

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD
Crl.A.Nos.611 and 659 of 2011
Date: 21.02.2018

Criminal Appeal No.611 of 2011

Between:

Kasireddy Ramakrishna Reddy,
S/o.Venkata Reddy, Age: 60 years,
Pullagummi village, Veldurthy mandal,
Kurnool district
and two others

... Appellants

And

The State of Andhra Pradesh,
rep. by Inspector of Police,
Kurnool Taluq Police Station,
Kurnool district.

... Respondent

Counsel for the Appellants : Mr.P.Veera Reddy,
Senior Counsel for
Mr.Jalagam Ravi Kumar

Counsel for the Respondent: Public Prosecutor (AP)

Criminal Appeal No.659 of 2011

Between:

M.Nageswara Reddy,
S/o.M.Venkateswar Reddy, Age: 45 years,
Resident of Pullagummi village,
Veldurthy mandal, Kurnool district

... Appellant

And

Boya Guvvala Govindu S/o.Chinna Sanjanna,
Aged about 53 years, Pullagummi village,
Veldurthy mandal, Kurnool district,
and eight others

... Respondents

Counsel for the Appellant : Mr.K.Rathanga Pani Reddy

Counsel for the respondents: Mr.P.Veera Reddy, Senior
Counsel for respondents 1 to 8

Public Prosecutor (AP)
for respondent No.9.

The Court made the following:

Common Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Criminal Appeal No.611 of 2011 is filed by accused Nos.1 to 3 in Sessions Case No.348 of 2008 on the file of the IV Additional District and Sessions Judge, Kurnool. By the said judgment, the said accused have been convicted for the offences under Sections 148 and 302 I.P.C. and they were sentenced to undergo imprisonment for life and to pay fine of Rs.2000/- by each and in default, to suffer simple imprisonment for 6 months for the offence under Section 302 I.P.C. and also imprisonment for a period of one year and pay Rs.1000/- and in default to undergo simple imprisonment for one month for the offence under Section 148 I.P.C.

2. Criminal Appeal No.659 of 2011 is filed by M.Nageswara Reddy, brother of the deceased and the informant of the offence, against the aforementioned judgment wherein, the respondents i.e. accused Nos. 4 to 11 were acquitted of all the charges.

3. An objection was raised by the learned counsel for the appellants in Criminal Appeal No.611 of 2011, on the maintainability of Crl.A.No.659 of 2011, as occurrence has taken place much prior to the amendment to Section 372 of Code of Criminal Procedure, which came into force w.e.f. 31.12.2009. However, in the manner this Court decided to dispose of the appeals, it is felt unnecessary to deal with

this aspect. We, therefore, proceed to decide the cases, as if Criminal Appeal No.659 of 2011 is also maintainable.

4. The case of the prosecution, as reflected in the charge sheet filed by the police, is as follows:

A-1, A-3 and A-7 are residents of Kurnool and the remaining accused are all residents of Pullagummi village, Vendurthi mandal, Kurnool district. That A-3 and A-8 are natural brothers, A-1 and A-2 are related to A-3 and A-7 to A-9 and that A-4 to A-6, A-10 and A-11 are said to be the followers of A-1. PW-1, the de facto complainant and PW-2 are younger brothers of the deceased. That, the deceased was the Village Panchayat Sarpanch and was doing real estate business at Kurnool and there are faction disputes between A-1 and his group on one side and the deceased and his group on the other side; that since 20 years prior to the incident, there were several quarrels between the two groups; that earlier an attempt was made on the life of the deceased in the year 1988 by A-1 and his men, while he was returning to the village after attending the court at Kurnool and that the deceased escaped with bleeding injuries at that time. Since then, A-1, his family members and followers, were residing at Chendukuru village of Kurnool district. That, on 02.01.2007, the deceased paid an advance of Rs.10,000/- to PW-7 and PW-8 for the purpose of a plot in Maruthinagar, Kurnool City. On 18.01.2007 at 7.30 p.m., the deceased along with PW1, PW-3, PW-7 and PW-8,

reached the house of PW-9 to pay the balance sale consideration of Rs.1,50,000/- by way of cheque and left the house in Tata Sumo bearing registration No.AP 21 E1239 and on the same day at 8.30 p.m., when the deceased and others reached Venkateswara Kirana Shop, situated near Dr.Kabeer Clinic at Gayatri Estate, the deceased asked PW-6, the driver of the jeep to stop the vehicle and get cigarettes from the Kirana shop. When PW-6 returned and was trying to start the jeep after purchase of cigarettes at PW-4's Kirana Shop, A-1 to 11, formed an unlawful assembly armed with hunting sickles and came behind the Sumo and surrounded it. A-1 to A-3 forced open the door of the Sumo, dragged the deceased who was sitting in the front seat on the left side and hacked him with hunting sickles indiscriminately, stating in telugu "Narakandiraa Eenakodukulunu". A-8 to A-11 broke the glasses of the Sumo, while A-9 to A-11 hacked PW-6 with hunting sickles and PW-6 sustained bleeding injuries on the right shoulder, right hand and right side of ribs, etc. and PWs-1, 3, 7 and 8 jumped out of the jeep by opening the right side door and tried to run away into the lane in front of Dr.Kabeer's Clinic. That, A-4 to A-7 chased them by shouting in telugu "Eenakodukulanu gani (kooda) narakandiraa" and A-4 to A-7 caught PW-7 and hacked him with hunting sickles on his head, neck back and hands and caused bleeding injuries, while PWs-1, 3 and 8 escaped and half an hour later, PW-1 and PW-3 went to the place of occurrence and found the deceased in a pool of blood. PWs-1, 3, 5 and 8 witnessed the entire

incident under the focus of street light. That, PWs-6 and 7 were treated in the Government Hospital, Kurnool on 18.01.2007 itself.

PW-1 gave the report to the police at 9.30 p.m. on 18.01.2007 and PW-13, the Sub-Inspector of Police, Kurnool III Town Police Station, registered Crime No.7 of 2007 and PW-17, the Inspector of Police conducted the investigation. That, the inquest report was made in the presence of panchayatdars on 19.01.2007 at 8 a.m. That on 09.02.2007 at 11 a.m., A-1, A-5, A-6 and A-11 were arrested by PW-17 and on their confession, the crime weapons were recovered under the cover of a panchanama. On 27.02.2007 at 7.30 a.m., PW-17 caused the arrest of A-3, A-8 and A-9 at Kalugotla bus stand and basing on their confessional statement, the crime weapons were recovered at 10.30 a.m. under the cover of a panchanama. That, on 22.03.2007 at 10 a.m., PW-17 arrested A-4 and A-7 at Nandyal check post and on 31.03.2017, A-10 was arrested by PW-17 and A-2 surrendered before the Court on 16.04.2007. PW-16 conducted autopsy over the dead body of the deceased on 19.01.2007, by commencement of postmortem at 11 a.m. and opined that the deceased died due to shock and hemorrhage due to multiple injuries and approximate time of death was about 12.00 to 24.00 hours prior to such examination. Charge sheet was filed on 20.07.2007 against A-1 to A-11 for offences punishable under Sections 147, 148, 324, 326, 307, 302, 427 I.P.C. r/w. 149 I.P.C.

5. Based on the charge sheet, the trial Court has framed the following charges:

Firstly: That you A1 to A11, on 18th day of January, 2007 at about 8.30 p.m., near Venkateswara Kiranam Shop situated near Dr.Kabeer Clinic at Gayathri Estates, Kurnool Town, Kurnool Mandal, Kurnool District were a member of an unlawful assembly and did, in prosecution of the common object of such assembly, viz in murdering, the deceased by name Moorasani Rajsekhar Reddy, committed the offence of rioting with a deadly weapon, to wit, hunting sickles and thereby committed an offence punishable under Section 148 of IPC and within my cognizance.

Secondly: That you A1 to A3, and A8 to A11 on the same day, hour and in the same transaction as mentioned in Charge No.1 supra, did commit murder by intentionally causing the death of Moorasani Rajasekhar Reddy, by hacking him with hunting sickles indiscriminately with hunting sickles, after dragging him from TATA sumo, and thereby committed an offence punishable under Section 302 IPC and within my cognizance.

Thirdly: That you A4 to A7 on or about the same date, time place and during the course of the same transactions mentioned in charge No.1 supra, were members of an unlawful assembly and in prosecution of common object of which viz in committing the murder of M.Rajasekhar Reddy, A1 to A3 of you caused the death of the said M.Rajasekhar Reddy and you A4 to A7 are thereby under Section 149 of IPC guilty of causing the said murder, an offence punishable under section 302 read with 149 IPC and within my cognizance.

Fourthly: That you A8 to A11 on or about the same date, time place and during the course of the same transaction as mentioned in charge No.1 supra, committed mischief to wit, broke the glasses of TATA sumo causing loss or damage to the said TATA sumo and thereby committed an offence punishable under Section 427 of IPC and within my cognizance.

Fifthly: That you A4 to A7 on or about the same date, time place and during the course of the same transaction as mentioned in charge No.1 supra, did an act to wit hacking Perumala Sekhar (L.W.8) on his head, neck back and hands with hunting sickles with such intention to and under such circumstances, that if by that act you had caused the death of the said Perumala Sekhar, you would have been guilty of murder and thereby committed an offence punishable under section 307 of the IPC and within my cognizance.

Sixthly: That you A9 to A11 on the same date, time, place and during the course of the same transaction as mentioned in Charge No.1 supra, did an act to wit, hacking Surisetty Rajesh (L.W.7) on his right shoulder, right hand and right side of ribs with hunting sickles with such intention and under such circumstances, that if by that act you had caused the death of the said Surisetty Rajesh, you would

have been guilty of murder and thereby committed an offence punishable under Section 307 IPC and within my cognizance.

Seventhly: That you A4 to A7 on the same date, hours and in the same transaction as mentioned in Charge No.1 supra, voluntarily caused simple and grievous hurt to Perumalla Sekhar on his head, neck, back and hands by means of sickles which is an instrument likely to cause death (like stablign and hacking) and thereby you committed an offence punishable under Section 326 of IPC and within my cognizance.

Eighthly: that you A9 to A11 on the same day, hour and in the same transaction as mentioned in Charge No1 supra, voluntarily caused hurt to Surisetty Rajesh on his right shoulder, right hand and right side of the ribs and caused bleeding injuries by means of sickles which is an instrument likely to cause death (for stablign and hacking) and that you thereby committed an offence punishable under Section 324 IPC and within my cognizance.

Ninthly: That you A1 to A7 and A9 to A11 on or about the same date, time, place and during the course of the same transaction as mentioned in Charge No.1 supra, committed mischief to wit, broke the glasses of TATA sumo, causing loss or damage to the said TATA sumo with common object and thereby committed an offence punishable under Section 427 read with 149 of IPC and within my cognizance.

And I hereby direct that you be tried under the above section of law.”

6. As all the accused pleaded not guilty, they stood trial during which, prosecution examined PWs 1 to 17 and got Ex.P-1 to P-34 marked. On behalf of the defence, no oral evidence was adduced, but Exs-D1 to D4 were marked on its side. On considering the oral and documentary evidence, the Court below has decided the case in the manner as stated hereinabove.

7. At the hearing, Mr.P.Veera Reddy, learned Senior Counsel for the appellants, advanced the following submissions:

1. F.I.R. is ante-timed, prepared after due deliberations, facilitating false implications.

2. Prosecution failed to examine independent witnesses, except PW-4, who turned hostile and that all the alleged eye witnesses being interest witnesses, their evidence ought not to have been believed by the lower Court.
3. PWs-1, 3 and 5 are planted witnesses and their testimony is not worthy of acceptance.
4. The weapons allegedly used in the commission of offence and other articles allegedly seized by the police during the investigation, were not produced before the Court and the observation of the lower Court that they were washed away in floods, is not based on any evidence or material.
5. The appellants are entitled to the benefit of doubt.
8. Opposing the above submissions, the learned Public Prosecutor submitted that PWs-6 and 7 being injured witnesses and PWs-1,3 and 5 being direct witnesses, the prosecution was able to establish the participation of the appellants in the commission of offence and that, therefore, they were rightly convicted by the lower Court. That there is no delay in the registration of F.I.R. and that, therefore, there is no scope for false implications. He has urged that the lower Court has given sound reasons for convicting A1 to A3 and, hence, the Criminal Appeal No.611 of 2011 is liable to be dismissed.

9. We shall start our discussion with the F.I.R. because, the delay in either its registration or it reaching the Court, considerably weakens the case of the prosecution, as it leads to false implications, manipulations and distortion of true facts. PW-1, who is none other than the younger brother of the deceased and alleged eye witness, deposed that he along with the deceased and others, reached a place near Dr.Kabeer Clinic at 8.30 p.m. and when the vehicle was stopped at the instance of the deceased for buying cigarettes, the attack had taken place. He has further stated that he, along with PW-3, went to III Town Police Station at about 9.30 p.m. and gave a statement to PW-13, the Sub-Inspector of Police. PW-13 also deposed that at 9.30 p.m., he was present in the police station and that PW-1 came along with PW-3 and gave oral complaint. He further stated that at 11 p.m., PW-17, the Circle Inspector of Police, came to the police station and took up the investigation. He however, did not state as to when the F.I.R. was dispatched. In the cross-examination, the witness admitted that the F.I.R. was received by the Magistrate at 4.15 a.m. on 19.01.2007. He denied the suggestion that Ex.P-1 – Complaint, was not received at 9.30 p.m. and that the same was received in the early hours of 19.01.2007. PW-17 deposed that at 22.00 hours on 18.01.2007, he has received phone call from PW-13 about the murder; that he immediately proceeded to the police station and reached at 22.30 hours; that he has received copy of Ex.P-13 – F.I.R. and recorded the statement of PW-1. It was suggested to him that

Ex.P-1 – report, was ante-timed and that the same was manipulated after knowing that PWs-6 and 7 reported before the Casualty Medical Officer, that they could not identify any of the offenders. He has admitted that the time of dispatch of Ex.P-13 – F.I.R. was not mentioned thereon.

10. We have perused the original record. Ex.P-1 – report, was prepared at 9.30 p.m. on 18.01.2007 by PW-13, purportedly on the oral statement of PW-1. A close perusal of the said report shows that there is an over writing on the numeral '9' preceding the numerals and letters '.30 p.m.'. It is visible to the naked eye that '0.30 p.m.' has been changed as '9.30 p.m.'. That means the first zero was corrected as nine. No doubt, either PW-13 or PW-17, were not subjected to cross-examination on this aspect. Be that as it may, as admitted by PW-17 in his evidence, the time of dispatch of Ex.P-13 – F.I.R., has not been mentioned. Admittedly, the F.I.R. was received at 4.30 a.m. on 19.01.2007 by the Magistrate. It has come in the evidence that the distance between the Police Station and the Magistrate Court is just 4 kms. If the F.I.R. was registered at 9.30 p.m., there is no reason for it, reaching the Court of the Magistrate, 7 hours later. There was absolutely no attempt made by the prosecution to explain this delay.

11. The effect of unexplained delay in F.I.R., was considered in many judgments by the Supreme Court and various other Courts,

including this Court. In **Meharaj Singh (L/Nk.) Vs. State of U.P.**,¹

the Supreme Court observed as under:

“FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr.PC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW-8.”

12. On the admitted facts of the present case, the fact that the time of despatch was not mentioned on the F.I.R. and the delay of 7 hours in the F.I.R. reaching the Magistrate, would create any amount of doubt that the F.I.R. was not registered at 9.30 p.m. and on the

¹ (1994) 5 Supreme Court Cases 188

contrary, it must have been registered much thereafter. This doubt is further strengthened by the correction of time mentioned on Ex.P-1 – report. As a necessary corollary, the possibility of false implications and distorted versions in the case of prosecution, cannot be ruled out.

13. We shall now consider the ocular evidence of the prosecution witnesses. PWs-1,3 and 5 were examined as direct witnesses and PWs- 6 and 7 are injured witnesses. The lower Court held that PW-7, one of the injured witnesses could not identify any of the accused and, therefore, his evidence is not useful for the prosecution to establish its case. As regards PW-6, the trial Court held that his evidence to the extent of participation of A1-A3, alone is credible as he could not identify other accused, including those who have caused injuries to him. To the extent of these findings, the prosecution has not joined issue before us. Therefore, there is no need to delve into the reasons of the Court below, as regards non- identification of all the accused by PW-7 and that of A4-A11 by PW-6.

14. The sheet anchor of the case of the defence is that, PWs-1,3 and 5 are planted witnesses and they have not witnessed the alleged occurrence. We shall, therefore, test this stand with reference to the evidence.

15. PW-1, the brother of the deceased, testified that on 18.01.2007, he and his deceased brother along with PWs-3 and 6, came to

Kurnool in a Tata Sumo and stayed at Meenakshi Lodge, that later they have called the plot broker and all of them have gone to the house of the plot owner (PW-9) who was residing at Gayathri Estate, that they reached the house of PW-9 at about 8 p.m. and that, after conclusion of the talks, they gave a cheque of Rs.1,50,000/- to PW-9 and started their return journey to their lodge at 8.30 p.m. That when they reached the place near Dr.Kabeer's clinic, the vehicle was stopped at the request of the deceased near a kirana shop for getting cigarettes and when the vehicle was about to start, all the accused came from behind, armed with hunting sickles and surrounded them. That, the deceased was on the left side of the Sumo when A1 to A3 forcibly opened its door and dragged the deceased by saying, 'hack this fellow' and, accordingly, they hacked the deceased over his head, shoulders and all over his front side of the body; that A8 to A11 attacked the Sumo and broke the front side of the glass with hunting sickles over his right hand and right ribs and that when the witnesses PW-3, PW7 and 8 were trying to escape by jumping from the Sumo after opening the right side door, they were all attacked by A4 to A7 by saying, 'hack all of them'. That, when they were running towards the lane on right side, the said accused chased them and A-4 to A-7 hacked PW-7 who was behind the witness and others, with hunting sickles. That however, the witness and PW-3 ran into the lane and were able to escape and that PW-8 also escaped. He has further deposed that after half-an-hour, PW-1 telephoned about the incident

to his younger brother and sister-in-law, the wife of the deceased and after half-an-hour, he came to the place of the occurrence and found the deceased in a pool of blood and dead. The witness added that they were able to observe all the aforesaid things under a streetlight and from the lighting coming from nearby shops. He has further deposed that when he enquired with the public who gathered at the scene about PWs-6 and 7, they informed them that they were taken to the hospital.

16. PW-2 is a resident of Pullagummi village and also one of the younger brothers of the deceased. He has deposed that about 9 p.m., when he was at his village, he received phone call from PW-1, informing about the incident, leading to the death of the deceased and that A-1 to A-11 have caused the death of the deceased, apart from causing injuries to PWs-6 and 7.

17. PW-3, the permanent driver of the deceased in his evidence, deposed that A1 to A4 came in front of the jeep and other accused have surrounded the same and that A1 to A4 came on the left side of the jeep and forcibly dragged the deceased by opening the door, while A-9 and A-11 attacked PW-6 and A-8 to A-11 damaged glasses of the jeep.

18. A close analysis of the evidence of PWs-1 and 3, would expose many gaping holes in their version. While PW-1 has stated that the

accused came from behind, PW-3 has stated that when the jeep was being re-started, A1 to A4 came from the front side. PW-1 has stated that after he witnessed A-1 to A-3 attacking the deceased, he fled from the scene by opening the right side of the back door. PW-1 further stated that when himself, PW-3, PW-7 and PW-8 were trying to escape, they were also attacked by A4, A6, A5 and A7. By his own statement, when he was attacked along with others, there was every possibility of his receiving some injuries, especially when PW-6 and PW-7 have received extensive injuries, it is very difficult to believe that PW-1, PW-3 and PW-8 would have escaped unscathed. Here, we have to keep in mind, the fact that PW-1 is no other than the own brother of the deceased and the motive as set up by the prosecution, is the faction rivalry. When a factionist attacks the rival group, the core faction members of the rival group are the natural targets. When PW-1's brother was attacked violently, even PW-1 himself, would have been a target for the rival group, more so, when he was present at the time of attack. When the accused have allegedly not spared PWs-6 and 7, who were totally unconnected with the faction, it is hard to believe that they have allowed PW-1 to escape.

19. We also observe the unnatural conduct of PW-1 during the course of the alleged attack. His evidence would reveal that he was sitting in the back side of the Sumo and watched A1 to A3 attacking his own brother and he did not get down from the vehicle, till he saw

his brother being attacked and also PW-6 being attacked by A9 to A11, while A8 to A-11 damaged the Sumo. PW-1 being the brother of the deceased and being part of a faction group, is not expected to meekly watch all the accused, perpetrating violence on his own brother. Even assuming that he had no courage to interfere, the least that is expected of him, is to reach the police station at the earliest possible opportunity and inform the police, which is just half a kilometre away from the scene of offence. He did not do so. On the contrary, he stated that he came back to the scene of offence after half-an-hour. He did not explain as to where he was, during the said half-an-hour. No person being a part of faction, would merely while away half-an-hour time, without doing anything, except allegedly informing his family members in the village on phone. Here again, we find an element of improbability. According to PW-1, when he returned to the scene of offence after half-an-hour, he found his brother dead and before that, he telephoned about the attack on and the death of the deceased to PW-2 and his sister-in-law, the wife of the deceased and, thereafter, he went to the place of occurrence and found his brother lying in pool of blood and dead. It is highly improbable for PW-1 to inform his family members on phone about the death of his brother, during the interregnum between his fleeing from the scene and returning to the scene and noticing his brother being actually dead. If at all, his informing his family members of the death would be possible, only after his return to the scene of offence.

This serious anomaly would cast any amount of doubt on the truthfulness of the version of PW-1. Indeed, if PW-1 was really present at the scene of offence, he would have made some attempt to intervene or urge people present at the scene (the scene of offence being a commercial locality, is not only a public place but a densely populated one with public moving around), to intervene and stop the attack. Even if he has not done so, as it was observed herein before, he might have sought the police help by rushing to the police station situated half a kilometre away from the scene of offence. The least that he could have done is, to come back to the scene of offence as early as possible and make an effort to shift the victim to the hospital, instead of resigning the deceased to his fate.

20. The judgment in **Meharaj Singh (L/Nk.) Vs. State of U.P. (1 supra)**, is apt to be referred to in this context. In that case, PW-3 was the widow of the deceased, who claimed to be present when her husband was being attacked. She did not try to save her husband by trying to provide a cover and even after he fell down, she did not even try to go anywhere near her husband. On these facts of the case, the Supreme Court observed as under:

“It appears that it was a blind murder and none of the eyewitnesses were actually present at the scene. The ante-timing of the FIR was obviously made to introduce eyewitnesses to support the prosecution case. We may demonstrate this by noticing that though PW 3 Smt. Kamlesh the widow of the deceased claimed that she was present with her husband at the time of the occurrence, her conduct was so unnatural that not only she did not try to save her husband by trying to provide a cover but even after her husband fell down and was inflicted

repeated injuries with the knife by the appellant Meharaj Singh, she did not even try to go anywhere near her husband and even later on hold his head in her lap and try to provide some comfort to him. This becomes obvious from the absence of any bloodstains on her clothes. She admitted that she had not even received a scratch during the occurrence. In a situation like this, the normal conduct of any wife would be firstly to make an effort to save her husband even by taking the blow on herself and if that is not possible then at least to go so close to his person, at least after the assailants had left that there would be no escape from the blood oozing out of the injuries of the deceased to come on to her clothes”.

21. Another important aspect which deserves to be noticed is that, PW-1 is a graduate in commerce. It looks strange that he has not scribed Ex.P-1. PW-13 claimed that he has reduced Ex.P-1 into writing on the oral statement of PW-1. The learned Senior Counsel has pointed out from the original record that the signature of PW-1 is in telugu. However, we noticed from his deposition that he signed in English. Though PW-1 was not confronted on this aspect, we cannot, however, ignore the same when the discrepancy is so glaring and patent. All these factors considered cumulatively, convince us to hold that PW-1 is not an eye witness, but was planted as an eye witness, evidently after consultations and confabulations. That appears to be the reason for the delay in the registration as well as despatch of the F.I.R. to the jurisdictional Magistrate. From the aforementioned discussion, it is reasonable to presume that PW-1 was also in the village along with PW-2, his younger brother and other family members and it is only after he was informed about the attack on the deceased, that he reached Kurnool and the F.I.R. might

have been finally registered after midnight. This conclusion is supported by the correction of time on Ex.P-1, as explained herein before.

22. PW-3 deposed that he is not only the driver, but also a follower of the deceased. He further admitted that he was working as driver for the last 20 years and he was an accused in the murder of one Sankarananada Reddy, the father of A3 and A8. Thus, he is also a highly interested witness like PW-1. When he was not only a close follower of the deceased but also an accused in the murder case of the father of A3 and A8, it defies any reason or logic for the accused to allow him to escape unhurt in the attack, more so, when the assailants were stated to be 11 in number. During the course of cross-examination, he stated that he was not examined by the Inspector of Police in the police station when PW-1 was examined. As noted herein before, there is a serious discrepancy as to the direction in which the accused came. While PW-1 stated that the accused first came from behind, this witness stated that they came from the front side of the jeep. Moreover, PW-1 in his cross-examination admitted that on the day of the incident, the roof laying work for PW-3's house under construction was in progress and that still he accompanied them. The defence has elicited omission from this witness to the effect that he did not state before the police that himself and PW-1 together, gave a report to the police and the same

was marked as Ex.D-2. For all the aforementioned reasons, we are of the opinion that there was no possibility of PW-3 being present at the scene of offence and he was also planted as an eye witness, as in the case of PW-1.

23. Though P.W.5 was also examined as an eyewitness, there is no need to discuss the same as the Court below has categorically held that he was not an eyewitness but a planted witness.

24. When we disbelieve the case of the prosecution that P.Ws.1 and 3 are the eyewitnesses, we are left with the evidence of P.Ws.6 to 8, the remaining alleged eye witnesses. Before discussing the evidence of P.Ws.6 and 7, the injured witnesses, we would like to discuss the evidence of P.W.8. He stated that the jeep was stopped near Kabeer Clinic for the purpose of purchasing cigarettes and when he was about to re-start the jeep, eleven persons (accused) came from behind. He further deposed that three of the accused went to the left side of the jeep and surrounded the deceased, who was sitting in the front seat, and beat him with hunting sickles. There is material variation in his description of attack on the deceased, from that of P.Ws.1, 3, 5, 6, and 7. The said witnesses stated that the deceased was dragged from inside the jeep to the outside before he was attacked. This witness simply stated that after surrounding the deceased, three persons beat him with hunting sickles. He further stated that four of the accused damaged the front side glass window of the jeep and the

remaining four came to their side and that himself, P.Ws.1, 3 and 7 ran towards right side to escape, but P.W.7 was attacked by the said accused persons. This witness has not stated about the attack on P.W.6. He, however, admitted that he cannot identify, who attacked the deceased and caused his death; that he cannot identify any of them, even if they are shown to him and that he cannot say if any of the accused shown to him at the trial, were the assailants. He further stated that he did not try to get the details of those who attacked them at any time after the incident. Therefore, the evidence of P.W.8 is not helpful to the prosecution to hold any of the accused guilty of the offences alleged.

25. As regards P.W.7, as he could not identify the accused, the Court below has discarded his evidence.

26. Coming to P.W.6, the reasoning of the Court below appears to be highly unconvincing. The defence was able to expose many shortcomings in his evidence. P.W.6 stated that himself and P.W.7 were taken to the hospital in 108 ambulance. However, he deposed that he did not know who called for the ambulance service. He further stated that there is outpost Police Station in the Government General Hospital, Kurnool; that III Town Police Station is opposite to the hospital and that he did not go to the Police Station nor sent any report to the Police before he was admitted into the hospital. He categorically admitted that he did not reveal the names of any of the

accused, who attacked him, to the Doctors. Initially, he denied that media persons came to the hospital to enquire him. However, the defence with the permission of the Court exhibited video film taken by TV9 channel, which showed the interview with the witness recorded by the crew of the said channel. After watching the film, P.W.6 admitted that he was interviewed by the TV crew, but he denied the voice in the interview as his. The Court below, however, disbelieved his denial and rightly so as there was no need for the TV channel to manipulate the voice as if that was of the witness. Ex.P-11 is the wound certificate of P.W.6. P.W.12, who issued Ex.P-11, clearly noted down on the said certificate that the patient was beaten by unknown persons. In his evidence, P.W.12 stated that P.W.6 was brought to the hospital by 108 emergency service; that generally, whenever the patient was handed over to the hospital by the said service, they will take the acknowledgement from the duty Doctor and that Ex.D-3 is the letter issued by the said 108 emergency service. He further admitted that the patient will be enquired about how he sustained injuries, so as to treat it as a medico legal case or an accident case and that on being enquired, both P.Ws.6 and 7 stated that they were beaten by unknown persons.

27. Ex.D-3 issued by 108 emergency service (GVK Emergency Management and Research Institute) makes an interesting reading. Against the column 'scene address', it is mentioned as "near Telugu

Desam Party Karyalayam, Kurnool”. The aforementioned contents of Ex.D-3 show that the cause of the injuries and the scene of offence, vary from the one set up by the prosecution.

28. The Court below, while partly accepting the evidence of P.W.6 to the extent of involvement of accused Nos.1 to 3 in the killing of the deceased, ignored the fact that if he identified the said accused, he would not have failed to mention the names of, at least, these three accused to P.W.12, more so, when the attack was vicious and fatal and the same was perpetrated on the deceased. It is not the case of the prosecution that P.W.6 was either not conscious or unable to speak out. He received only two injuries. If he watched accused Nos.1 to 3 indulging in a gruesome attack on the deceased, he would have insisted that this information is passed on to the Police outpost in the hospital and also to the Police in the Police Station situated across the street in front of the hospital. At least, when a TV channel had interviewed him, there was no reason for him to not divulge the names of accused Nos.1 to 3 as having attacked the deceased, even if he has not recognized his own assailants. This crucial aspect was completely glassed over by the Court below, while partly believing the version of P.W.6 to the extent of attack on the deceased. We would like to summarise the aforementioned discussion as under.

- (i) The F.I.R. was not registered at the time as claimed by the prosecution, but it was registered many hours after

the occurrence and sent to the Magistrate with unexplained delay, which facilitated the Police to falsely implicate the accused, obviously after P.W.1 arrived at the Police Station.

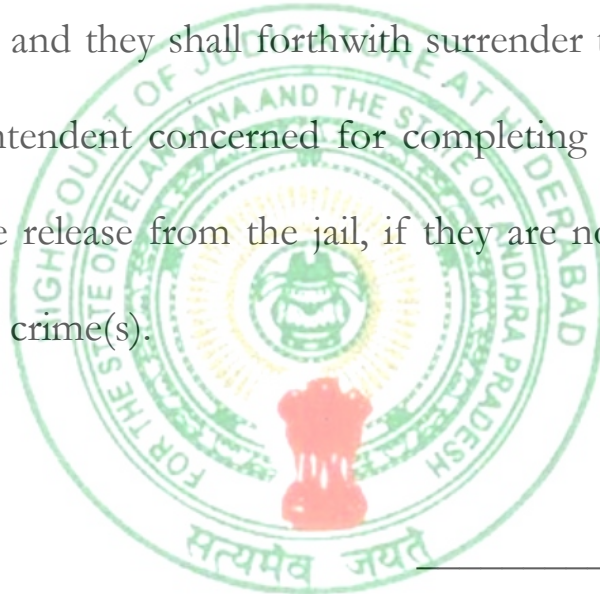
- (ii) P.Ws.1, 3, 5 and 8 were planted witnesses.
- (iii) P.Ws.6 and 7 could not identify the assailants.
- (iv) The accused, being the members of the rival faction, were the natural suspects and accordingly, they have been implicated on mere suspicion, without any clear evidence.
- (v) The Court below has completely failed to comprehend the aforementioned aspects and erroneously convicted accused Nos.1 to 3, while acquitting accused Nos.4 to 11.
- (vi) In our opinion, the same reasoning, which was adopted by the Court below for acquitting accused Nos.4 to 11, is equally applicable to accused Nos.1 to 3.

29. For the aforementioned reasons, the judgment of the Court below to the extent of convicting appellants/accused Nos.1 to 3 in Criminal Appeal No.611 of 2011 is liable to be set aside.

30. In the result, Criminal Appeal No.611 of 2011 is allowed and Criminal Appeal No.659 of 2011 is dismissed. The conviction and sentence recorded against the appellants in Criminal Appeal No.611

of 2011/accused Nos.1 to 3 in judgment, dated 28.04.2011, in Sessions Case No.348 of 2008 on the file of learned IV Additional District and Sessions Judge, Kurnool, are set aside and they are acquitted of the charges framed against them. The fine amount, if any, paid by them shall be refunded to them.

31. We have been informed that the appellants in Criminal Appeal No.611 of 2011/accused Nos.1 to 3 are presently on bail, *vide* this Court's order, dated 14.11.2016. Therefore, their bail bonds shall stand cancelled and they shall forthwith surrender themselves before the Jail Superintendent concerned for completing the formalities of their immediate release from the jail, if they are not required in any other case(s) or crime(s).



(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Date: 21st February, 2018

msb/ghn

