

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD

CRIMINAL APPEAL NO.684 OF 2010

Date : 13-06-2016

Between :

Syed Chand (since died)
Syed Azam and another
Appellants

..

Vs.

The State of A.P.,
Represented by its Public Prosecutor,
High Court of Judicature,
Hyderabad.
Respondent

..

Counsel for appellants : Mr. D. Bhaskar Reddy
Counsel for respondent : Public Prosecutor for the State of
Telangana

The Court made the following :

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

This Criminal Appeal is instituted against the Judgment dated 23-3-2010 in S.C.No.234 of 2008 on the file of the learned Sessions Judge, Adilabad, whereby he has convicted the appellants for the offence under Section 302 r/w. Section 34 IPC and sentenced them to undergo life imprisonment and pay a fine of Rs.5000/- each, in default, to suffer simple imprisonment for three months each.

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

On 25-7-2007 at 03.00 Hours, PW-1, a resident of Purana Bazar, Bhainsa, came to the Bhainsa Town Police Station and submitted a report in Telugu wherein she has stated that herself and her husband – Syed Yasin (the deceased) were residing at H.No.3-3-33 of Purana Bazar, Bhainsa; that the deceased was working as a watchman at Sri Om Prakash Ladda Ginning Factory, at Bhainsa; that they were blessed with two sons and two daughters; that about 5 years back, the deceased went to Raikal

village for doing mirchi business, stayed there for one year and returned back to Bhainsa; and that at the time of the incident herself and the deceased were residing at the above mentioned address at Bhainsa. She has further stated that while the deceased was doing business at Raikal village, his elder brother – A-1 gave him Rs.8000/- as hand loan which was repaid by the deceased; that the deceased and A-1 were quarreling with each other over payment of interest; that the previous day i.e., on 24-7-2007 at about 19.00 Hours, A-1 and his three sons i.e., A-2, A-3 and Syed Shoheb came to the house of the deceased and demanded repayment of Rs.40,000/- and manhandled her and her father-in-law by beating with hands; that in the meantime PW-3, PW-9 and PW-10 separated them; that at that time, the accused threatened them with dire consequences if they do not repay the amount and also threatened to set fire to the house of PW-1 at Owaisi Bazar, Bhainsa. PW-1 further stated that on 24-7-2007 at about 21.00 Hours on return of the deceased from duty, she narrated the facts to him; that the deceased after having dinner went to their old house at Owaisi Bazar along with his elder son – PW-2 to safeguard the house and sat in their old house along with neighbours; and that when they were discussing the incident with the neighbours at about 12.00 Hours in the night, A-1 and his sons came to the house of the deceased, assaulted and dragged him to their house

located nearby. That in the meantime, PW-2 escaped and all the three accused and Syed Shoheb (the last son of A-1) beat the deceased with iron rods on hands and legs and caused injuries; that the deceased tried to escape and went to the house of PW-3 and requested her for water; that after the deceased drank water given by PW-3, A-1 to A-3 and Syed Shoheb came to the house of PW-3 and beat the deceased again, as a result of which he has died; and that on hearing the entire incident from PW-2, PW-1 lodged a report. On receipt of the report, PW-18 registered Crime No.108/2007 for the offence under Section 302 r/w. Section 34 IPC and issued express F.I.Rs. to all the concerned. On receiving the FIR, PW-19 took up the further investigation and examined and recorded the statement of PW-1. He has immediately rushed to the scene of offence situated at Owaisi Bazar, Bhainsa and recorded the detailed statements of LW-2 to LW-13 who include PW-2 to PW-10, taken photographs of the scene of offence and the dead body of the deceased with the help of PW-7 and conducted the scene of offence and seizure panchanama before PW-11 and PW-12, seized the blood stained leaves, chappals and a plastic cover from the scene of offence. PW-19 has also conducted inquest over the dead body of the deceased before the same mediators i.e., PW-11 and PW-12 and subjected the dead body of the deceased to autopsy in the Government Area Hospital, Bhainsa, while making

efforts to apprehend the accused which went in vain.

3. However, on 30-7-2007, at 15.00 Hours, on reliable information, PW-19 along with his men proceeded to Owaisi Nagar, Bhainsa and apprehended the accused and Syed Shoheb (aged 16 years - a juvenile) at their residence at Owaisi Nagar, Bhainsa and interrogated them individually in the presence of PW-13 and PW-14. On interrogation, the accused confessed the commission of the offence. In pursuance of the said confession, a blood stained iron rod with a small spade at its end and another blood stained iron rod used in the commission of the offence by A-1 and A-2 respectively were recovered from the house of A-1 under cover of separate panchanamas. The accused were thereafter arrested and produced before the jurisdictional Magistrate who remanded A-1 to A-3 to judicial custody. A-4, being a juvenile, was sent to Juvenile Court under a separate remand case diary. PW-16 who conducted autopsy over the dead body of the deceased opined that the death of the deceased occurred due to shock and hemorrhage due to head injury. LW-19, the Scientific Officer, at the Regional Forensic Science Laboratory, Karimnagar, who examined MOs.1 to 8, issued Ex.P-20 FSL report stating that human blood is detected on MOs.1, 2, 5, 6, 7 and 8; that the blood group of blood stains on M.Os.5 to 8 is of 'B'; and that the origin of the blood on M.Os.3 and 4 and the blood group of blood stains on item Nos.1 and 2 could

not be determined.

4. The charge sheet further mentioned that from the evidence collected during the course of the investigation, it was revealed that due to the dispute between the deceased and the accused over payment of money, the latter have attacked the former; that A-1 and A-2 beat the deceased with iron rods while A-3 and A-4 beat him with hands and legs and caused injuries; that the deceased tried to escape and went to the house of Ahmedi Begum (PW-3) and that after the deceased drank the water given by her, the accused came there and beat him, as a result of which the deceased died.

5. As A-4 was a juvenile, he was separately tried by the Juvenile Court.

A-1 to A-3 denied the charges leveled against them and preferred to be tried. Accordingly, A-1 to A-3 were subjected to trial during which the prosecution examined PW-1 to PW-19 and marked Exs.P-1 to P-21 and produced M.Os.1 to 8. On behalf of the defence, no oral or documentary evidence was produced. On a thorough consideration of the evidence on record, the trial Court has convicted and sentenced the accused as noted hereinbefore.

6. At the hearing of the appeal, the learned Counsel for the appellants submitted that appellant No.1/A-1 died during the pendency of the appeal. Accordingly, the appeal abated *qua* appellant No.1.

The learned counsel for appellant Nos.2 and 3 advanced the following submissions :

- (1) The crucial witnesses, namely, PW-3, PW-5, PW-6, PW-8 and PW-15 turned hostile; that PW-1 is not a direct witness and that PW-2, the son of the deceased, is a highly interested witness and his testimony is wholly artificial.
- (2) PW-13 and PW-14 who were the panch witnesses for recovery of M.Os.5 and 6, the iron rods, turned hostile and PW-11 and PW-12 who were witnesses to the inquest report have also turned hostile and therefore the prosecution failed to prove the cause of death as well as recovery of the weapons allegedly used in the commission of the offence.
- (3) When the case of the prosecution is that A-1 beat the deceased with iron rod and A-2 beat with Tikah, Exs.P-10 and P.11 confessional and recovery panchanamas show that Tikah was recovered from A-1 and iron rod was recovered from A-2, which wholly discredits the case of the prosecution regarding the manner of attack pleaded by it.
- (4) As per PW-1's own evidence, at the time she went to the Police Station at 11 P.M., all the accused were present at the Police Station; that she got the FIR lodged and that even before the

FIR was lodged, the police have commenced the investigation, which is wholly impermissible in law.

- (5) PW-2 cannot be treated as an eye-witness as he has deposed that on seeing the accused attacking the deceased with stones, he sped away and he has not witnessed the alleged incident that has taken place at the residence of PW-3 which allegedly led to the death of the deceased and that while PW-2 deposed that the accused have attacked the deceased with stones, the whole case of the prosecution is that A-1 and A-2 attacked the deceased with iron rods and that therefore the evidence of PW-2 is not worthy of acceptance.
- (6) PW-4 admitted in his evidence that he met A-1 at the Jail. That a suggestion was put to PW-4 that he has demanded money to not support the case of the prosecution and that as A-1 declined to meet his demand, he has falsely deposed against the accused.
- (7) Ex.P-19, the scene of offence panchanama, has not shown the house of PW-4 at all besides existence of street lights and that therefore there was no possibility of PW-4 hearing the alleged cries of the deceased, his reaching the scene of offence at the time of occurrence and identifying the offenders.
- (8) While PW-19, the Investigating Officer, and PW-

16, the Doctor who conducted autopsy, deposed that the body was taken to the Government Hospital at 8 A.M. on 25-7-2007, the other prosecution witnesses have testified that the body was shifted on the previous night itself and that in view of this serious discrepancy, the credibility of Ex.P-8 inquest panchanama itself is in serious doubt, which in turn severely affects the case of the prosecution.

The learned Counsel relied upon the Judgments in **Losula Venkatarao Vs. State of A.P.**^[1], **Chiluka Ashok Vs. State of A.P.**^[2], **Barre Kantha Rao and others Vs. State of A.P.**^[3] and **Ganesh Dutt Vs. State of Uttarakhand**^[4] in support of his submissions.

7. Opposing the above submissions, the learned Public Prosecutor for the State of Telangana submitted that though some of the prosecution witnesses have turned hostile, the admissible portion of their statements recorded under Section 164 Cr.P.C. coupled with the evidence of PW-1, PW-2 and PW-4 prove the guilt of the appellants beyond all reasonable doubt. That though PW-3 has turned hostile, through her evidence the prosecution was able to prove that on the night of the occurrence, an untoward incident has taken place, that she has seen the deceased coming to her house with injuries, asking for drinking water, her giving and the

deceased taking water and the deceased falling dead after walking a little away. That the categorical deposition of PW-4 further proved the case of the prosecution as to the appellants attacking the deceased both at the latter's house and also at the house of PW-3 and that PW-4 being an independent witness, there is absolutely no reason to disbelieve his evidence. Regarding the witnesses turning hostile, the learned Public Prosecutor placed reliance on the Judgments in **Paramjeet Singh Vs. State of Uttarakhand**^[5] and **Bhagwan Dass Vs. State (NCT of Delhi)**^[6].

8. We shall now consider the submissions of the learned counsel for the appellants.

Re Submission 1

PW-3 is a resident of Owaisi Nagar in Bhainsa Town. She is a beedi worker. She was examined under Section 164 of CrPC before the Judicial Magistrate of First Class (JFCM), Nirmal, on 16.10.2007. As per her evidence the accused were also the residents of her locality, their house being located 25 feet away from her house. In her chief-examination she deposed that on the night of occurrence the deceased came to her house with injuries and asked her for water, that she gave water and after the deceased drank water, he along with the help of somebody went to a little distance from her house and fell dead and that several people also gathered there at that

time. She has further stated that she did not see who attacked the deceased and as to on which parts of the body the deceased suffered injuries. She, however, stated that there was bleeding on the face of the deceased. In her cross-examination by the learned Government Pleader, she has admitted that during the night of occurrence she heard noise of an untoward incident from the side of the house of A-1. In her further chief-examination conducted by the Additional Public Prosecutor, she made a graphic description of what she has stated in the statement under Section 164 CrPC before the Magistrate. It is apt to quote the relevant part of the evidence hereunder:

"I gave a statement before the J.F.C.M. Court, Nirmal, on 16.10.2007.

In that statement I mentioned that when the deceased Syed Yaseen came to my house and I have seen him when I heard his cries to save him. I also stated before the said court that Syed Yaseen was suffering from bleeding injuries and that I found A-1 to A-3 coming there with rods in their hands. I also stated before the said Court that A-1 to A-3 and another son of A-1 beat Syed Yaseen with rods. I also stated that Syed Yaseen came nearer to the door of my house and asked for water and I gave water to him and thereafter A-1 to A-3 and another son of A-1 came and beat him. I gave Ex.P-12 statement before JFCM Court, Nirmal."

During the cross-examination by the defence the witness stated that she gave Ex.P-12 statement before the JFCM, Nirmal, due to fear that somebody may cause harm to her. To a question 'whether the contents of Ex.P-12 are true or what she deposed in her chief-examination was true', she has replied that what she deposed in the chief-

examination before the Court is true and not the contents of Ex.P-12.

PW-5, husband of PW-3, followed his wife's footsteps while repeating what his wife has deposed in the chief-examination. He has also admitted that he has given the statement as in Ex.P-13 under Section 164 CrPC before the JFCM, Nirmal. When the contents of Ex.P-13 were read over to him, he admitted that he made the statement to the effect that A-1 to A-3 and the other son of A-1 beat the deceased with iron rods. Like his wife, he has also replied to the question put by the defence lawyer that he gave Ex.P-13 statement due to fear.

If we observe the conduct of PWs-3 and 5, it is clearly evident that these witnesses to a substantial extent resiled from what they have stated in Exs.P-12 and P-13 before the JFCM, Nirmal. However, they have admitted in their evidence that their statements were correctly recorded by the Magistrate, but both of them stated that they gave those statements due to fear. They have, however, not stated that either the Police or anyone from the victim's side brought pressure on them or forced them to give the statements before the Magistrate. A perusal of these two statements shows that the learned Magistrate has put the following question.

"Q.No.4. Have you come to the court on your own accord or by anybody's force?"

Ans: Voluntarily I came to the court on my own accord."

Had these witnesses been forced or coerced by anyone to give their statements as in Exs.P-12 and P-13, there was no reason for them for not stating the same before the Magistrate. Therefore, it is difficult to lend credence to their version that they gave in Exs.P-12 and P-13 statements due to fear.

Dealing with the object of recording of statements under Section 164 CrPC, their effect and the question whether such statements constitute substantial evidence, the Supreme Court in **R. Shaji Vs. State of Kerala**^[7], held as under:

“Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 Cr.P.C. can be used only for the purpose of contradiction and statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 Cr.P.C., he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 Cr.P.C. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

So far as the statement of witnesses recorded under Section 164 is concerned, the object is twofold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement; and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is

recorded under Section 164, his evidence in Court should be discarded, is not at all warranted [Vide Jogendra Nahak v. State of Orissa, (2000) 1 SCC 272; and Collector of Central Excise v. Duncan Agro Industries Ltd., (2000) 7 SCC 53].

Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 Cr.P.C., can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 Cr.P.C., such statements cannot be treated as substantive evidence.

During the investigation, the police officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Cr.P.C. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced. (Vide Mamand v. Emperor, AIR 1946 PC 45; Bhuboni Sahu v. R., AIR 1949 PC 257; Ram Charan v. State of U.P., AIR 1968 SC 1270; and Dhanabal v. State of Tamil Nadu, AIR 1980 SC 628)."

From the above judgment, it is clear that the evidence given in a Court under oath has a great sanctity and that as the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 CrPC, such statements cannot be treated as substantive evidence and nevertheless such statements can be relied upon both for corroboration as well as contradiction to the witnesses who gave the statements. As discussed above, both PWs-3 and 5 in their evidence have categorically admitted their giving

statements before the Magistrate regarding their witnessing the accused attacking the deceased and there was clear attempt on their part to retract the statements given before the Magistrate by stating that they made the same due to fear which was not substantiated. This reason put forth by them in their evidence is in direct contradiction to the answer given by them to question No.4 in Exs.P-12 and P-13 to the effect that they were giving the statements voluntarily.

In **State of Gujarat Vs. Anirudhsing**^[8], while dealing with the history of a witness, the Supreme Court *inter alia* held that every criminal trial is a voyage in quest of truth for public justice to punish the guilty and restore peace, stability and order in the society, that every citizen who has knowledge of the commission of cognizable offence has a duty to lay information before the police and cooperate with the investigating officer who is enjoined to collect the evidence and if necessary summon the witnesses to give evidence, that he is further duty bound to appear before the Court of Session or competent criminal court, tender his ocular evidence as a dutiful and truthful citizen to unfold the prosecution case as given in his statement and that any betrayal in that behalf is a step to destabilize social peace, order and progress.

In **Radha Mohan Singh @ Lal Saheb & Ors. Vs. State of Uttar Pradesh**^[9], the Supreme Court held that

the evidence of the prosecution witnesses cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him, that the evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof.

Dealing with an unscrupulous witness, who tried to conceal the material truth from the Court contrary to his earlier statement made in the complaint, the Supreme Court in **Mahesh Vs. State of Maharashtra**^[10], held that the conduct of such a witness for no plausible and tenable reasons pointed out on record, will give rise to doubt the testimony of the investigating officer who had sincerely and honestly conducted the entire investigation of the case, and that no benefit could be given to the accused for unfavourable conduct of the witness to the prosecution.

In **Rajendra Vs. State of Uttar Pradesh**^[11] the Apex Court observed that merely because a witness deviates from his statement made in the FIR, his evidence cannot be held to be totally unreliable. In **Govindappa Vs. State of Karnataka**^[12] the Apex Court, while reiterating a similar view observed that the deposition of a hostile witness can be relied upon at least upto the extent he supported the case of the prosecution.

In **Paramjeet Singh** (5 supra), after reviewing the relevant case law on the aspect, the Supreme Court held as under:

“The fact that the witness was declared hostile at the instance of the Public Prosecutor and he was allowed to cross-examine the witness furnishes no justification for rejecting en bloc the evidence of the witness. However, the court has to be very careful, as prima facie, a witness who makes different statements at different times, has no regard for the truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to it. The court should be slow to act on the testimony of such a witness; normally, it should look for corroboration to his testimony. [Vide State of Rajasthan v. Bhawani, (2003) 7 SCC 291].”

On a careful analysis of the case-law, Exs.P-12 and P-13, statements of PWs-3 and 5 recorded under Section 164 CrPC and the evidence given by them as witnesses before the trial Court, we have no doubt whatsoever that they are the eye-witnesses to the occurrence that they have heard the noise of the untoward incident from the side of the house of A-1 (paragraph 6 of cross-examination of PW-3 by the Government Pleader), that the deceased approached them with bleeding injuries on face and asked for water and that she gave water to the deceased. Though these witnesses tried to save the accused by retracting Exs.P-12 and P-13 statements recorded by the Magistrate regarding the involvement of the accused in causing injuries leading to the death of the

deceased, in paragraph-14 of PW-3's evidence and in paragraph-7 of PW-5's evidence, they have stated before the Magistrate that the accused had attacked the deceased resulting in the latter's death.

The statement of PW-6 was also recorded by the Magistrate under Section 164 CrPC and the same was marked as Ex.P-14. He also resiled from this statement. He deposed that Ex.P-14 was given by him as instructed by the Police.

PW-8 was also cited as an eye-witness. However, his statement was not recorded by the Magistrate. He was examined by the prosecution to prove that the deceased was talking with him when the accused came there and attacked the deceased and that the entire incident has taken place in his presence. Though he has purported to have made a statement under Section 161 CrPC before the Police, he has denied having given such statement. What is, however, significant in his evidence is that he has stated that 'people gathered there expressed the opinions that A-1 to A-3 beat the deceased'.

Thus, in our opinion, though Exs.P-12, P-13 and P-14 do not constitute substantive piece of evidence, the said statements are amply corroborated by PWs-3, 5 and 6 from which a safe conclusion can be drawn that it is only the accused who are responsible for the death of the deceased and that their attempt to win over the direct witnesses notwithstanding, the prosecution was able to

establish the involvement of the accused.

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Re Submissions 2 and 3

9. Since these two submissions are interconnected, they are dealt with together.

Ex.P-10 is the confessional and recovery panchanama relating to A-1 and Ex.P-11 is the confessional and recovery panchanama relating to A-2. Both the accused have confessed their keeping iron rods in a corner of their house, and produced them from the place where they have hidden them in their house, which were seized by the Police in the presence of PW-14 in the case of A-1 and PW-13 in the case of A-2. Though under Section 25 of the Indian Evidence Act, 1872, confession to a Police Officer does not constitute proof, to the extent of leading to discovery of the material objects it stands as a proof. Both PWs-13 and 14, however, toed the line of many of the prosecution witnesses in taking the stand inconsistent with their purported statements in Exs.P-10 and P-11. Therefore, we need to carefully sift their depositions.

In his chief-examination PW-13 deposed that after death of the deceased, Police came to his house and obtained signatures on some papers in connection with the death. In his cross-examination he has, however, admitted that M.O.5 – iron rod and M.O.6 – iron rod with a blade, containing paper chits to them, which in turn bear

his signatures, were shown to him in the court. It was further deposed that the Police have shown M.Os.5 and 6 at his house and that the paper chits were not pasted before him by the Police. He denied the suggestion that A-1 and A-2 were present when the Police showed M.Os.5 and 6 to him. He admitted that Exs.P-10 and P-11 panchanamas contained his signatures. He has however denied the suggestion that M.Os.5 and 6 were seized in his presence following the disclosure made by the accused. The evidence of PW-14 is also on the same lines as that of PW-13. From the evidence of these two witnesses, this Court could notice their anxiety in somehow bailing the accused out of the case. The fact that both the chits pasted to M.Os.5 and 6, and Exs.P-10 and P-11, confessional and recovery panchanamas, containing their signatures, falsify their version that they have not witnessed the confession and recoveries of M.Os.5 and 6. In order to overcome their conduct in signing on the two chits pasted to M.Os.5 and 6 and Exs.P-10 and P-11, these witnesses have come out with the version that the Police obtained their signatures at their house in the absence of A-1 and A-2. PW-19 - Investigating Officer deposed that on 30.07.2007 in the course of investigation, he arrested the accused in their house situated at Owaisi Nagar, Bhainsa, summoned PWs-13 and 14, interrogated A-1 and A-2 in their presence and that on the information given by the said

accused he has recovered M.O.5 brought by A-2 and M.O.6 brought by A-1 from their house, under Exs.P-10 and P-11 panchanamas respectively. Significantly, except a generic suggestion to PW-19 that he has not recovered anything from the possession of the accused, neither any reference is made to Exs.P-10 and P-11, nor any suggestion was put to the witness that these panchanamas were not prepared in the presence of the accused or that the signatures of PWs-13 and 14 were obtained in the absence of the accused at the Police Station.

On consideration of the entire evidence on this aspect as discussed above, we have absolutely no reason to doubt the recovery of M.Os.5 and 6 from the possession of A-1 and A-2 in the manner as reflected from Exs.P-10 and P-11.

The learned counsel has laid strong emphasis on the fact that while it is the case of the prosecution that A-1 beat the deceased with iron rod and A-2 beat him with tikah, Exs.P-10 and P-11 confessional and recovery panchanamas show that tikah was recovered from A-1 and iron rod was recovered from A-2 and therefore the overtacts attributed to the accused and the alleged recoveries do not correlate with each other. In our opinion, this submission could be referred only to be rejected. A-1 and A-2 are father and son, and both M.Os.5 and 6 were allegedly hidden at one place, i.e., in

the house in which both A-1 and A-2 were living. Therefore, both the weapons were in joint possession of A-1 and A-2 and if, in that process, each of the accused has handed over the weapon other than that was used in the commission of the offence, that would not affect the case of the prosecution in any manner. The situation would have been different if the accused have produced the respective weapons from different places. Therefore, we do not find any merit in this submission of the learned counsel.

On the strength of the discussion undertaken on submissions Nos.2 and 3, we hold that the prosecution succeeded in proving the recovery of M.Os.5 and 6 from A-1 and A-2.

Re Submission 4

10. PW-18 denied the suggestion that before Ex.P.1 was received by him from PW-1, A-1 to A-3 were already detained in the Police Station. P.W.1 stated in her evidence that on coming to know about her husband's death near the house of PW-3, she went to the Police Station where she saw all the four accused being at the Police Station. However, a different nature of the suggestion was put to PW-19, namely, that the accused were also present before PW-1 came to the Police Station. In his Section 313 CrPC examination, A-1 stated that after coming to know about the death (of the deceased) he also went to the Police Station at 2.00 a.m.

and that he was arrested. A-2 also made a similar statement, though A-3 has not made any such statement. However, except the ipse dixit of A-1 and A-2, no evidence was produced to show that all the accused were arrested on the same night of occurrence and especially before Ex.P-1 report was lodged by PW-1. The very presence of all the accused at the Police Station does not give rise to an inference that the Police have arrested and brought them to the Police Station. On the contrary, their own statements of A-1 and A-2 show that they have gone to the Police Station on their own. In his evidence PW-19 stated that he has arrested all the accused on 30.7.2007 at their house at Owaisi Nagar, Bhainsa. No suggestion was put to this witness that the accused were arrested at any time prior to 30.7.2007. Though PW-19 denied the presence of the accused in the Police Station on the night of occurrence, in the face of the admission by PW-1 that the accused were present at the Police Station when she went there, we have no reason to accept the plea of the defence that the accused were present in the Police Station.

The law is well-settled that registration of FIR must precede commencement of investigation and arrest of the accused by the Police (See **State of Andhra Pradesh Vs. Punati Ramulu**^[13] and **Lalit Kumari Vs. Government of Uttar Pradesh**^[14] But, in this case, there

is nothing on record to show that the accused were arrested prior to 30.7.2007, i.e., five days after the occurrence. In **Losula Venkata Rao** (1 supra) relied upon by the learned counsel, the mediator (PW-7) to the arrest of the accused therein deposed that by the time he was stopped by the Police the accused was in the custody of the Police. Based on the said fact, this Court doubted the presence of PW-7 therein at the time of the arrest of the accused. Therefore, the facts in that case are not similar to the facts of the present case and hence the said judgment is of no help to the accused.

Re Submission 5

11. PW-2 is one of the sons of the deceased. As per his version, he along with his father came to their old house at Owaisi Nagar at 9 O'clock in the night of occurrence, that when they were talking to their neighbours, all the four accused came and attacked his father and on seeing the same he has fled away from that place out of fear and that A-1 to A-4 beat his father with stones and forcibly took him away towards a drainage channel. He has further deposed that he has fled from that place to bring his maternal uncle – Tameez, that after his return to Owaisi Nagar, PW-4, LW-7 and others informed him about the death of his father and that on that night he went to a mosque and slept there. In his cross-examination he has stated that after he fled away from the spot, he went to the Government hospital at Bhainsa on

the next day morning at 10 O'clock to see the dead body of his father.

In our opinion, the conduct of PW-2 is wholly unnatural. If he was with his father, when the latter was attacked, he would have at least raised alarm to attract the attention of the neighbours, even if he is not courageous enough to intervene to stop the accused from attacking his father. He did not claim to have made any such attempt. Further, having known about his father's death, after his effort to inform his maternal uncle proved futile, he did not go to his mother to inform about the murder. It is not possible for any person in the place of PW-2 to be away from his other family members, such as his mother, go to a mosque, and later leisurely go to the hospital, where the dead body was kept, at 10.00 a.m. on the following day. Further, the whole case of the prosecution is that A-1 and A-2 have attacked the deceased with iron rods, whereas he has deposed that they have attacked the deceased with stones. The overall conduct of PW-2 does not inspire confidence and he is evidently a planted witness, whose evidence is not worthy of acceptance.

Re Submissions 6 and 7

12. Since these two submissions are interconnected, they are dealt with together.

PW-4 was examined as one of the eye-witnesses to the incident. He has deposed that he is a hotel worker and a resident of Owaisinagar in Bhainsa and that his house is

situated near the house of A-1. He has further deposed that when he was in his house during night at about 12 O' clock he heard cries '*bachao, bachao..*' coming from the side of A-1's house, that when he went out, he saw the *tadika* (partition made with bamboo) at A-1's house falling down, that the deceased came running from that side and went to the house of PW-3 and requested for water, and that when PW-3 gave water to the deceased, all the accused came there and assaulted the deceased, that A-1 beat the deceased on his head with an iron rod and A-2 beat the deceased with *tikah* (an instrument made with iron pipe for digging), that when A-1 was beating him, the deceased uttered the words '*Chand Bhai, mujhe maaf kardo*' and that instead of stopping, A-1 uttered the words '*khatham kardo saale ko*' (meaning, 'kill him'). Though the witness (PW-4) tried to rescue the deceased, he could not succeed as A-2 beat him with *tikah's* rod, though he has not received any injury and that A-1 told A-2 not to beat the witness. The witness further deposed that after beating the deceased, all the accused went away and that A-3 and A-4 caught hold of the deceased and A-1 and A-2 attacked him.

In his cross-examination, PW-4 admitted that he did not state before the Police that the deceased requested A-1 to pardon him though he has stated to the Police that A-1 uttered the words '*Katham kardo saale ko*'. He also did not tell the Police that A-2 beat him and that he ran

towards the house of the accused only when he heard the words '*bachao, bachao...*', but not before. He denied the suggestion that he did not state before the Police that he tried to rescue the deceased. This part of the statement is marked as omission at the instance of defence. He denied the suggestion that he demanded money from A-1 for not giving evidence against him and that he is giving false evidence as the accused refused to pay money.

It was elicited from PW-19, Investigating Officer, that PW-4 did not state before him that he has heard the deceased uttering the words '*Chand Bhai, mujhe maaf kardo*' and that he did not state before him that A-1 uttered the words '*Khatham kardo saale ko*'. He has also deposed that PW-4 did not state before him that the deceased fled away from the house of A-1 by breaking the bamboo partition, that he did not state before the witness (PW-19) that PW-4 was requested by the deceased to take him to hospital and that he (PW-4) did not state before him that he tried to rescue the deceased from the accused.

Learned counsel for the appellants strenuously argued that PW-4 is an inimical witness as he has developed grudge against the accused since A-1 has declined his demand for money for not deposing against them. Though this stand of the defence was reflected by way of suggestions put to A-1, during his cross-examination under Section 313 CrPC, in answer to

question No.4, through which he was confronted with the evidence of PW-4, he did not make a whisper about the stand except making a cryptic reply "false". Had PW-4 really demanded money and gave evidence against the accused, as his demand was not met, it could have been natural for A-1 to state the same during examination by the trial Court under Section 313 CrPC. His failure to take such a stand clearly shows that there was no truth in the defence stand on this aspect. No doubt, as could be seen from certain admissions by PW-4 himself and also from the evidence of PW-19, PW-4 has improved his version on aspects such as A-1 requesting A-2 to spare the witness (PW-4) and later A-1's exertions to kill the deceased. This apart, even if we eschew these embroideries from his evidence, we have no reason to doubt that his evidence is worthy of credence.

The learned counsel for the accused argued that Ex.P-19 rough sketch does not show location of the house of PW-4 and that therefore the prosecution failed to prove that it belongs to a neighbor of the accused and the deceased and hence there was no chance of PW-4 hearing the quarrel and arriving at the scene of offence during the dead of the night. Though Ex.P-19 has not shown the house of PW-4 in the vicinity, PW-3 made a repeated reference to the presence of PW-4, besides categorically stating that he also lives in the same locality as PW-3, accused and the deceased. PW-5 has

deposed that after his wife gave water to the deceased, himself, his wife and PW-4 held the deceased and tried to take him to the main road near their house to take him to a hospital. PW-6 also admitted that PW-4 belongs to their locality. Similarly, PW-8 also spoke about the presence of PW-4 when he went to see the dead body. Thus, we see that even though all the above noted witnesses have turned hostile, yet they have consistently spoken about the presence of PW-4 at the scene of offence. Therefore, there can be no iota of doubt about the presence of PW-4 at the scene of offence and his being an eye-witness. While PWs-3, 5, 6, 8 and 15 tried to help the accused by turning hostile and resiling from their earliest statements, PW-4, however, stuck to his stand before the Magistrate. Though there were some improvements in his evidence as noted above, in our opinion, these embellishments will not completely discredit his evidence as the same is lent corroboration by the other witnesses, i.e, PWs.3, 5, 6 and 8.

Re Submission 8

13. In her evidence PW-1 deposed that the dead body of the deceased was shifted to the hospital on the night of occurrence at 3 'O clock. PW-4 also deposed that the Police removed the body from the scene of offence at 4.00 a.m. PW-16 – the Doctor, who conducted autopsy, stated that the dead body was not in the hospital before 10.45 a.m. PW-19, however, stated that after recording

the statements of PWs-1 and 2, he proceeded to the scene of offence at Owaisi Nagar in Bhainsa Town, that the dead body was lying there and that as it was dark, he posted a guard there and examined the neighbours of that spot. He further deposed that on the next day morning at 8.00 a.m. he conducted inquest over the dead body of the deceased in the presence of PWs-11 and 12 under Ex.P-8. Both these witnesses have turned hostile. There was an attempt on the part of both these witnesses to show that the inquest was conducted at the hospital and not at Owaisi Nagar.

The purpose of holding inquest is to know the cause of the death [See **Podda Narayana Vs. State of A.P.** ^[15] and **Radha Mohan Singh** (9 supra)]. In the present case there is no dispute about the cause of death, which is homicidal. The stand of the defence appears to be that the murder has not taken place at the place and in the manner in which the prosecution has alleged. All the witnesses, including those who remained hostile, consistently spoke about the fact that the deceased was attacked at two places, namely; at the house of A-1 as well as at the house of PW-3, and that the deceased died a few yards away from PW-3's house. The only dispute that remained to be resolved is who are the real assailants that have attacked the deceased. As the whole controversy was narrowed down only to that extent, the questions as to whether the dead body was removed to

the hospital on the night of occurrence itself or the inquest was held at the place of offence or at the hospital have

absolutely no relevance on the facts of the case. Therefore, the apparent contradictions on these aspects in the evidence of the witnesses have no bearing on the outcome of the case.

In **Chiluka Ashok** (2 supra) the evidence on record showed that the accused was tied to a pole by the villagers on 03.11.2006 and the Court disbelieved the evidence of the prosecution that they arrested the accused on 6.11.2006. Thus, this judgment turns on its own facts and it is of no help to the accused.

Conclusion

14. The evidence on record clearly shows that PW-1, widow of the deceased, narrated the background which led to the accused attacking to her husband. Though all the eyewitness, except PW-4, remained hostile, their own evidence corroborated by the evidence of PW-4, clinchingly established the guilt of the accused and the prosecution is able to bring home the guilt of the accused beyond all reasonable doubt. The case of the prosecution against the accused that the attack was made with MOs.5 and 6, iron rod and tikah, stood proved by the medical evidence, namely, Ex.P-17 – post-mortem report and the testimony of PW-16. The post-mortem report shows as many as seven injuries of which the

Doctor opined that the injuries mentioned in columns 5 to 7 were caused by a hard and blunt object and they were ante-mortem in nature. PW-16 opined that the injuries were possible to be inflicted by M.O.5 (iron rod) and the blunt side of M.O.6 (iron rod with blade). Nothing much could be elicited from the evidence of this witness to disbelieve the case of the prosecution that the deceased was attacked with M.Os.5 and 6.

On the analysis of the facts, evidence and law, as above, we are thoroughly satisfied that the prosecution has brought home the guilt of the accused beyond all reasonable doubt and that the lower Court has rightly convicted and appropriately sentenced them. Hence, we do not find any reason to interfere with the judgment of the lower Court.

15. The Criminal Appeal is accordingly dismissed.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD,

J

13-6-2016

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Note: LR copies to be marked.

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- [1] 2012(3) ALT (CrI) 314 (DB)
- [2] 2012(3) ALT (CrI) 305 (DB)
- [3] 2011(3) ALT (CrI) 10 (DB)
- [4] AIR 2004 S.C. 2521
- [5] (2010) 10 SCC 439
- [6] (2011) 6 SCC 396
- [7] (2013) 14 SCC 266
- [8] (1997) 6 SCC 514
- [9] (2006) 2 SCC 450
- [10] (2008) 13 SCC 271
- [11] (2009) 13 SCC 480
- [12] (2010) 6 SCC 533
- [13] AIR 1993 SC 2644 = 1994 Supp. (1) SCC 590
- [14] (2014) 2 SCC 1
- [15] AIR 1975 SC 1252