. His brother-in-law died a few hours later. This Court held that the case fell under the second part of Section 304 as the accused gave only one blow and it was not on a vital part of the chest and but for the fact that injury caused severed an artery, death would not have ensued.

G (16.2) In *Randhir Singh* (supra), that there was an altercation between the deceased and father of the accused. At that time, on the exhortation of his father, the accused, a young college student, gave a blow on the head of the deceased with a Kassi. The solitary injury caused by the accused was sufficient in the ordinary course of nature to cause death and the deceased died after six days. Taking note of the circumstances, that the accused was
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not carrying the weapon in advance, there was no pre-meditation, that he was a young college boy, that there was some altercation between father of the accused and deceased, and that the death occurred after six days, the conviction was altered from Section 302 to 304 Part II. A

(16.3) In *Tholan* (supra), the accused stood in front of the house of the deceased and used filthy language against some persons (who were unconnected with the deceased). The deceased came out of his house and told the accused that he should not use vulgar and filthy language in front of ladies and asked him to go away. The accused questioned the authority of the deceased to ask him to leave the place. In the ensuing altercation, the accused gave one blow with a knife which landed on the (right) chest of the deceased which proved to be fatal. This Court came to the conclusion that the accused could not be convicted under Section 302, but was guilty under Section 304 Part II. The circumstances which weighed with this Court were : (i) there was no connection between the accused and the deceased and the presence of the deceased at the time of the incident, was wholly accidental; (ii) altercation with the deceased was on the spur of the moment and the accused gave a single blow being enraged by the deceased asking him to leave the place (iii) requisite intention could not be attributed to the accused as there was nothing to show that the accused intended the blow to land on the right side of the chest which proved to be fatal. B C D

(16.4) In *Bagdiram* (supra), there was an altercation between two groups and brick-batting from both sides. When tempers were running high, in the heat of passion, upon sudden quarrel without any pre-meditation, the accused assaulted the unarmed deceased. The accused-appellant was not carrying any weapon, but he picked up a pick axe lying at the place of incident and he landed only one blow and did not repeat the blow. In these circumstances, it was held that he did not intend to cause the death of the deceased and that the appellant was guilty under Section 304 Part I IPC. E F

17. It would thus be seen that in all these cases, the accused landing a single blow was only one of the several circumstances which persuaded this Court to hold that the offence did not fall under Section 302 but fell under Section 304 Part I or Part II. The fact that the accused gave only one blow, by itself, would not mitigate the offence to one of culpable homicide not amounting to murder. There are several cases where single blow inflicted by the accused, resulting in death have been found to be sufficient for conviction under Section 302. We may refer to a few of them, namely, *Virsa Singh* v. *State* G H

A *of Punjab,* AIR (1958) SC 465, *Gudar Dusadh* v. *State of Bihar,* AIR (1972) SC 952, *Vasanta* v. *State of Maharashtra,* [1984] Supp. SCC 648, *Jai Prakash* v. *State (Delhi Administration),* [1991] 2 SCC 32 and *State of Karnataka* v. *Vedanayagam,* [1995] 1 SCC 326].

(17.1) In *Virsa Singh* (supra), this Court held that a culpable homicide B is a murder under Section 300 clause Thirdly, if the prosecution should establish four elements - (i) the presence of a bodily injury, (ii) nature of such bodily injury, (iii) intention on the part of the accused to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended; and (iv) the injury was sufficient to C cause death in the ordinary course of nature (this part of enquiry being purely objective and inferential, nothing to do with the intention of the offender). Dealing with the question, as to how intention is to be inferred, Vivian Bose, J. succinctly stated :

> "In considering whether the intention was to inflict the injury found D to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted x x x x The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be E present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its F seriousness, or intended some consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant G an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question...."

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(17.2) The following legal position regarding single blow injury, was summed up in *Jagrup Singh* v. *The State of Haryana,* AIR (1981) SC 1552 thus

> "There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under section 304, Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negativing the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either clause Firstly or clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death."

18. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters - plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre-meditation; (vii) whether there was any prior

A enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation. and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other B special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may.

19. In this case, as noticed above, the appellant was carrying a Barisa, a dangerous weapon. There was previous enmity There was an earlier incident, C about half an hour earlier when the father and brother of the deceased had been attacked by the appellant and his father. The deceased was unarmed. There was no provocation, sudden quarrel or fight. There was no indication of any cause for an apprehension on the part of the appellant that the deceased may attack him. The stabbing was with great force, causing an injury on a vital part of body, sufficient in the ordinary course of nature to D cause death. The description of the injury and cause for death given by PW-11, who conducted the post mortem is telling :

> "An incised injury 5 cm x 3 cm x 12 cm deep over right supra clavicular fossa above the medial end of right clavicle.. sub-clavian artery is severed.....An incised injury 4cm x 1cm x 2cm deep over the apex of E right lung.....deceased would appear to have died due to haemorrhage and shock due to injuries to right sub-clavian artery and upper lobe of right lung."

The intention to cause death or at all events intention of causing bodily injury which is sufficient in the ordinary course of nature to cause death was made F out. The circumstances to bring the case under Exception (4) to Section 300 do not exist.

20. We accordingly find no reason to interfere with the decision of the High Court convicting the appellant. The appeal is dismissed.

G V.S.S. Appeal dismissed.