

**HON'BLE SRI JUSTICE G.CHANDRAIAH**

**AND**

**HON'BLE SRI JUSTICE M.S.K.JAISWAL**

**CRIMINAL APPEAL No.254 of 2011**

**JUDGMENT:** (per Hon'ble Sri Justice G.Chandraiah)

This criminal appeal is directed against the judgment dated 04.02.2011 in Sessions Case No.307 of 2009 passed by the learned I-Additional Sessions Judge, Nizamabad, whereby the appellants/ A-1, A-3 and A-6 were convicted of the offence under Section 302 read with Section 34 I.P.C. and sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default thereof, to undergo simple imprisonment for a period of one month. However, Accused Nos.2, 4, 5 and 7 were found not guilty of the offence under Section 302 read with 149 I.P.C.; A-1 to A-7 were found not guilty of the offences under Sections 147, 148 and 307 read with Section 149 I.P.C.; A-8 and A-9 were found not guilty of the offence under Section 120-B I.P.C.; Accused Nos.1 to 3 and 6 were found not guilty of the offence under Section 27 of the Indian Arms Act and accordingly they were acquitted of the said offences.

The case of the prosecution, in brief, is that one Akram Khan @ Akram (hereinafter referred to as 'the deceased') and P.W.1 were accused in Crime No.7 of 2009 of I Town Police Station, Nizamabad, for committing the murder of one Syed Vikranth Ali, who is the brother of A-1 and A-6. In order to take revenge against the deceased and P.W.1, A-1 and A-6 hatched a plan with A-2 to A-5 under the leadership of A-7, with the assistance of A-8 and A-9, to kill the deceased and P.W.1. On 28.05.2009 at about 10.00 A.M. the deceased along with P.Ws.1 and 2 came to Nizamabad and they reached the District Court in an Auto to attend the criminal case and when they entered into the Court premises, A-1 to A-7, who were armed with knives and red chilly powder, attacked them. A-3 sprinkled chilly powder over the deceased, P.Ws.1 and 2

and when A-4, A-5 and A-7 caught hold of the deceased, A-1 and A-6 stabbed him with knives; when P.W.1 ran towards Court hall, A-2 and A-3 chased him with arms, but in vain. Thereafter, A-2 and A-3 came back and joined with A-1 and A-6 in stabbing deceased with knives and then the accused ran away from the scene of offence. Subsequently, the deceased was shifted to the Government Hospital, Nizamabad, where the deceased declared brought dead. Basing on the complaint of P.W.1, P.W.10-Sub Inspector of Police, I Town Police Station, Nizamabad, registered a case in Crime No.186 of 2009 under Sections 147, 148, 302 read with Section 149 I.P.C. against A-1 to A-6, A-8 and A-9.

During the course of investigation, P.W.10 and P.W.16-Inspector of Police visited the scene of offence. P.W.16 examined P.Ws.1 and 2; conducted scene of offence panchanama in the presence of P.Ws.12 and 13-mediators and prepared rough sketch; seized knife pouch, one chilly powder plastic sachet and also collected bloodstained and controlled earth from the scene of offence under panchanama. Thereafter, on receipt of information about apprehension of A-3 by P.W.6-Police Constable with the assistance of public, P.W.16 rushed to Saraswathinagar, Nizamabad; took A-3 into custody and recorded his confessional statement in the presence of P.Ws.12 and 13; seized knife and also the blood stained clothes of A-3. Thereafter, P.W.16 proceeded to the Government Head Quarters Hospital, Nizamabad and conducted inquest over the dead body of the deceased in the presence of P.Ws.12 and 13. Subsequently, P.W.9-Assistant Civil Surgeon, Government Head Quarters Hospital, Nizamabad, conducted autopsy over the dead body of the deceased and issued Ex.P24-Postmortem report. After completion of investigation, P.W.16 filed charge sheet against the accused for the offences punishable under Sections 147, 148, 302, 307, 120-B read with Section 149 I.P.C. and Section 27 of the Indian Arms Act.

On appearance of the accused, the trial Court framed charges under Sections 147, 148, 302, 307 read with Section 34 I.P.C. against A-1 to A-7; under Section 120-B I.P.C. against A-8 and A-9 and under Section 27 of Indian Arms Act against A-1 to A-3 and A-6, read over and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

The prosecution, in order to prove its case against the accused, got

examined P.Ws.1 to 16 and marked Exs.P1 to P43 and M.Os.1 to 14. On behalf of defence, Exs.D1 to D6 were marked.

After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating circumstances appearing against them in the evidence of prosecution witnesses and they denied the same and stated that they had no defence witness.

The trial Court, on appraisal of entire evidence, both oral and documentary, held that the prosecution has brought home the guilt of A-1, A-3 and A-6 beyond all reasonable doubt for the offence under Section 302 read with Section 34 I.P.C., and accordingly convicted and sentenced them as stated in the first paragraph above.

Learned Counsel for the appellants/A-1, A-3 and A-6 submits that absolutely there is no reliable evidence on record to connect the accused with the commission of offence and the evidence of P.W.11, who is not an independent witness, relied on by the trial

Court, is not trustworthy as he was a stock witness of Rural Police Station, Nizamabad in number of cases i.e., Crime Nos.143, 196, 237, 261 and 280 of 2009 and, therefore, conviction cannot be based on his evidence. He further submits that P.W.11 was examined two days after the alleged incident and there is also a contradiction in his evidence with regard to his statement that he himself approached police and gave statement, whereas P.W.16-Investigating Officer stated that on his summons, P.W.11 came to the police station and gave statement. He further submits that with regard to arrest of A-3 also, there are lot of contradictory statements in the evidence of P.W.11 and P.W.16. He further submits that no Test Identification Parade was conducted by the prosecution in this case and P.W.11 for the first time identified the appellants/A1, A3 and A-6 in the Court and, therefore, non-conducting of Identification Parade is fatal to the case of the prosecution. In support of the said contention, he relied on a decision of the Supreme Court in *Budhsen and another V. State of U.P.* He further submits that the trial Court, without appreciating the evidence in proper perspective, convicted the appellants, which is not sustainable in the eye of law, and therefore, the appellants are entitled to benefit of doubt.

On the other hand, the learned Public Prosecutor appearing for the respondent-State contended that there is sufficient material to show that the appellants-A-1, A-3 and A-6 were responsible for commission of offence and, therefore, the conviction and sentence passed by the trial Court is justified and it does not warrant any interference by this Court.

Now the points that arise for consideration are,

(1) Whether the prosecution is able to bring home the guilt of appellants/A-1, A-3 and A-6 for the offence under Section 302 read with Section 34 I.P.C. beyond all reasonable doubt?

(2) Whether the conviction and sentence imposed on the appellants/A-1, A-3 and A-6 by the trial Court is liable to be set aside or modified?

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On 28-05-2009 a horrendous and dare-devil incident took place in broad daylight within the precincts of the Temple of Justice. The person who was alleged to have caused the death of two persons and involved in some other crimes previously was done to death in a gruesome incident.

The deceased (Akram Khan) and two of his relatives viz., P.Ws.1 and 2 (Mohd.Ghouse Khan and Mansoor Khan) are alleged to have caused the death of one Vikarath Ali and Nayeed Ghouse, in January, 2009, who are brothers of A-1, A-6 and A-8 in the present crime. The deceased, PWs.1, 2 and others have been arrayed as accused in Crime No.Nos.7 and 9 of 2009 of Nizamabad I-Town P.S. for having caused the death of one Vikarath Ali and Nayeed Ghouse.

The day when the incident took place was a Thursday and it was a Court working day. The incident took place within the compound wall of the District Court, Nizamabad, where several Courts are housed. Admittedly, there will be several persons moving around the area at that time i.e., between 10.00 and 10.30 a.m. It is also in the evidence that due to the security reasons, certain Armed Reserved Constables were deployed at the Court and they were manning the entrance. A-3 was apprehended from Saraswathi Nagar, a residential area, in the mid-afternoon and at that time, it is alleged that the clothes of A-3 were soaked with blood and he was holding a knife in his hand till

he was disarmed at about 12.30 in the after-noon. In spite of that, only three persons have been listed as eye-witnesses to the incident and they were examined as PWs.1, 2 and 11. The rest of witnesses are relatives of the deceased, panch witnesses, photographer, Medical Officer and the Investigating Officers. Therefore, the fate of the accused hinges on the testimony of P.Ws.1, 2 and 11.

It is well-settled that the graver the crime, the greater is the responsibility on the prosecution to prove its case by placing on record clinching and reliable evidence. The testimony should be wholly reliable of the star witnesses of the prosecution who are said to have witnessed the incident.

According to the prosecution, even though A-7 has not been figured in the F.I.R., his involvement has been established and A-8 and A-9 are the persons said to be behind the conspiracy to kill the deceased. The trial Court has acquitted all the accused except A-1, A-3 and A-6 and they are the appellants herein.

Before going into the evidence of the material witnesses, the evidence of the other witnesses, in brief, be noticed.

P.W.3 is the mother of the deceased, P.W.4 is the wife of the deceased and P.W.5 is the younger brother of the deceased. These three witnesses, while admitting about the violent death of the deceased, denied any knowledge about the persons responsible for the death of the deceased. They were treated hostile by the prosecution and in the cross-examination they denied having stated before the police as in Exs.P5, P6 and P7. P.W.7 is the photographer; PW.8 is the person who is said to have taken the cell-phone from P.W.1 and gave it to A-1. The evidence of these two witnesses is not of much significance. P.W.9 is the Doctor who conducted autopsy over the dead body of the deceased and found as many as '11' internal incised injuries and '16' external incised injuries. Ex.P.24 is the post-mortem report and the Medical Officer opined that the cause of death is due to multiple stab injuries on vital organs like lungs, heart major arteries in neck, sever haemorrhage and also due to hypovolumic shock. The evidence of P.W.9 and Ex.P.24 establishes the undisputed fact that the death of the deceased is homicidal. P.W.10 is the Sub Inspector of Police, who received the complaint from P.W.1 (Ex.P.25) and on

its basis, registered a case in Crime No.186 of 2009 and issued the F.I.R. (Ex.P.26). It is in the evidence of P.W.10 that in the complaint (Ex.P.25), there is no mention about A-7. Further investigation was taken up by the Inspector of Police, who has been examined as P.W.16. PWs.12, 13, 14 and 15 are the panch witnesses who turned hostile and refused to subscribe to the version of the prosecution that in their presence the panchanamas were conducted by P.W.16- Investigating Officer.

As already stated supra, the evidence that needs to be considered for determining the guilt or otherwise of the accused is that of PWs.1, 2, 6, 11 and 16. PWs.1 and 2 are the co-accused of the deceased in Crime Nos.7 and 9 of 2009, in which the deceased are the brothers of A-1, A-6 and A-8 in the present crime. Therefore, it is alleged that an attack on the life of P.Ws.1 and 2 was also made along with the deceased, but fortunately they escaped having ran inside the Court premises. The evidence of P.W.1 is that P.W.2 is his elder brother; that in the criminal case relating to the murder of Vikarat Ali and Nayeed Ghouse, he along with the deceased were falsely implicated and were sent to jail where they were detained for three months; that they were released from jail on 15-05-2009; that on 28-05-2009, he along with his brother P.W.2 came to Nizamabad to attend the Sessions Court in connection with the above murder cases; that they met the deceased outside the Nizamabad bus stand, three of them engaged an auto-rickshaw and reached the gate of the District Court, Nizamabad. He further deposed that when they were alighting from the auto rickshaw, someone sprinkled chilly powder, which fell in his eyes; that he and his brother P.W.2 ran into the Court premises; that he does not know as to who threw the chilly powder; that when they entered the Court premises, police caught him and his brother-P.W.2; that 15 minutes thereafter he came to know that the deceased has been murdered, police took him and PW.2 to the I-Town P.S., Nizamabad, the police wrote a complaint and obtained his signature, which is Ex.P.1. In view of the nature of the testimony of P.W.1, the Public Prosecutor treated P.W.1 as hostile and in the cross-examination he denied having stated before the police as in Ex.P.2. He denied the entire case of the prosecution that he has seen the accused persons attacking the deceased. He further stated that his statement under Section 164 Cr.P.C. was recorded by

the Magistrate which is Ex.P.3, but the police people have obtained that statement after detaining him in the Police Station and holding out threats.

On identical lines is the testimony of P.W.2. He also denied knowledge as to the persons who were responsible for the death of the deceased. He also denied having stated before the police as in Ex.P.4. It is manifest from the above that the two material witnesses' viz., P.Ws.1 and 2 have resiled from their previous statements and denied having seen the actual assault on the deceased. They could not even name the persons who have chased them.

The other eye-witness was examined as P.W.11. The testimony of P.W.11 is attacked by the learned Counsel appearing for the appellants/accused on various grounds so as to convince us that P.W.11 is not an eye-witness; that he is a stock-witness of the police and there are several circumstances which go to show that what he saying is not truthful. Before going into these aspects, it may be appropriate to re-produce the evidence of P.W.11, in brief, as under:

“According to P.W.11, the incident had occurred in between 10.00 and 10.30 A.M. at the District Court premises, Nizamabad. On that day, he came to the Court to discuss with his advocate in connection with the accident case occurred with an auto owned by his friend. He had seen three persons inside the compound wall of Court premises, near the main gate, talking on mobile phone. All of a sudden, four persons entered into the premises and attacked on the three persons. Out of the three persons, two persons ran inside the Court premises, assailants had sprinkled chilly powder on the deceased and the two assailants started stabbing the deceased. Other two persons, who chased P.Ws.1 and 2, were unsuccessful and came back and joined with other two assailants in stabbing the deceased. On seeing the incident, the public gathered started shouting and in the meanwhile all the attackers fled away from the compound wall leaving a knife in the stomach of the deceased. The public could able to catch one person out of four persons and that the police took the said person along with them. Through public, he heard that the apprehended person is Maqsood. Later, police shifted the deceased to the hospital when he was struggling for life. After two days, his statement was recorded. He further deposed that he can identify the persons who attacked on the deceased and accordingly he identified them as A-1 to A-3 and A-6, who are present in the Court hall as assailants.”

The statement of P.W.11 was also recorded by the jurisdictional Magistrate under Section 164 Cr.P.C. That statement is not made available either to the Court or to the accused, which is mandatory as per sub-clause (4) of Section 207 Cr.P.C., and sub-clause (2) of Section 208 Cr.P.C. Therefore, the Court as well as the accused is deprived of looking into the earliest statement of P.W.11 for the purpose of corroboration or contradiction.

P.W.11 claims himself to be the eye-witness to the incident. The incident took place on 28-05-2009 at about 10.00 or 10.30 A.M. The statement of P.W.11 by the Investigating Officer under Section 161 Cr.P.C. was recorded on 30-05-2009. His name does not figure either in the complaint or in any of the panchanamas, such as scene of offence panchanama or the inquest panchanama. The accused were arrested on different dates. It is admitted by the Investigating Officer—P.W.16 that even in the remand report sent to the Court on 19-06-2009, the name of P.W.11 has not been shown as an eye-witness to the incident. Section 161 Cr.P.C. statement of P.W.11 was sent to the Court for the first time along with charge-sheet and his name was shown as an eye-witness to the incident only in the charge-sheet.

P.W.11 appears to be a most trusted witness of the police of Nizamabad. It is admitted by the Investigating Officer – P.W.16 and also P.W.11 himself that he is a witness in (i) Crime No.280 of 2009 (Ex.D.1); (ii) Crime No.261 of 2009 (Ex.D.2); (iii) Crime No.237 of 2009 (Ex.D.3); (iv) Crime No.196 of 2009 (Ex.D.4); (v) Crime No.143 of 2009 (Ex.D.5) and Crime No.143 of 2010 (Ex.D.6) of Rural Police Station, Nizamabad. It is evident that after citing P.W.11 as an eye-witness in this case, he acted as panch witness or eye-witness in several crimes of Nizamabad Town and Rural Police Stations. On the basis of these admitted facts, the learned Counsel for the appellants/accused vehemently contended that P.W.11 is not an eye-witness who can be relied upon for holding that he is truthful witness.

On the date of the incident, P.W.11 claims to have gone to the Court to meet an advocate in connection with an accident case of his friend involving the auto. No details, whatsoever, are given by P.W.11 to show the purpose for which he happened to go to the District Court, Nizamabad. A perusal of the evidence of P.W.11 goes to show that he gave a vague statement about the incident. He

could not name or identify the persons as to who chased P.Ws.1 and 2, or who attacked the deceased. He could not give the specific overt acts. What all he stated is that out of four persons, two have chased P.Ws.1 and 2 and two attacked the deceased. Who are the persons chased PWs.1 and 2 and who are the actual assailants of the deceased is not spoken to by him. It is evident from the testimony of P.W.11 that the accused fled away from the scene of offence after the public started shouting, which means that there were several people in the vicinity when the incident took place as is expected since the place of attack is within the premises of the District Court, Nizamabad and the time was between 10.00 and 10.30 a.m., on a Court working day.

According to P.W.11, the public who gathered there were able to apprehend one of the four assailants' viz., A-3 and that the police people came there and took that person away. It is admitted by P.W.11 that he has seen A-3 running outside the gate before apprehending him and again bring him back to the main gate and that in the meanwhile the police came and took A-3 into custody. It is also in the evidence of P.W.11 that he was in the Court premises for about 20 to 30 minutes. That means, the police people have arrived at the scene in between 10.30 and 11.00 A.M., and took away the injured/deceased and also A-3 who was apprehended by the public. This evidence of P.W.11 is completely contrary to the case of the prosecution, according to which, only after P.W.1 having lodged the complaint at 11.00 a.m., the investigation was taken up, the Inspector of Police-P.W.16 reached the scene of offence and by that time, the injured/deceased was already shifted to hospital and A-3 was nowhere there. According to the Investigating Officer-P.W.16, when he was in the process of conducting the scene of offence panchanama, he was telephonically informed that A-3 has been apprehended by the public and he is in the house of one Raghava Rao, which is in Saraswathi Nagar and immediately P.W.16 asked P.W.6-Police Constable, who was on patrolling duty, to proceed to Saraswathi Nagar so as to protect the assailant A-3 from being attacked by the public. P.W.6-police constable supports the version of the Investigating Officer-P.W.16. But as noticed above, the evidence of P.W.11 is quite contrary to the evidence of the Police Officers.

According to P.W.11, two days after the incident, he himself voluntarily went to the Police Station and he gave his statement. The claim of P.W.16-

Investigating Officer is quite converse. According to the Investigating Officer, on the night of 29-05-2009 itself, he came to know that P.W.11 is the eye-witness and accordingly he has summoned P.W.11 to the Police Station on 30-05-2009 and recorded his statement.

It is also admitted by P.W.11 that the injured was shifted by the police constable by name Khaja of I-Town Police Station in an auto. Even though P.W.11 named the constable by name Khaja, he nowhere figured in the list of the prosecution witnesses. All these material facts have been suppressed by the investigating agency for the reasons best known to it.

In *Budhsen and another v. State of U.P. (cited supra)*, the Supreme Court held as under:

“Now, the facts which establish the identity of an accused person are relevant under Section 9 of the Indian Evidence Act. As a general rule, the substantive evidence of a witness is a statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. There may, however, be exceptions to this general rule, when for example, the Court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object of enabling the witness to identify person concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bona fides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in Court. Identification proceedings in their legal effect amount simply to this: that certain persons are brought to jail or some other place and make statements either express or implied that certain individuals whom

they point out are persons whom they recognize as having been concerned in the crime.”

So far as the assailants are concerned, they are utter strangers to P.W.11. He does not claim any prior or post acquaintance with them. When an offence is committed by strangers and if the eye-witness to the incident has no prior acquaintance, the identification made by such an eye-witness for the first time in the Court has to be viewed with suspicion since such a witness has no opportunity of seeing the offenders in between the date of offence and giving evidence in the Court. In the instant case, the incident took place on 28-05-2009 and P.W.11 gave his evidence on 10-03-2010 and in the interregnum, P.W.11 had not seen any of the assailants. To test the authenticity of P.W.11 in identifying the assailants, no Test Identification Parade was conducted. Even the descriptive particulars or any special features of the assailants are given by P.W.11 in the statement recorded under Section 161 Cr.P.C. For the first time, in the Court, P.W.11 stated that it is A.1, A.2, A.3 and A.6 who have participated in the attack. No other details are given by P.W.11. P.W.11 is also conspicuously silent about the presence of A.4, A.5 and A.7, who according to the prosecution is also the persons, attacked the deceased. In the evidence given before the Court, P.W.11 asserted that after the incident, the police came to the scene of offence and shifted the injured/deceased to the hospital who was struggling for life.

As per Ex.P25, which is the complaint lodged by P.W.1, at about 11.00 a.m., it is stated that after the accused left the place, P.Ws.1 and 2 went near the deceased and found severe injuries with heavy bleeding. It is further mentioned therein that immediately the complainant-PW.1 and PW.2 with the help of persons available there, shifted the deceased to the Government Hospital, Nizamabad, in an auto and the Doctor declared him dead. This is said to have taken place at about 10.20 a.m. Therefore, the claim of P.W.11 is quite contra to what is mentioned in Ex.P25-complaint. As per Ex.P25 and also the Investigating Officer-P.W.16, by the time he reached near the scene of offence, the injured/deceased was not there and even by 10.20 A.M. itself the deceased was declared dead on being shifted to the hospital by P.Ws.1, 2 and others. Only after the deceased being declared dead, the complaint-Ex.P.25 was

lodged by P.W.1 and only thereafter, the police came to know about the incident.

It may be stated here that the incident took place between 10.00 and 10.30 A.M. on a Court working day within the compound of the District Court, Nizamabad. It is admitted by P.W.16, the Investigating Officer, that Armed Reserve Constables are deployed in the Court premises for security reasons and there were some police personnel even at the entry gate. None of them are examined by the Investigating Officer or examined before the Court. As already stated except P.W.11, not even a single eye-witness has been examined or listed by the Investigating Officer-P.W.16. It is difficult to believe that when the incident of that magnitude took place, at a prominent place in the town and which incidentally is opposite to the Office of the District Collectorate, the police people who were around the area and the Police Station itself was just 1 K.M. away, have not come to know about the incident for more than an hour and only on lodging Ex.P25-complaint by P.W.1, the police came to know about the incident. This version of the prosecution is unpalatable. It is anybody's knowledge that there will be several police people around the Court complex where there were several Courts, more particularly, after 10.00 A.M. on a Court working day. It is difficult to believe that none of them have moved their little finger nor informed the local police.

In view of the above, we find it difficult to hold that the evidence of P.W.11, the solitary eye-witness, is inspiring the confidence of the Court and that it is reliable. On the face of which, it appears that PW.11 is a planted witness. The strong reasons therefor are that his name is not at all mentioned in any of the proceedings prepared during the course of investigation till the charge-sheet was filed long after the incident. Statement under Section 164 Cr.P.C. of P.W.11 said to have been recorded by the Magistrate has not produced before the Court by the prosecution.

The other evidence is that of the Police Constable—P.W.6, who is said to have apprehended A-3. P.W.6 stated in his evidence that when he was on patrolling duty, he received a message from P.W.16 over his VHP set directing him to proceed to Saraswathi Nagar and protect A-3 who has been apprehended by the public. As already stated, according to P.W.11, A-3 was apprehended by the people in the Court premises itself and was handed over to the police. Even

otherwise, it is difficult to believe the claim of the Investigating Agency that A-3 was apprehended by the locality people and was detained for more than 2 ½ hours in the residential area without handing him over to the police. The house in which A-3 is said to have detained belongs to one Raghava Rao. Neither he was examined nor were any of the locality people examined to speak on this aspect. It is admitted by P.W.6 that by the time he went to the said place, several locality people were already holding A-3. The evidence of those witnesses would have been crucial. That apart, it is difficult to believe that A-3 would have been holding the knife in his hand, for a full length of about 2 ½ hours. Even till the Investigating Officer – P.W.16 reached there, it is said that A-3 was holding the knife in his hand and the police constable-P.W.6 was holding A-3 by catching hold of his waist. Upon carefully analyzing the material on record, we are of the opinion that the entire case of the prosecution with regard to apprehension of A-3 is unbelievable and actually all the facts are not before the Court.

For the foregoing reasons, we are of the view that the prosecution has failed to prove the guilt of the appellants-A-1, A-3 and A-6 beyond all reasonable doubt and they are entitled to benefit of doubt.

In the result, the Criminal Appeal is allowed. The conviction and sentence passed by the learned I-Additional Sessions Judge, Nizamabad, against the Appellants-Accused Nos.1, 3 and 6 for the offence punishable under Section 302 read with Section 34 I.P.C, in Sessions Case No.307 of 2009 dated 04.02.2011, are hereby set aside and they are acquitted of the said offence and they shall be set at liberty forthwith, if they are not otherwise required in any other case. The fine amount, if any, paid by the appellants-A1, A3 and A6 shall be refunded to them.

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**G.CHANDRAIAH, J**

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**M.S.K.JAISWAL, J**

Gsn.