Injury Nos. 1, 2, 4, 5 were simple in nature however, injury No. 3 was kept under observation for X-ray. The probable duration of all the injuries was within 24 hours for examination. The injuries were caused by blunt weapon.

30. Doctor opined that "the injury No. 5 of Sumer Singh (P.W. 2) having been caused by a fall on a hard surface cannot be ruled out. Similarly, injury No. 3 on the person of Sube Singh having been caused by a fall on a hard surface cannot be ruled out. The injury No. 2 on Muni Devi is only a complaint of pain and I cannot give its duration and the weapon used. The injury No. 3 on the person of Indira, having been caused by a fall on the hard surface cannot be ruled out. The injury Nos. 6 and 8 on the person of Sunder Lal having been caused by a fall on the hard surface cannot be ruled out.

31. As already noticed, out of the injured complainant party, only Karan Singh P.W. 1 and Sumer Singh P.W. 2 have been cited as witnesses. The others were not examined. The nature of the injuries sustained by the complainant party would clearly suggest that such injuries could be caused in a melee which is the version of the defence that injuries sustained by deceased-Kundan Lal and other members of the complainant party have been caused by a mob consisting of 300-350 while trying to rescue the accused-Ram Kishan. Considering the nature of the injuries sustained by the complainant party it is quite probable that they sustained injuries accidentally while being involved in a mob fight. We are clearly of the view that the nature of the injuries sustained by the complainant party would clearly suggest that such injuries could only be caused in a melee wherein the mob of 300-350 gathered at the place as projected by the defence. Such injuries sustained by the complainant party could not be attributed to the accused in the circumstances as explained above.

32. In the fact and circumstances recited above, we are clearly of the view, that the prosecution has not come up with a true story. It has suppressed the facts. If that be the case, the whole prosecution story would stand on a quick sand. The prosecution has failed to establish its case beyond reasonable doubts. It is now well settled principle of law that if two views are possible, one in favour of the accused and the other adversely against it, the view favoring the accused must be accepted.

33. In the result, these appeals are allowed, the convictions and sentences passed on the appellants are set aside and all the appellants are acquitted of the charges framed against them. The appellants are in jail. They are directed to be set at liberty forthwith, if not required in connection with any other case.

34. The impleadment application is dismissed.

Appeals allowed.

AIR 2003 SUPREME COURT 174

(From : Andhra Pradesh)*

N. SANTOSH HEGDE
AND B. P. SINGH, JJ.

Civil Appeal Nos. 11299-11301 of 1995 with 11302-03, D/- 1-11-2002.

Rama Talkies and others, Appellants v. Government of A.P. and another, Respondents.

Andhra Pradesh Entertainment Tax Act (10 of 1939), S. 4, Expln. 2 (as inserted by Andhra Pradesh Entertainment Tax (Second Amendment) Act, 1988) — Entertainment tax — Rate at which to be levied — Cinema theatres situated in areas which are not administered by Municipality — Notification equating such areas with first grade Municipality in State however issued by State Govt. — Levy of tax at rate applicable to theatres situated in municipal area — Proper — No question of retrospective levy arises, levy being a valid levy is liable to be collected from the date of its original imposition.

(Paras 2, 3)

Ms. K. Amareshwari, Sr. Advocate, P. Vittal Rao and B. Kanta Rao, Ms. Sudha Gupta, G. Prabhakar and Ms. T. Anamika, Advocates with her, for Appearing Parties.

SANTOSH HEGDE, J. :— Having failed in their endeavour to question successfully the validity of the Andhra Pradesh Enter-

*W.P. Nos. 333, 387 and 404 of 1989, D/- 6-3-1992 (Andh Pra).

tainments Tax (Second Amendment) Act, 1988 inserting Explanation II in S. 4 of the Andhra Pradesh Entertainments Tax Act, 1939 before the High Court of Judicature Andhra Pradesh at Hyderabad, the appellants are before us in these appeals by way of special leave. The main contention urged on behalf of the appellants by Ms. K. Amareshwari, learned senior counsel, is that the respondent-State could not have collected entertainment tax from the appellants at a rate which is applicable to cinema theatres situated in the area administered by a Municipality because the State Government under the Municipalities Act had not issued any Notification equating the respective areas in which appellants' cinema theatres are situated, with a Municipality. It is the contention of the appellants that in the absence of any such Gazetted Notification the State has no authority to collect the entertainment tax at a higher rate. This argument of the appellants was rejected by the High Court on the ground that this was a question which was available to the appellants to be urged in an earlier writ petition filed by them and that having not been done, the appellants are barred by the principle of constructive res judicata from raising such a contention in the subsequent writ petitions.

2. In this appeal, we need not go to that question because it is pointed out by Mr. G. Prabhakar, learned counsel for the State of Andhra Pradesh, that in fact such a Notification as stated by the appellants, was issued by the State Government as could be seen from G.O.Ms. 274, M.A. Health and Municipal Administration Department, dated 29th March, 1971 which was in regard to Kothagudem notified area. Learned counsel for the State urges similar notifications are there in regard to other areas involved in these appeals. A perusal of this notification shows that the State Government has, exercising the power under S. 389-A of the Andhra Pradesh Municipalities Act, 1965, issued the above notification wherein Kothagudem and other areas found in the different notifications have been equated to that of a first grade Municipality in the State, and the said notification has been Gazetted in the Gazette Extraordinary issued by the Andhra Pradesh Government published on 31-3-1971. In view of the above factual position, we are unable to accept the argument addressed on behalf of the appellants.

3. We also find no merit in the next argument addressed on behalf of the appellants in regard to the retrospective effect of the levy. We find in these appeals there is no challenge to the constitutionality of the levy. The limited challenge is based on the fact that without proper notification under the Municipality's Act, the levy could not be imposed. That argument of want of notification, we have rejected on facts if that be so levy being a valid levy is liable to be collected from the date of its original imposition.

4. In the said view of the matter, we find no merit in these appeals and the same are dismissed. No costs.

Appeals dismissed.

AIR 2003 SUPREME COURT 175

V. N. KHARE AND ASHOK BHAN, JJ.

Civil Appeal No. 3412 of 2001, D/- 15-11-2002.

Bar Council of Andhra Pradesh, Appellant v. Kurapati Satyanarayana, Respondent.

(A) Advocates Act (25 of 1961), S. 38 — Appeal — "Person aggrieved" — State Bar Council of India being prosecutor can be a person aggrieved — Appeal against order of Disciplinary Committee by State Bar Council, is maintainable.

The role of the Bar Council is of dual capacity, one as the prosecutor through its Executive Committee and the other quasi-judicial performed through its Disciplinary Committee. Being the prosecutor the State Bar Council would be an "aggrieved person" and, therefore, the appeal under S. 38 of the Advocates Act, 1961 would be maintainable on its behalf.

(Para 7)

(B) Advocates Act (25 of 1961), S. 38 — Professional misconduct — Misappropriation of client's money is an act of grave misconduct — Excuse that delinquent Advocate did not make payment to de facto complainant as he had utilised money for personal need for treatment — Not entertainable being frivolous and unsustainable — Moreso, when it was neither pleaded nor shown that delin-