2022:APHC:36567

HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE TWENTY EIGHTH DAY OF OCTOBER

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE M.GANGA RAO

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL APPEAL NO: 1041 OF 2015

Between:

1. S.V.NAGESWARA RAO @ RAJA, GUNTUR DIST. & 2 OTHRS Son of Durga Prasada Rao,
   resident of Lingineilivaripalem, Nizampatnam Mandal, Guntur Ditrict

2. Lingineni Durga Prasada Rao @ Durga Prasad @ Durga @ Durga Rao, Son of Venkateswarlu,

   Resident of Seelamvaripalem,
   H/o. Srikakulam, Ghantasala Mandal, Guntur District.

3. Somarothu Bhujanga Rao @ Bujji, Son of Sambasiva Rao,

   Resident of Linginenivaripalem,
   Nizampatnam Mandal, Guntur District

...PETITIONER(S)

AND:

1. P.P., HYD rep. by its
   Public Prosecutor, High Court of Judicature
   at Hyderabad For the State of Telangana and
   the State of Andhra Pradesh, Hyderabad

...RESPONDENTS

Counsel for the Petitioner(s): V PADMANABHA RAO

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER

2022:APHC:36567

HON'BLE SHRI JUSTICE M.GANGA RAO

&

HON'BLE SHRI JUSTICE T.MALLIKARJUNA RAO

CRIMINAL APPEAL No.1041 OF 2015

JUDGMENT: (*Per Hon'ble Shri Justice T.Mallikarjuna Rao)*

1. The appellants herein are accused nos.1 to 3 in Sessions Case No.119 of 2013, who faced the trial for the offences punishable under Section 302 read with 34 Indian Penal Code (for short IPC). By its Judgment dated 08.06.2015, the learned XI Additional District and Sessions Judge, Tenali, convicted A1 to A3 for the offence punishable under Section 302 read with section 34 IPC. Accordingly, it sentenced each to suffer imprisonment for life and pay a fine of rupees one thousand each, in default, rigorous imprisonment for three months each.

2. We may note that by the impugned Judgment, A.4 and A.5 were found not guilty for the offence under Section 302 read with Section 34 IPC and acquitted. The state has not preferred the appeal against the acquittal.

3. The substance of the charge against A1 to A5 is that on 12.12.2011 at 12.30 PM, with a common intention to do away with the life of Lingineni Murali Babu they obstructed and

attacked him with deadly weapons and caused injuries near Harizanawada, Muttupalli and murdered him.

4. The case of the prosecution in brief, as disclosed by the material prosecution witnesses, is that, P.W.1-Lingineni Surendra and P.W.2-Lingineni Suresh are the brothers and sons of the deceased. PWs.1 and 2 are residents of Edupalli Village of Nagaram Mandal. The deceased was a native of Linginenivaripalem of Nizampatnam Mandal but shifted his residence to Edupalli about 18 years back. The deceased herein was one of the accused in a murder case about 18 years back. The junior paternal uncle of A1 was deceased in that case. Both the parties compromised in that case, and said case ended in acquittal.

5. According to P.W.1, on 12.12.2011, in the early hours, he and his brother Suresh went to the fields to attend work. At about 08.00 AM, his father brought tiffin for them, and they all had tiffin at their fields. About 12.15hours after completion of work, they were returning home for lunch, he and his father were coming on one cycle, and his brother P.W.2 was coming on another cycle. When they reached Muttupalli Harizanawada, A2 called his father 'Babai' while arriving on a motorcycle. Then he turned back. A3 and A4 came in front of him, putting their bike across. Due to fear, his father got down the cycle and started

running towards their village. By running, A.1 picked out the knife and stabbed his father in the head. A2 got down from the bike and hacked his father on his nape and his hands. When he and his brother tried to rescue their father, they threatened to kill him by showing the knife, and his father died on the spot. A.1 to A.4 ran towards Nizampet's side on their bike, and he lodged Ex.P.1 report containing the signature.

6. According to P.W.14, the Sub-Inspector of Police, Nizampatnam, on 12.12.2011 at 01.30 PM, he received the report (Ex.P1). Based on it, he registered a case in Cr.No. 44 of 2011 for the offences punishable under Section 302 read with section 34 of IPC. He informed the in-charge Circle Inspector of Police about the crime's registration. Ex.P10 is the First Information Report.

7. According to P.W.15 - A.V.Suresh Kumar, Circle Inspector of Police, on the instructions of Sub Divisional Police Officer, Bapatla, took up an investigation. He rushed to the scene of the offence at Muttupalli Harizanwada at 02.30 PM and secured the mediators, i.e., P.W.13 Karra Ravi Kumar and L.W.15 P.Ramakrishna Reddy, examined the scene of the crime. There was a dead body of one Lingineni Murali Babu lying in a pool of blood on the roadside between the church under construction and the house of one Merugupala David, and got prepared the Ex.P6 scene observation report. At the scene, he seized material

objects, secured a photographer, and got taken Exs.P11 to P15 photos with a CD of the dead body of the deceased lying at the scene. He prepared Ex.P16 rough sketch of the scene of the offence. He secured the mediator L.W.16 - M.Sambasiva Rao and conducted an inquest over the dead body of the deceased, prepared Ex.P.7 the inquest report. He sent the dead body with a requisition to Government Hospital, Repalle, to conduct a post-mortem examination.

8. PW.16, who worked as Inspector of Police, Repalle stated that on his return from leave, he took up further investigation on 25.12.2011. He secured mediators P.W.13 – Karra Ravi Kumar and L.W.17 B.Sambasiva Rao along with the sub-inspector of police. Nizampatnam proceeded to Bavajivaripalem crossroad at about 03.00PM. They found A1, A2 and A5 from the Repalle side on a motorcycle. On seeing them, they tried to escape; he apprehended them and interrogated them in the presence of mediators. They confessed that they hacked the deceased Muralibabu with knives on 12.12.2011 due to the previous enmity and threw the knives at Mutupalli crossroads in the thorny bushes. The mediators report, i.e., Ex.P8, was drafted and seized MO.7, the motor cycle bearing No.AP07AY5407. According to PW.16, A1, A2 and A5 led them to Muttupalli crossroads, and A.1 picked out three knives packed with a piece

of urea bag. They stated that they used the knives to commit the offence. PW.16 seized MO.6 knives under cover of Ex.P.9 mediator report. According to PW.16 on 27.12.2011, he sent the material objects, i.e., M.O.8 – blood-stained shirt, M.O.9 – the blood-stained cut bunion, M.O.10 -- the blood-stained cotton lungi and M.O.11 --- blood-stained underwear, M.O.12 – two rows waist thread seized from the dead body of deceased by the doctor to Regional Forensic Laboratory, Guntur through Sub Divisional Police Officer, Bapatla for chemical analysis.

9. According to PW.16, he received Ex.P.17 report from A.P. Forensic Science Laboratories. As per the report, the blood-stained shirt, cut bunion and lungi and underwear, two rows of waist belts seized from the dead body, blood-stained earth seized from the scene of offence and knives seized from the accused stained with human blood.

10. After collecting all the material, PW.16 filed the charge sheet. Additional Junior Civil Judge, Repalle has taken on file as PRC No. 16 of 2012 On appearance, furnished the copies of the documents to the accused under Section 207 Cr. P.C and committed to the Sessions Court. Based on the material available on record charge, as referred to earlier, came to be framed, read over and explained to the accused. They pleaded not guilty and claimed for trial.

11. To prove the case, prosecution examined P.Ws.1 to 16 and got marked Exs.P.1 to P.17, besides marking M.Os.1 to 12. On behalf of Accused No.4, D.Ws.1 to 3 got examined, marked Exs.D.3 to D.14 . In cross-examination of PWs.7 and 9, Exs.D.1 and D.2, contradictions were elicited. After completing the prosecution evidence learned Sessions Judge examined the accused under Section 313 Cr.P.C. concerning the incriminating circumstances appearing against them in the evidence of prosecution witnesses, which they denied. The defence was of total denial and false implication by the deceased's family members.
12. After considering the necessary material available on record, the learned Sessions Judge found the guilt of A.1 to A.3/appellants and convicted and sentenced as stated hereinbefore. Aggrieved by which the present appeal has preferred.
13. Sri.V.Padmanabha Rao, learned counsel for the appellants, would contend that the prosecution has utterly failed to prove motive beyond doubt and, as such, a vital link to complete the chain of circumstances is absent. If two views are possible, the benefit should always go to the accused: the learned trial court failed to notice a discrepancy between FIR and the evidence tendered before the Court. The trial Court ignored the settled principle of jurisprudent that the burden of proof lies on the

prosecution, and it has to prove a charge beyond a reasonable doubt. Its Judgment is based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence. However, the learned trial Court doubted the recovery and also how the recovery was made but convicted Accused Nos.1 to 3. The trial Court has not considered that PWs.1 and 2 deliberately failed to state during the investigation about the presence of a watchman in the fields. The trial Court has not believed the version of Pws.1 and 2 about the involvement of A4 and A5 in the commission of the offence. Still, it convicted Accused Nos.1 to 3 by relying on a such unreliable versions of PWs.1 and 2. The trial Court failed to observe that the evidence of independent witnesses does not corroborate the interested testimony of PWs.1 and 2. The learned trial Court has considered Ex.P17 RFSL report, though the prosecution did not examine the expert who gave such a report. Learned counsel for the appellants relied on the following decisions.

(a) 2021 Law Suit (SC) 136in between Shivaji Chintappa Patil Vs. The state of Maharashtra.

(b) 2002 Law Suit (SC) 1215 in between Jasbir Vs. The state of Haryana.

(c) 2008 Law Suit (SC) 77 in between Sambhaji Hindurao Deshmukh Vs. The state of Maharashtra.

(d) 2012 Law Suit (SC) 173 in between Govindaraju @ Govinda Vs. State, Sriramapuram P S and ANR.

(e) 2020 Law Suit (SC) 594 between Anwar Ali and another Vs. State of Himachal Pradesh.

(f) 1976 Law Suit (SC) 325 Lakshmi Singh Vs. The state of Bihar.

(g) 2008 Law Suit (SC) 72 between Sattatiya @ Satish Rajanna Kartalla Vs. The state of Maharashtra.

14. The learned Additional Public Prosecutor submits that the evidence of PWs.1 and 2 is creditworthy and inspires confidence. Non-supporting such a version by independent witnesses would be no grounds, to discard their testimony. The presence of PWs.1 and 2 at the scene of the offence, along with their deceased father, is quite natural, and they are possible eyewitnesses. They are not to be categorised as interested witnesses. It is settled law that merely because a person is a related witness or sole witness, the Court cannot reject such evidence. Otherwise, the same is found credible. As the trial Court has not accepted the prosecution case regarding the role played by A4 and A5 in the commission of the offence, it does not mean to reject the entire case. It does not debar the Court from separating the truth from falsehood and accepting a part of the evidence. Learned Additional Public Prosecutor relied on the following citations ;

A) State of A.P. v. S.Rayappa and others in Criminal Appeal Nos.1401-02 of 1999

B) (1981) 2 Supreme Court Cases 752 between State of Rajasthan vs Kalki and another in Criminal Appeal No.543 of 1976.

C) (1981)3 Supreme Court Cases 675 between Hari Obula Reddy and others Vs. The State of Andhra Pradesh in Criminal Appeal No.146 of 1977

D) (2005)11 Supreme Court Cases 142 between Seeman Alias Veeraanam vs State, By Inspector of Police in Criminal Appeal No.972 of 2004.

E) (2019) 10 Supreme Court Cases 554 : (2020) 1 Supreme Court Cases (Cri) 47: 2019 SCC Online SC 1418 in between Rohtas and another vs State of Haryana in Criminal Appeal No.764 of 2009.

F) (2019) 10 Supreme Court Cases 554 between Rohtas and another vs the State of Haryana in Criminal Appeal No.76 of 2009.

G) 2022 SCC online AII 323 between Manvir vs State in Jail Appeal No.4325 of 2009.

15. In Ramesh Singh alias Photti v. the State of A.P., [(2004) 11 SCC 305], it is observed that the totality of circumstances could hardly be ever similar in all cases. Therefore, unless and until the facts and circumstances in a cited case are in parimateria in all respects with the facts and circumstances of the case in hand, it will not be proper to treat an earlier case as a precedent to arrive at a definite conclusion.

16. We will examine the applicability of the rulings referred to by the appellants' counsel and Additional Public prosecutor in light of the facts and circumstances of the present case.

17. Upon considering the material on record, the point that arises for consideration is whether the prosecution was able to prove the guilt of accused Nos.1 to 3 beyond all reasonable doubt.

18. The prosecution has mainly relied on the evidence of PW.1 – Lingineni Suresh and PW.2 – Lingineni Suresh to prove the commission of the offence, and they claimed as eyewitnesses. This Court has already referred to the evidence of PW.1 supra. Coming to the evidence of PW.2, he deposed that on 12.12.2011 at about 6.00AM, he and his brother (PW.1) went to the field to weed out waste plants in the ground nut crop. At about 7.30 AM, his father left to get tiffin and returned with tiffin at about 8.00 AM. After completing work at approximately 12.15 hours, they intended to return home for lunch. P.W.1 and his father were coming on one cycle. He was going on another cycle when they reached Mutthupalli Harizanawada. A. 2 called his father 'Babai'. His father turned back, and A.3 came on a bike and stopped in front of cycle of his father. His father and P.W.1 left the cycle, and his father started running towards Nizampatnam's side. His brother ran towards him, i.e., Nagaram's side and A.1 picked out a knife and hacked his father on his head, and A.3 hacked his

father on his shoulder. A.5 stabbed on the right side waist, for which the deceased died on the spot. L.W.5 - Sivaiah and P.W.4 - Lingineni Srinivasa Rao, who were returning from Repalle, on seeing them came to them, P.W.1 took the vehicle from P.W.4 and went to Nizampatnam police station and lodged a report.

19. The prosecution examined P.W.3-Kokkiligadda Babu Rao to speak the witnessing the occurrence. P.W.3 stated in his evidence that he returned home by noon on the day of the incident. The dead body of the deceased was found lying near a hut three houses away from their house in Harizanawada Muttupalli, killed by somebody. In the cross-examination held by the learned Additional Public Prosecutor. He denied the suggestion that he stated before the police as in Ex.P.2. Though P.W.3 cited as an eyewitness to the occurrence, he did not support the prosecution's case. The counsel appearing for the accused persons reported no cross-examination on behalf of the accused. The evidence of P.W.3 that he found the dead body of Muralibabu near a hut three houses away from his home in Harizanawada Muttupalli is not in dispute.

20. It is settled law that the evidence of a hostile witness can be relied on to the extent to which it supports the prosecution version, particularly when such a version is not disputed by the accused.

21. The prosecution examined P.W.4-Lingineni Srinivasa Rao to prove that he noticed A1 to A5 while going on three bikes on 12.12.2011. He deposed that at about 12.30hours while he was coming on his motorcycle along with L.W.5-Ch.Sivaiah from the Nizampatnam side, when they reached Yedlapalem, they found coming of A.1 and A.2 on one bike, A.3 and A.4 on another bike, and A.5 on another bike, coming in their opposite direction from Muttupalli side towards Nizampatnam together with knives in their hands. They also proclaimed that they executed their plan as decided and finished the life of the deceased - Murali Babu. They got perturbed, proceeded, and when they reached Harizanawada of Muttupalli, they found the dead body of Muralibabu by the side of the road near the church and also wailing of P.Ws.1 and 2. They found the dead body of Muralibabu lying in a pool of blood with a full of cut injuries. P.W.1 wanted to give a report and took his vehicle, and left for Nizampatnam.

22. The prosecution examined P.W.5 - Kokkiligadda Ramesh to prove the occurrence, but he did not support the prosecution's case. In the cross-examination held by the learned additional public prosecutor, he denied the suggestions that he stated before the police as in Exs.P3. Thus his evidence is not helpful to the case of the prosecution.

23. P.W.6 - Lingineni Venkateswara Rao @ Venkateswarlu stated knowing the death of Murali Babu, he went to Muttupalli Village along with other villagers and found his dead body lying on the roadside in Harizanwada Muttupalli. He noticed stab injuries over his dead body.

24. The prosecution examined the wife of the deceased as P.W.11 - Lingineni Venkata Lakshmi. She deposed that on that day, P.Ws.1 and 2 went to the fields to weed out the waste plants in their ground nut crop in the morning. At about 9.00 AM, her husband went to the fields to take tiffin to their children. At approximately 12.30 PM, while they were returning home for lunch, the accused attacked her husband at Harizanawada of Muttupalli. They hacked him, due to which he died. Then she went to the spot and found the dead body of her husband lying with injuries on his head and body. Even according to her evidence, she is not an eyewitness to the occurrence.

25. The prosecution examined P.W.13 Karra Ravi Kumar, V.R.O., Muthupalli of Nizampatnam, to prove the visit to the scene of the offence and seizure of the case property. His evidence shows that on 12.12.2011, the Nizampatnam police called him to the crime scene at Harizanawada of Muthupalli and L.W.15 P.Rama Krishna Reddy to the scene of the offence. They examined the scene of offence which is on the roadside towards the western

side of the house of P.W.5. They found the dead body of the deceased Lingineni Murali Babu with bleeding injuries. They found one cycle and two pairs of chappal, i.e. one pair was to the legs of the dead, and another pair was separately lying in the blood. The police seized the cycle and chappal, the blood-stained earth, and the controlled earth under cover of Ex.P.6 scene observation report. He and Ramakrishna Reddy attested to it. He can identify seized items, i.e. M.O.1 blood stained earth, M.O.2 is the controlled earth, M.O.3 blue havai chappals, M.O.4 black colour chappal, M.O.5 cycle. He also deposed that the inspector of police conducted inquest over the dead body of Lingineni Murali Babu and he acted as one of the mediators along with L.W.15 P.Rama Krishna Reddy and L.W.16 Meesala Sambasiva Rao and they examined the dead body of Murali Babu and they found bleeding injuries over the head, neck and also on the body with cut wounds. During the inquest, the blood relatives and family members of the deceased were examined. As per the statements of the witnesses examined that the accused persons hacked him to death in connection with the grudges and Ex.P.7 the inquest report is prepared.

26. In the cross-examination, P.W.13 deposed that when police called him on 12.12.2011 while he was at Pallapatla village attending his work, he received a phone call from the police at

about 2.00 PM. The villagers also gathered at that time, and a canal was nearby the scene of offence. There is a school near the crime scene, it is a distance of 15 yards. He does not remember whether the day of week is Sunday. They found a cycle lying on the cement road and hawai blue chappal to the legs of the deceased. He admitted that there are corrections by insertions in the mediators report vide Ex.P.6. But he deposed that they only made the said corrections at that time. He also stated that the body was lying on the road. He also admitted that there are corrections by insertions in the last but one sentence on page 4 and that they inserted the father's name. He also admitted a similar correction by inserting the same name on the 5th page, the last but one sentence. He stated that on 12.12.2011 at 2.45 PM, he drafted a mediator report. They also drafted an inquest report at about 3.45 PM. In the cross-examination held by the counsel for A.2 and A.5, PW.13 deposed, as per Ex.P.6, seizure of two pairs of chappals, but it is not explicitly mentioned blue colour chappals. He also admitted that in column No.8 by, injury No.1 is shown on the head and does not mention other injuries. He also admitted that column No.10 does not mention the user of heavy knives and axes to kill the deceased. He also admitted adding the name of Singamsetty Venkateswara Rao @ Tiger by interpolation in column No.11 and column No.15 of Ex.P.7. He

also admitted that there is sufficient space left in the signatures. The evidence of P.W.15 A.V.Suersh Kumar that he sent the dead body to Government Hospital Repalle with a requisition to conduct a post-mortem examination is not in dispute.

27. It is imperative to look at the evidence of the doctor, PW.12 - Dr.B.Chandrasekhar, who conducted a post-mortem examination of the dead body of Murali Babu. He issued an Ex.P5 wound certificate, wherein he mentioned the injuries found on the dead body of Muralibabu. The said injuries are extracted hereunder: -

1. An incised wound 20 cm x 3 cm of the brain deep with protrusion of skull contents extending from the occipital region to the forehead via vertex.
2. An incised wound 22 cm x 8 cm with the destruction of brain tissue extending vertically from the left occipital region to the left eye blow below injury No.1.
3. An incised wound 24 cm x 3 cm extending from the left occipital region to the left cheek bisecting the left ear, brain deep red below injury No.2.
4. An incised wound 21 cm x 3 cm starting below the left ear and extending to the left side of the lower part of the neck bone-deep, involving red skull and neck bones below injury No.3.
5. An incised wound 17 cm x 3 cm extending from the upper part of the left lower neck to the upper part of the left arm dividing the colour bone and humerus.

6. An incised wound located obliquely over the left side of the lower back 9cm x 1 cm x 0.5 cm muscle deep.
7. An incised wound horizontally oriented 4 cm x 2 cm x 1 cm over the lower back of the left side below injury No.6.
8. An incised wound 10 cm x 3 cm obliquely oriented over the lower back below injury No.7.
9. An incised wound of 15 cm x skin deep horizontally oriented located over the lumbar region of the lower back on the left side.
10. An incised wound of 4 cm x 1 cm x 0.5 cm located obliquely over the back of the left arm is red.

28. The doctor is of the opinion that the approximate time of death is 18 to 24 hours before the examination. The counsel appearing for the accused has reported no cross-examination. The nature of the injuries suffered by the deceased indicates that the death of the deceased was not natural. In the opinion of the doctor who conducted the post-mortem examination, the deceased died as a result of shock due to multiple injuries on the head and neck. As seen from the material on record, mediators prepared an inquest report of the deceased, and the witnesses proved it. Per the witnesses' opinion, the deceased's death occurred due to injuries sustained by him. In view thereof, the deceased's death occurred due to injuries sustained by him, and the photographs relied on by the prosecution also clearly establish the same. Blood-stained

earth is recovered from the place of occurrence to show/prove the place of occurrence. The fact remains that the accused have not suggested to any witnesses that the incident occurred elsewhere. It can see that the Investigating Officer has prepared the site plan of the place of occurrence and placed it before the Court and duly proved.

29. From the aforesaid factual position, it emerges that the defence has not at all disputed the death of the deceased as a homicidal one. In cross-examination of P.W.1, Learned Additional P.P suggested that P.W.1's father got several enemies due to disputes in the money lending business. Their watchman Akkala Veeraswamy Reddy also threatened their father to kill him for not paying the amount due and thereby implicated him. However, he is in no way concerned about his father's death. By cross-examining P.Ws.1 and 2, the defence wanted to establish that the deceased was having disputes with several persons.

30. Considering the nature of injuries on the vital organs of the deceased's body and the doctor's opinion in the context of other evidence led by the prosecution, there was nothing to disbelieve the homicidal death. It would be appropriate to note that even in the cross-examination of material witnesses, the defence did not dispute the homicidal death of the deceased. Thus we consider that the death of the deceased was homicidal.

31. Learned counsel appearing for the appellants submitted that the prosecution did not examine the expert and forensic report could not be relied upon. The learned Additional Public Prosecutor submits that the report given by Forensic Expert is admissible under Sec.293 Cr.P.C. and so the trial court admitted in evidence without examining the expert. It would be profitable to refer to Section 293 Cr.P.C., which reads as under:

> *(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or another proceeding under this Code.*
>
> *(2)The Court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report.*
>
> *(3)Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.*
>
> *(4) This section applies to the following Government scientific experts, namely:-*
>
> *(a) any Chemical Examiner or Assistant Chemical Examiner to Government;*
> *(b) the Chief Inspector of- Explosives;*
> *(c) the Director of the Finger Print Bureau;*
> *(d) the Director, Haffkeine Institute, Bombay;*
> *(e) the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;*
> *(f) the Serologist to the Government.*

32. A bare perusal of Section 293 Cr.P.C. would show that the opinions given by specific Experts are admissible in evidence without formal proof. We hold that if an accused wishes such reports to be clarified or questioned, he has an option to apply to the Court under section 293 Cr.P.C. and cross-examine the analyst. Despite such an option being available, if the accused fails to exercise the same, he cannot then choose to question the report on assumptions, presumptions and hypotheses without according any opportunity for the examiner to clarify or explain things. The Court cannot impose its views or refuse to disbelieve an analyst's report without giving him any opportunity to explain any point on which the report is silent. The defence cannot take benefit of its failure to apply and cross-examine the expert when this opportunity is available to it. Raising the issue at the final hearing is not sustainable. If the accused/appellants had any grievance or wanted to seek any explanation, they had the option to apply under section 293 Cr.P.C., but they never exercised the option.

33. In the facts of the case, we believe that the examination of an expert could be a mere formality. The expert's report is said to be per se admissible under Section 293 of the Code. In addition, there is no challenge to the genuineness of the report. The defence did not object at the time of marking the document. It is

nobody's case that the report could raise doubt in the mind of the Court, and the report needs further clarification from the report's author. However, at this stage, it is not open to the defence to raise such an objection.

34. The main thrust of the argument of the learned counsel for the appellants is that the prosecution failed to establish for causing injuries to the deceased. The learned trial Judge has not given a finding that the prosecution proved motive on the part of the appellants, and it warrants the rejection of the defence's case. In Ex.P1, there is a reference made to previous disputes between the deceased and the family of A1. The prosecution examined PW.6 to establish such previous enmity. According to P.W6, on the occasion of the death of the grandmother of A.1, A.1 declared that he would kill the killers of his uncle. He again made such a proclamation one week before the death of Muralibabu. The evidence of PW.6 in his cross-examination shows that his father and grandfather of Murali Babu, namely Venkaiah, are brothers by full blood.

35. In the cross-examination, PW.6 stated that he did not say before the police that one week before, Murali Babu A.1 proclaimed to kill the persons who killed his Babai. The evidence of P.W.6 disclosed that he was not present when A.1 declared that he would kill the persons who killed his uncle on the occasion of

the death of his grandmother. It is the defence case that A1 had no chance to know about the disputes between him and the deceased's family members. An attempt has been made to establish the same through the cross-examination of PW.6 by suggesting that the father of A.1, i.e., Durga Prasad Rao, had two marriages. He married the second time after the death of his first wife. He admitted that A.1 is the son of his father's first wife, but he does not know whether the mother of A.1 died when he was two months old; after that, his grandparents brought him up. The defence did not place any evidence in support of the said version.

36. The prosecution examined PW.8-Bhetanapudi Bhimayya, PW.9-Lingineni Maheswara Rao and PW.10-Lingineni Nancharayya to establish that the accused persons conspired together to eliminate the deceased. PW.8 did not support the prosecution's case, and he denied the suggestion in the cross-examination held by APP that he stated before the police as in Ex.P4 Section 161 Cr.P.C., statement.

37. PW.9 stated in his evidence that he knew P.W.1, Muralibabu and the accused. He heard from a public talk that the murder of the deceased Muralibabu occurred due to old disputes. On the previous day, i.e. on 11.12.2011, he heard a private conversation at the house of A.1 and A.3 that they wanted to kill the deceased

Murali Babu due to old disputes. P.W.9 stated in cross-examination that the house of A.3 is at a distance of 4 to 5 houses away from his house. The house of A.3 is not visible to his house. Any conversation in the house of A.3 is not audible to him. He has no occasion to hear anything from the house of A.3. He did not state before the police, as in Ex.D2, that he heard the conversation from the house of Somarothu Bujaganga Rao. Considering inherent improbabilities in the evidence of witnesses, the trial Court observed that he had no occasion to hear the said conversation. The said finding of the trial court is quite reasonable.

38. The prosecution examined P.W.10, the younger brother of the deceased. According to him, approximately one month before the death of Muralibabu, A.1 to A.5 came to his rice mill and wanted to have a friendly relationship. Again ten days later, they came to his rice mill, abused him as if he was responsible and threatened to kill his brother. In the cross-examination, he deposed that he did not state before the police that the accused came twice. He admitted that no disputes arose between their families after 1992 till this case. A.4 herein was accused in the murder case of Lingineni Nageswara Rao, which took place more than 20 years back. By considering the evidence, the trial court observed that when no disputes arose between them from 1992 onwards, the

evidence of P.W.10 appeared to be artificial. It is difficult to believe that the accused persons went to the rice mill, abused him, and threatened to kill his brother. The trial court discarded the evidence of P.W.10 by recording cogent reasons.

39. It is also not in dispute that the deceased shifted to Edupalli from Linginenivaripalem of Nizampatnam Mandal about 18 years back due to fear of threat to his life. The earlier murder cases ended in acquittal due to the compromise between the parties. PWs.1, 2 and PW.11 stated in their evidence that after shifting to Edupalli, A.1 and A.2 used to threaten his father that they would kill him at any time. His father used to inform the same to him. P.W.2 also stated that about 4 or 5 days before the incident, his father informed him of the threat of killing over the phone by A.1, A.3 and A.5 due to old disputes. From an overall reading of the evidence on record, we consider that the prosecution has not placed sufficient material before the Court to prove the motive as contended by the defence counsel.

40. In a Plethora of decisions, it has been held that in criminal cases, sometimes offences are committed without any motive on trifle matter. Still, motive loses its significance when the case is based on an eyewitness account. We will advert to refer to some of the decisions of the Apex Court concerning this aspect.

41. In the case of State of H.P. v. Jeet Singh[1] the Apex Court has made the following observations:

> *"No doubt it is a sound principle to remember that every criminal act was done with a motive, but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended".*

42. It is a settled legal proposition that even if the absence of motive as alleged is accepted, that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, if there is direct, trustworthy evidence of witnesses as to the commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only because of the absence of motive. If otherwise, the evidence is worthy of reliance. (Vide Hari Shankar Vs. The State of U.P., (1996) 9 SCC

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[1] (1999) 4 SCC 370: AIR 1999 SC 1293

40; Bikau Pandey & Ors. Vs. The state of Bihar, (2003) 12 SCC 616; and Abu Thakir & Ors. Vs. State of Tamil Nadu, (2010) 5 SCC 91) : (AIR 2010 SC 2119: 2010 AIR SCW 2799).

43. It is a well-settled legal position that the prosecution cannot be disbelieved on the ground that it failed to establish the motive on the part of the accused as it is a case based on the evidence of eyewitnesses but not based on circumstantial evidence.

44. The learned defence counsel submitted that the independent witnesses did not support the prosecution's case, and only the sons of the deceased supported it. It has been succinctly laid down by the Apex Court in Namdeo v. the State of Maharashtra[2] that a witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term "interested" postulates that the witness has some direct or indirect "interest" in having the accused somehow or the other convicted due to animus or for some other oblique motive. The Apex Court also observed that a close relative could not be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinised carefully. If under such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, the conviction can be based on the 'sole' testimony of such a witness. The close relationship of

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[2] 2007 AIR SCW 1835: 2007(Cri LJ 1819)

the witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relatives of the deceased would usually be most reluctant to spare the real culprit and falsely implicate an innocent one.

45. The learned counsel for the appellants submits that though PWs.1 and 2 have claimed their presence at the time of the alleged incident, their evidence also show that they did not come to the rescue of their father. It is improbable to believe their version regarding their presence at the scene of the offence. In Ex.P1 report, it is referred explicitly that the accused persons threatened P.W.1 and his younger brother (P.W.2) with knives when they tried to rescue their father. P.W.1 stated in his evidence that when he and his brother tried to go to the rescue of their father, the accused persons threatened them to kill by showing the knives. According to the evidence of P.W.2, he did not observe due to fear and went away into the houses.

46. It needs to be seen that there is no set rule of natural reaction. Everyone reacts uniquely, and the way the witnesses should react cannot be predicted. The presence of the witnesses cannot be doubted on the ground that he was not going to the rescue of the deceased when he was in the clutches of the assailants, as it was unnatural. To discard the evidence of a witness on the

ground that he did not react in any particular manner is a wholly unrealistic and un-imaginary way.

47. In Dilawar Singh v. the State of Haryana[3], the Apex Court restated that while analysing the evidence of eyewitnesses, it must be borne in mind that there is bound to be variations and difference in the behaviour of the witnesses or their reactions from situation to situation and individual to individual. There cannot be uniformity in the reaction of witnesses. There can be no hard and fast rule about the uniformity in human reaction, and the Court must not decipher the evidence on an unrealistic basis.

48. After considering the evidence of Pws.1 and 2, this Court believes that they have explained why they did not go forward to rescue their father. Following the observations made in the above decision, this Court need not disbelieve the evidence of P.W1 and 2 on that ground. Their evidence is believable, trustworthy and convincing.

49. The learned counsel for the appellants submitted that the prosecution planted PW.4 as a witness to the prosecution's case. He need not proceed to Muttupalli village, including Harizanawada of Muttupalli; it is contended that he is only a chance witness.

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[3] (2015) 1 SCC 737 : (2015) 1 SCC (Cri) 759

50. At this stage, it is pertinent to note the presence of P.W.4 and L.W.5 Sivaiah mentioned in Ex.P.1 report. It is mentioned in Ex.P.1 report, which was lodged within one hour of the incident when P.W1's father was in a pool of blood on the ground, that all the accused escaped from there on two bikes towards the Nizampatnam side. While the accused were escaping on bikes, armed with knives, Chinthala Sivaiah, son of Jagannadham, Meesalavaripalem, and Lingineni Srinivasa Rao, son of Teja, who were coming on a bike, saw the accused persons. Thus the content of Ex.P.1 supports the version of the prosecution with regard to the presence of P.W.4 at the scene of the offence immediately after the incident, and also it supports and corroborates the version of P.W.4 that he noticed the proceeding of the accused persons on bikes after the occurrence and the said fact also informed to P.Ws.1 and 2; P.W.1 got mentioned the same in the report.

51. In the cross-examination, P.W.4 deposed that he stated before the police that they went on the motorcycle of Ch. Sivaiah to Rapalle on business work and stated that one could go to Meesalavaripalem, the Village of Sivaiah, without coming to Nagaram, without touching Muttupalli Village, including Harizanawada. In the cross-examination, he deposed that after seeing the accused on the way, within 15 minutes, they reached

the scene of offence at Muttupalli and noticed the dead death body of the deceased. The evidence of P.W.4 shows that he has been a resident of Nagaram Village since 2010, and L.W.5 Sivaiah is his maternal uncle. He and Sarah went to Repalle at 09:00AM on 12.12.2011 in connection with their business. Sivaiah is a resident of Meesalavaripalem which is at a distance of 3 kilometres from Nagaram, and they went to Rapallo via Muttupalli. Though P.W.4 was cross-examined at length to elicit that there was no need for him to proceed through the Harizanawada of Muttupalli, nothing was elicited in the cross-examination to discredit the same.

52. In the state of A.P. v. K.Srinivasulu Reddy[4] the Hon'ble Apex Court held that the evidence of a chance witness could not be brushed aside on the ground that he is a mere chance witness. It held as follows (paragraph 13): – The expression "chance witness" is borrowed from countries where every man's home is considered his castle. Everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite an unsuitable expression in a country where people are less formal and more casual, at any rate, in the matter of explaining their presence. Thus we do not find any reason to discard the evidence of P.W.4 on the ground that he is a chance witness".

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[4] 2005 SCC (Cri) 817

53. In sum and substance, it is vehemently urged by learned counsel for the appellants that the case of the present appellants stands on the same footing as the case of acquitted co-accused persons. It is further submitted that, the learned trial court acquitted Nos.4 and 5 based on the evidence of PWs1 and 2. Thus the trial Court is not supposed to convict A1 to A3 based on the same version. This Court is of the view that it is always open to a Court to differentiate accused who had been acquitted from those who were convicted, where several accused persons are involved in the commission of the offence.

54. In the matter of Gorle S.Naidu v. the State of A.P.,[5] it has been held by the Apex Court that mere acquittal of a large number of co-accused does not per se entitle others to acquittal. The Court is required to separate the grain from the chaff.

55. As seen from the defence taken by A4, he pleaded alibi as he left for Secunderabad on Janmabhoomi Express on the day of the occurrence. He filed various photographs with the intent to prove his presence in the railway station on 12.12.2011 from 12.30 PM onwards. The learned trial Court has elaborately discussed the evidence of DWs.1 to 3, who got examined on behalf of A4. In support of his case, A4 himself got examined as DW.2. He also got examined DW.1-N.V.Satyanarayana, Senior Divisional

[5] AIR 2004 SC 1169

Manager Commercial Manager, Vijayawada and D.W.3 Inspector, Railway Protection Force, S.C.Railway, Guntur. D.W.1 deposed that the reservation chart will be available with the chief ticket inspector/sleeper, Guntur, Division, Guntur. The reservation chart would be preserved only for six months. After that, it would be destroyed, and he also deposed that the record relating to video footage at the railway station would be available only for 30 days. D.W.3 also deposed cameras are arranged in the railway station; it is called a closed circuit surveillance system to monitor the station management, including the entire premises of Guntur railway station and the video footage recorded in the DVD exhibited in the open Court on laptop and on seeing it, he deposed that it is related to the video footage recorded in Guntur railway station. It is marked as Ex.D.14, and the photo shown to him are marked as Ex.D.4 to D.13, which are related to Ex.D14, it is the evidence of DW.3 that there is no evidence in their office to show that his predecessor furnished the video footage to anyone else or there is any requisition from any person to furnish the CD. The video footage picture would not be made available to any third party except on furnishing from their department either formally or informally. Though A.4 failed to place the source of the authenticity of the DVD allegedly recorded during the relevant period and photos marked under

Exs.D.4 to D.13 showing the presence of A.4 at various places in the station but, the trial court observed A.4 had placed probable material to prove his presence in the railway station at the relevant time. A.4 has not explained with regard to the source of collecting material vide Exs.D4 to D17. It is not the case of A4 that he produced such material before the investigation officer during the stage of investigation to establish his innocence. No explanation is forthcoming as to why he has not chosen to place such a material before the investigation officer or the Court. Thus it is clear that A4 produced such documents only after the destruction of the original material. It is pertinent to note that there is no opportunity for the investigation officer to investigate with regard to Exs.D4 to A14. As such, this Court believes that the evidence of P.Ws.1 and 2 need not be disbelieved on the ground that the trial Court has not accepted their evidence regarding the role played by A.4.

56. At this stage, we feel it relevant to refer to the decision between the State of Punjab v. Jagir Singh[6] and Lehna v. State of Haryana[7], where in the accused/appellants stressed the non-acceptance of evidence tendered by some witnesses to contend about the desirability to throw out the entire prosecution case.

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[6] AIR 1973 SC 2407
[7] 2002(3) SCC 76

In essence, prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is untenable. Even if a significant portion of evidence is found to be deficient, in case residue is sufficient to prove the guilt of an accused, notwithstanding the acquittal of several other co-accused persons, his conviction can be maintained. The Court must separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the Court to convict an accused, even though evidence has been found to be deficient to prove the guilt of other accused persons. The falsity of a particular material witness or material particular would not ruin it from beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India, and the witnesses cannot be branded as liars.

57. As already observed, the trial Court has also not accepted the role played by A5 in the commission of the offence. According to P.W.13 Karra Ravi Kumar V.R.O. Muttupalli, on 25.12.2011 at 03.00 PM, the Inspector of police, Repalle and S.I. of police Nizampatnam took him to Bavajipalem crossroad to act as a mediator. They stopped A1, A2 and A5 going on a bike and questioned them in their presence. They confessed to having killed Murali Babu along with A.3 and A.4 and further they concealed knives in the bushes at the Muthupalli crossroads. To

that effect, a report is drafted and Ex.P.8 is the relevant portion of the said report. According to the evidence of PW.13, they followed A.1, A.2 and A.5 to the Muttupalli crossroad and picked out three knives kept in a fertiliser bag; the inspector seized the knives under cover of the mediator report(Ex.P.9) for recovery of three stained blood knives, i.e., M.O.6. PW.13 also admitted that the name of Singamsetty Venkateswara Rao @ Tiger added by interpolation in column No.11 and column 15 of Ex.P7. It is relevant to note that PW.1 did not speak about the presence of A.5 at the scene of the offence, and he did not attribute any overt acts to A5. P.W.2 stated in his evidence that A.5 stabbed the right side waist of the deceased. In this regard, PW.15 – A.V.Suresh Kumar stated in cross-examination that PW.2 did not state before him that A5 stabbed on the right side of the waist of the deceased.

58. The trial Court has disbelieved the case of the prosecution with regard to the recovery of the weapons in pursuance of the confession statement said to be made by A.1, A.2 and A.5. It seems that the alleged participation of A5 in the commission of the offence is not known to P.W.s. 1 and 2 at the time of occurrence. It appears that as the role played by A5 came to light during the investigation, PW.2 attributed some overt acts against

A5 to strengthen the prosecution case. After analysing the evidence that had come on record, the trial court observed that the direct evidence was inconsistent with the involvement of A.5. The confession could not be accepted, not only being inadmissible, but recovery being artificial. The trial court found that the evidence of P.W.13 and 16 cannot be accepted about the role played by A.5 in the commission of the offence. The trial Court also observed that there was no need for the accused to conceal the weapons in the bushes.

59. There can be no dual opinion that the failure of the prosecution to prove the recovery of incriminating material to the satisfaction of the Court cannot be a ground to exonerate the accused persons of the charges when the eyewitnesses examined by the prosecution are found to be trustworthy.

60. In Krishna Mochi & Ors. v. State of Bihar[8], wherein it has been submitted on behalf of the appellants that nothing incriminating could be recovered from them, which goes to show that they had no complicity with the crime it is held that the recovery of no incriminating material from the accused cannot alone be taken as a ground to exonerate them from the charges, more so when their participation in the crime is unfolded in the ocular account

[8] [(2002) 6 SCC 81]

of the occurrence given by the witnesses, whose evidence has been found by him to be unimpeachable.

61. After careful appreciation of the evidence on record, we view that the evidence of PWs.1 and 2 cannot be rejected in entirety in the facts and circumstances of the case only on the ground that the trial Court disbelieved the case of the prosecution regarding the role played by A4 and A5 in the commission of the offence.

62. The learned counsel for the appellants vehemently contended that P.W.2 deposed in cross-examination about the presence of their watchman in the field along with them on the day of the offence, whereas P.W.1 stated in his cross-examination that there was a watchman to their fields staying in the shed. Still, he left due to differences in the payment of his salary about two months before the incident. One Akkala Veeraswamy Reddy of Challamma Agraharam was working as a watchman. He worked for two years. He denied the suggestion that their watchman Akkala Veera Swamy Reddy and threatened his father to kill him for not paying the due amount. However, in the cross-examination of P.W.2, it is elicited that their watchman Veera Swamy Reddy absconded after the incident, returned about one month, and worked in their field. The evidence of P.W.2 was recorded on 07.10.2014. Based on the said evidence of P.W.2, it is vehemently contended that though the watchman Veera

Swamy Reddy was present on the date of occurrence along with PWs.1 and 2 and deceased, for the reasons best known to them, the presence of watchman Akkala Veera Swamy Reddy was not disclosed during the investigation.

63. As seen from the record, PWs.1 and 2 appeared to have not stated the presence of their watchman in the fields of the deceased on the date of the incident. The defence did not put any question in this regard to the Investigating Officer. Thus no explanation was required to be furnished by him on this issue. The offence did not take place in the fields of the deceased. The incident occurred at Muttupalli Harizanwada when Pws.1, 2 and the deceased were proceeding to their house from their fields. In the said facts of the case, we view that non-disclosure of the presence of a watchman at the field on the date of occurrence and the non-examination of the watchman does not go to the root of the case as it is not a fact relating to the scene of offence at the time of the crime.

64. It has been held in the Babu Ram State of U.P., 2002 SCC (Cri) 1400 : (2002 Cri LJ 3745, para 7) as under: – "It was submitted by learned counsel for the appellants that Ram Autar, an independent eyewitness was present at the scene of occurrence and he has not been examined, and therefore an adverse inference should be drawn against the prosecution. It is held

that law that the non-examination of an eyewitness cannot be pressed into service like a ritualistic formula for discarding the prosecution case with a stroke of the pen. An effort should be made to appreciate the worth of such evidence as has been adduced. If the evidence coming from the mouth of the eyewitnesses examined in the case is found to be trustworthy and worth being relied on so as to form a safe basis for recording a finding of guilt of the accused persons, then on examination of yet another witness who would have merely repeated the same story as has already been narrated by other reliable witnesses would not cause any dent or infirmity in the prosecution case.

65. In Paras Yadav and Ors. v. the State of Bihar[9], the Apex Court has held that if the lapse or omission is committed by the Investigating agency or because of negligence, the prosecution evidence is required to be examined dehors such omission to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise, the designed mischief would be perpetuated, and justice would be denied to the complainant party.

[9] 1999(2) SCC 126

66. In Ram Bihari Yadav v. State of Bihar and others[10], the Supreme Court has observed that if primacy is given to such designed or negligent investigation to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law enforcing agency but also in the administration of justice. This view has been again reiterated in Amar Singh v. Balwinder Singh and Ors.,[11].

67. According to the prosecution's case, the incident in question occurred on 12.12.2011 at 12.30 PM and received the information at the police station at 13.30 hours. It is elicited in the cross-examination of P.W.1 by the counsel for A.4 that he went to the police station at about 13:30hours on the bike. P.W.1 deposed that one can go to Nizampatnam in 15 minutes and deposed that it takes about 20 to 25 minutes. Thus within one hour of the incident, P.W.1 lodged the report at the police station.

68. As already observed, the presence of PW.4 and LW.5 – Sivaiah immediately after the occurrence at the scene of the offence got mentioned in Ex.P1 report. The material on record clearly shows that PW.4 informed PW.1 about the return of the accused persons with weapons on bikes. The said fact was also

[10] 1998 (4) SCC 517 : AIR 1998 SC 1850
[11] 2003(2) SCC 518: AIR 2003 SC 1164

mentioned in Ex.P1 report. The learned counsel appearing in support of the appeal submitted that the testimonies of PWs.1 and 2 should not have been relied on because both are the sons of the deceased; though the occurrence was said to have taken place in broad daylight, the prosecution failed to examine single independent witnesses and the witnesses, other than PWs.1 and 2 who claimed to have seen the occurrence, had not supported the prosecution.

69. We view that the testimonies of PWs.1 and 2 inspire confidence; there was no motive for the witnesses to falsely implicate the appellants. Their presence cannot be doubted at the place of occurrence. The defence made a lengthy cross-examination, but nothing could be elicited from the testimony of witnesses. The minor inconsistencies and discrepancies regarding the exact place or the point at which the incident occurred, particularly when the incident happened on the road abutting the residential locality or who landed blows, are not sufficient to disbelieve the evidence of eyewitnesses. Not all eyewitnesses need to refer to the distinct acts of several assailants expressly. It is often not possible for the witnesses to describe accurately the part played by each one of the assailants. How the incident took place, causing multiple injuries by A1 to A3 on vital parts of the body, shows the intention of the accused persons. It establishes that

they intend to cause the death of the deceased or at least to cause such injuries which were sufficient to cause his death in the ordinary course of nature to cause death. The lodging of a report by PW.1 at the police station without wasting a single movement of time indicates that the informant did not have any time for deliberation and false implication of the appellants in the crime. We are of the view that FIR is prompt, and there are no chances for concoction. Be that as it may, it is not the case of the appellants that after the occurrence of an incident, some deliberations took place to implicate the appellants in this case falsely. There is nothing in the cross-examination of Pws.1 and 2 which may suggest that these witnesses were either telling a lie or were not present at the scene of the offence. They promptly lodged the report within one hour of the incident by covering a distance of 13 kilometres. They have truthfully described the occurrence. In the FIR, the role played by the accused persons is narrated. The version of Pws.1 and 2 is fully corroborated by the medical evidence produced before the Court. It is not the number of witnesses but the quality of the evidence required to be taken note of by the Court to ascertain the truth of the allegations against the accused. Section 134 of the Indian Evidence Act provides that no particular number of witnesses is required to prove any fact.

70. There cannot be any doubt that lodging the first information report within a short time after the occurrence would ordinarily lead to a conclusion that the statements made therein are correct. As seen from the cross-examination of Pws.1 and 2, no contradictions and omissions have been brought on record in their evidence. That means no suggestion was given to these witnesses that they are giving a different or contradictory version to the version already given by them before the police under Section 161 (3) Cr.P.C.

71. Learned counsel for the defence submitted that the evidence of P.Ws.1 and 2 could not be accepted as being the sons of the deceased. The evidence on record shows that the occurrence had occurred in broad daylight. The prosecution examined some of the witnesses by portraying them as eyewitnesses. Still, they have not supported the case of the prosecution. But P.Ws.1 and 2 consistently supported the prosecution case in all material particulars in their statements made before the police and substantive evidence in Court. The trial court placed reliance upon the said evidence.

72. The learned counsel for the accused pointed out some discrepancies in the evidence of P.Ws.1 and 2. P.W.1 stated that on 12.12.2011, in the early hours, he and his brother Suresh went to the field to attend the works. At about 08.00 AM, his

father brought a tiffin idly to them, and they had tiffin in their fields. It is the evidence of P.W.2 on 12.12.2011 at about 6.00AM, he, P.W.1 and their father went to the fields to weed out the waste plants in the ground nut field at about 7.30 AM. Their father left the fields to get tiffin and returned with tiffin Dosa at 8.00 AM. P.W.1 stated that he did not know his father was doing a money-lending business. Whereas P.W.2 stated in his evidence his father was doing a money lending business apart from agriculture. In this regard, P.W.11 stated that on that day, P.Ws.1 and 2 went to the field to weed out waste plants in their ground nut crop in the morning. At about 9.00 AM her husband went to the fields taking tiffin to their children. The said evidence shows there is inconsistency as to whether P.Ws.1 and 2 and the deceased went to their fields together or the deceased separately went to the fields and joined with them at about 9.00 AM and brought the tiffin Idly or Dosa from the hotel for PWs.1 and 2.

73. Regarding the money lending business of the deceased also, they have given different versions. The evidence of P.Ws.1 and 2 is consistent with the incident in question that occurred while they were returning from their fields on cycles at about 12.15 hours. The discrepancy in the evidence is with regard to the things that happened much before the incident in question. The said discrepancies are not related to what happened at the time of the

actual incident. It would not be possible for a witness to narrate or to give particulars of the tiffin they had taken on the particular day of the incident, which happened after the lapse of years.

74. As observed by the Hon'ble Supreme Court in State of Rajasthan v. Smt. Kalki and Anr. (AIR 1981 SC 1390), normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and those are always there; however, honest and truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted in Krishna Mochi and Ors. v. State of Bihar etc.[12].

75. After reading the evidence of P.Ws.1 and 2, we consider there was minor wear and tear in the evidence of the witness described above. Still, they have given consistent versions of the acts perpetrated by the appellants, and the witnesses have withstood the ordeal of cross-examination about the incident in question. It

[12] J.T. 2002 (4) SC 186

is a well-settled law that inconsistencies and contradictions, which are minor, cannot be given much importance unless it is shown that contradictions and inconsistencies go to the root of the matter to render the prosecution case doubtful. Some minor discrepancies, deviations, or even improvements, would be bound to occur due to a long time-lapse. When those discrepancies or exaggerations do not go to the root of the prosecution case, undue importance cannot be given to them as the main fabric of the prosecution is unshattered.

76. As already observed, P.Ws.1 and 2 stated the reason for their attending to their fields on the day of the incident. The defence does not dispute the said reason. It is not the case of the defence that there is no need to attend the work of weeding out the plants on the particular day of the incident. It is natural for P.Ws.1 and 2 to attend their fields since they belong to an agricultural family. The evidence on record shows that the incident occurred when they were returning along with their father from the fields. As already observed, within one hour of the incident, the report came to be lodged. Unless the incident in question happened in the presence of PW.1, it is impossible to submit the report with such minute details about the commission of the offence. The testimony is of P.Ws.1 and 2 do not reveal any good reason for rejecting their evidence as

untrustworthy or unreliable. Nothing is brought on record either in cross-examination of the witnesses concerned or in any other evidence to show any good reason as to why they should falsely implicate the accused. The learned defence counsel is not justified in requesting the Court to reject their testimony as they are interested witnesses, being the sons of the deceased. The fact of the relationship would add to the value of their evidence because they would be interested in getting the real culprit rather than innocent persons punished. Simply because there are some inaccuracies and inconsistencies, the evidence of P.Ws.1 and 2 cannot be rejected. This Court believes such errors or omissions occur because of a lapse of memory, poor power of observations, or inability to recount and recite accurately.

77. The learned trial Court has succinctly set out those circumstances leading to the offence with which we do not see any reason to differ. Even according to the defence case, they have no enmity with the deceased and their family members. In the said circumstances, they must explain why these witnesses falsely implicated these appellants by concealing the actual culprits. P.W.4 supports the evidence of P.Ws.1 and 2. The evidence of P.Ws.1 and 2 attributing overt acts to the accused also corroborates with the injuries found by the doctor. In a case like this, even though the recovery of the weapons is full of

doubt, it cannot be the reason to brush aside the prosecution case. After carefully reanalysing the circumstances, we do not find any reason to differ from the trial court's findings and conclusions.

78. We have taken stock of the whole evidence, particularly because it was vehemently asserted by the learned counsel for the defence that there was no proper appreciation of evidence by the Trial Court. We do not think such a sweeping statement can be made about the Judgment of the trial Court. We have considered the Judgment very carefully and find that the Trial Court has gone into the intricacies of the evidence. Therefore, we are not impressed by this contention on the part of the defence.

79. On a conspectus of various relevant features of this case, including the genesis; the nature of the incident; the nature of injuries caused by the accused at the time of occurrence in furtherance of their common intention, it cannot be concluded from the prosecution evidence or from any probability arising from the record that the accused-appellants had falsely been implicated in this case.

80. In view of the above discussion, we consider that no other conclusion except the one reached by the trial Court is possible in the instant case as the evidence on record stands. We are of the view that the learned Sessions Judge did not commit any

wrong in holding that prosecution established the guilt of A1 to A3 beyond reasonable doubt for the offences punishable under section 302 read with section 34 of the Indian Penal Code.

81. Accordingly, the impugned Judgment of conviction and sentence dated 08.06.2015 in S.C.No.119 of 2013 passed by the learned XI Additional District and Sessions Judge, Tenali, is hereby confirmed and appeal stands dismissed. The appellants shall get benefit of set-off in terms of Section 428 Cr.P.C., out of period of imprisonment already undergone.

82. As the appellants are in jail, we hereby direct to intimate the convicts about the result of the appeal and send a copy of the Judgment to them through the concerned.

JUSTICE M.GANGA RAO

JUSTICE T.MALLIKARJUNA RAO

Date :28.10.2022
BV/KGM