

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

CRIMINAL APPEAL No.606 OF 2010

Dated: 05-07-2016

Between:

Ernapati Pedda Venkateswarlu
and two others.

...

Appellants.

AND

The State of Andhra Pradesh,
Rep. by Public Prosecutor,
High Court, Hyderabad.

...

Respondent.

Counsel for the appellants
Reddy.

:

Smt. A. Gayatri

Counsel for the respondent

:

Public Prosecutor.

THE COURT MADE THE FOLLOWING:

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

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1. This Criminal Appeal arises out of the judgment dated 23-02-2010 in Sessions Case No. 238 of 2008 on the file of the Court of VI Additional District and Sessions Judge, Markapur, Prakasam District (for short, 'the trial Court'), whereby A1 to A3/the appellants herein were convicted and sentenced to suffer rigorous imprisonment for life and pay fine of Rs.5,000/- each and in default of payment of fine, shall suffer simple imprisonment for six months for the offence under Section 302 of the Indian Penal Code (for short, 'I.P.C.') and to suffer rigorous imprisonment for ten years and shall pay fine of Rs.3,000/- each and in default of payment of fine, shall suffer simple imprisonment for six months for the offence under Section 307 I.P.C. Both the sentences were directed to run concurrently.

2. The brief facts of the case of prosecution are as follows: A1 to A4 and the deceased T. Venkata Narayana are residents of K. Kothapalli Village of Markapur Mandal. That A1 suspected that the deceased developed illicit intimacy with his wife Subba Lakshmi and, in that connection, he quarreled with the deceased at Cumbum bus stand about 20 days prior to the incident in the presence of P.W.10. On the fateful night of 08/09-10-2005 at about 0.30 hours, while the deceased was sleeping in his house on a cot with a mosquito net, his younger brother P.W.2 - T.China Venkata Narayana was sleeping in the north side portion in front of his house; that P.W.1, wife of the deceased, woke up and found the accused attacking the deceased with hunting sickles and axes and that she identified them in the glow of kerosene lamp placed, in the verandah; that P.W.1 saw A1 hacking over the head of the deceased with hunting sickle and when she intervened, to rescue her husband, A2 hacked her with hunting sickle over her head; that, later, A3 hacked P.W.1 over her right chest with an axe and A4 hacked P.W.1 with an axe on her right index finger; that when the deceased and his wife cried loudly, their neighbour J. Alluraiah (L.W.6) came to the spot. Then, the deceased ran out of the house and onto the street while being chased by the accused; that

P.Ws.1 and 2, T. Subbaiah (L.W.2), T. Adi Lakshmi (L.W.4), J. Seetamma (L.W.5) and L.W.6 ran after the accused; that the deceased fell down on the road near the streetlight in front of the house of P.W.6; that thereafter, A1 and A2, armed with hunting sickles, and A3 and A4, armed with axes, hacked the deceased indiscriminately; that on hearing the cries of the deceased, P.Ws.6 and 7, I. Balaiah (L.W.9) and I. Subbulu (L.W.10) came to the spot and witnessed the accused hacking the deceased; that thinking that the deceased died, the accused left the deceased and that immediately, I. Venkateswarlu (L.W.12) and P.W.3 brought the deceased and his wife to Area Hospital, Markapur, in an auto rickshaw.

3. On receipt of intimation from the hospital at about 3.00 a.m. on 8/9-10-2005, P.W.8, who was in charge of the Station House Officer, Markapur Rural Police Station visited the hospital and found the deceased in unconscious stage. He recorded the statement of P.W.1., returned to the police station at about 4 a.m. and handed over the statement of P.W.1 to the Sub-Inspector of Police-P.W.12. Basing on it, P.W.12 registered a case in Crime No.61 of 2005 under Section 307 read with Section 34 I.P.C. and sent F.I.R. to the Magistrate concerned through P.C. 975 of Markapur Rural Police Station. At about 05:00 a.m. on the same day, P.W.12, along with his staff, reached the hospital and recorded the statements of PW-1, LW-2 – T. Subbaiah, PW-2 and LW-4 – T. Audilaxmi at 5.15 a.m. and shifted PW-1 and the deceased to Government Hospital, Guntur, for expert treatment on the advice of the Medical Officer-PW-11. On the same day at 7.30 a.m., P.W.12 visited the scene of offence at K. Kothapalli Village, prepared rough sketch of the two scenes of offence, conducted observation panchanama, seized material objects in the presence of P.W.5 and I. Koteswararao (L.W.16) and recorded the statements of other witnesses. On 20-10-2005 at about 09:00 p.m., P.W.12 received death intimation of the deceased from Government General Hospital, Guntur, and he altered

the Section of law from 307 read with Section 34 I.P.C. to Section 302 read with Section 34 I.P.C. On 20-10-2005 at 9:00 p.m., P.W.14 took up further investigation. On 21-10-2005, PW-14 reached G.G.H., Guntur, conducted inquest over the dead body of the deceased at 8.30 a.m. in the presence of P.W.4, M.Sreenu, I. Venkateswarlu and Dr. J. Solmon Raju (L.Ws.19 to 21) and sent the dead body for *post mortem* examination. Dr. P. Sreenivasa Rao (L.W.22) conducted *post mortem* examination over the dead body and issued *post mortem* examination report. P.W.11 who gave treatment to PW-1 and the deceased issued wounds certificates.

4. On 27-10-2005 at 12.15 p.m., P.W.14 along with P.W.12 reached K. Kothapalli, arrested A1, A2 and A4 and interrogated them in the presence of P.W.5 and L.W.16, during which they confessed to the commission of the offence. In pursuance of the confession of A1, hunting sickle was recovered under cover of mediatornama. In pursuance of confession of A4, axe was recovered from his possession under cover of mediatornama. The material objects seized were sent to Regional Forensic Science Laboratory for analysis and report. After receiving the report, P.W.14 filed charge sheet against the accused.

5. The case was taken on file as P.R.C. No.3 of 2006. During pendency of the enquiry, A4 died and the case against him stood abated.

6. After furnishing copies of documents to A1 to A3, the case was committed to the Court of Sessions, Ongole, and the same was numbered as Sessions Case No.238 of 2008.

7. Considering the material on record and on hearing both sides, the trial Court framed charges under Sections 302 and 307 read with Section 34 I.P.C. against the accused. The accused pleaded not guilty

for the charges and claimed to be tried. During the trial, the prosecution examined P.Ws.1 to 14 and marked Exs.P1 to P18 and M.Os.1 to 5.

8. The accused were examined under Section 313 of the Code of Criminal Procedure and they denied the incriminating evidence appearing against them and reported no evidence on their behalf.

9. The trial Court, on considering the evidence and hearing arguments of both sides, arrived at a conclusion that A1 to A3 committed the offences under Sections 302 and 307 read with Section 34 I.P.C. and convicted and sentenced them as indicated hereinbefore.

10. The points that arise for consideration in this Appeal are:

1. Whether the prosecution proved the guilt of A1 to A3 beyond reasonable doubt for the offences under Sections 302 and 307 r/w Section 34 I.P.C.?

2. Whether there is any illegality in the findings of the trial Court in convicting A1 to A3?

11. Learned counsel for the appellants submitted that there is delay in lodging F.I.R. and that the delay has not been explained by the prosecution satisfactorily. She has further submitted that the prosecution has failed to prove the motive for commission of the offence and that the appellants/accused have been implicated in the case due to political rivalry. She has further submitted that there are two scenes of the offences in this case; that PW-1 did not go to the second scene of offence and witnessed the incident and that is the reason why she did not specifically attribute overt-acts of the accused at the second scene of offence either in her complaint or in her statement recorded under Section 161 Cr.P.C. and that the second scene of offence has been created by the prosecution to bring home the guilt of the accused. The learned Counsel has further submitted that as it was dark at the time of the incident, there was no possibility

for PW-1 and PW-2 to identify the accused; that the alleged location of the kerosene lamp was not clarified by the prosecution; that the kerosene lamp was not seized from the first scene of offence and therefore the presence of light at the time of the incident and the identification of the accused by PW-1 and PW-2 are doubtful; that there was no light at the second scene of offence also and therefore the version of the prosecution with regard to the alleged incident at the second scene of offence has to be disbelieved. She has further submitted that the trial Court erred in placing reliance on the evidence of highly interested witnesses i.e., PW-1, PW-2, and PW-10, who are related to the deceased

12. Opposing the above submissions, the learned Public Prosecutor submitted that the motive for the commission of the offence was the suspicion of A-1 that the deceased developed illicit intimacy with his wife and the same has been clearly spoken to by PW-1, PW-2 and PW-10; that the motive sought to be set up by the accused as the political rivalry has not been proved and therefore the same cannot be believed. He has further submitted that the two scenes of offences were clearly spoken by the prosecution witnesses and the investigation also reveals that the incident occurred at two places. He has further submitted that being the residents of the same village, the accused are known to the material prosecution witnesses; that PW.1 and PW-2 have identified the Accused Nos.1 to 4 in the illumination of kerosene lamp at the first scene of offence; that PW-1, PW-2, PW-6 and PW-7, who have seen the accused hacking the deceased at the second scene of offence near the house of PW.6 spoke about the incident; that there are no discrepancies in the evidence of the prosecution witnesses and that there is no mistaken identity of the accused in this case. The learned Public Prosecutor submitted that there was no delay in lodging the FIR and that the Prosecution could bring home the guilt of the accused. He therefore sought to sustain the Judgment of the trial Court.

POINTS:

13. The evidence brought on record shows that F.I.R. No.61 of 2005 was lodged on 09-10-2005 at 04:00 a.m. P.W.1 is *de facto* complainant whose statement was recorded at the hospital by P.W.8 – Head Constable. The evidence of PW-8 reveals that on 09-10-2005 at 03:00 a.m., he received hospital intimation from Markapur Area Hospital; that he went to the hospital and recorded Ex.P-6 statement of P.W.1 at 3.15 a.m., after ascertaining her condition through duty doctor that she was conscious; that the deceased was with injuries and was in unconscious state and, as such, his statement could not be recorded; and that he went to the police station and handed over Ex.P6 to P.W.12 at 4.00 a.m. PW-12-Sub-Inspector of Police deposed that on receipt of Ex.P6 from P.W.8 at 4.00 a.m. he registered a case in Crime No.61 of 2005 under Section 307 read with Section 34 I.P.C. and issued F.I.R. and that on receiving the death intimation on 20-10-2005 at 9 p.m. through Fax from the Government General Hospital, Guntur, he has altered the section of law from 307 r/w. Section 34 IPC to Section 302 r/w. Section 34 IPC and submitted the altered FIR to the Magistrate and sent copies of the same to all the concerned officers. The testimony of P.Ws.8 and 12 does not reveal any lapse, much less delay, in registering the FIR. Therefore, we do not see any force in the contention raised by learned counsel for the appellants that there was unexplained delay in lodging the FIR.

14. The version of PW-1, the wife of the deceased, as reflected from her statement and her evidence before the trial Court is that A-1 and A-2 are brothers and A-3 and A-4 are friends of A-1 and A-2; that she knows all of them and that they are the residents of the same village. That during the night of the incident after having dinner, the deceased, herself and their son slept on a cot in the front yard of their house; that their cot was covered with mosquito net; that at midnight A-1 to A-4 came to their house; that on hearing the loud screaming of the

deceased she woke up and observed that the accused hacked the deceased with hunting sickles and axes on the right side of his head and the deceased received bleeding injuries; that she went to the rescue of the deceased; that thereupon A-2 hacked her with hunting sickle on her head; that A-3 hacked her with an axe over her right chest; that when she requested them with folded hands, A-4 hacked her with an axe on her right index finger and that when the deceased started running towards bazaar, all the accused chased him by saying "*champandi raa naa kodukunu*". That PW-3 and LW-4 came out of their house; that her father-in-law also came there; and that PW-1, PW-2, LW-2 and LW-4 ran after the accused towards the bazaar. That the deceased fell down near the house of PW-6; that A-1 to A-4 hacked the deceased indiscriminately and retreated towards Ramulavari Temple. That PW-6, LW-9, LW-10 and PW-7 gathered at the scene of offence; that PW-3 called an auto over phone from the house of Vysya people; and that PW-3, PW-5 and Immadi Kasamma took PW-1 and the deceased to the Government Hospital, Markapur and that the deceased was in unconscious state; that the incident occurred at about 12.30 at midnight; that she witnessed the incident in the illumination of the kerosene lamp burning at her house and also the street light near the house of PW-6; and that the Doctors treated her at the hospital. PW-1 further deposed that about 20 days prior to the incident she came to know from the deceased that alleging that he was having illicit intimacy with his wife, A-1 beat him at Markapur; and that due to the suspicion that her husband was having illicit intimacy with the wife of Accused No.1, the accused killed her husband by hacking him with hunting sickles and axes.

15. PW.2, the brother of the deceased, and who was also sleeping along with his elder son on a cot at a distance of 10 to 14 feet from the cot of the deceased on the fateful night, deposed that he heard the cries of the deceased and woke up and saw Accused Nos.1 to 4

around the cot of deceased with hunting sickles and axes, that Accused No.1 hacked deceased with hunting sickle on his head; that when PW.1 intervened praying the accused not kill the deceased, Accused No.2 hacked PW.1 with hunting sickle on her head, Accused No.3 hacked PW.1 with axe below right chest, Accused No.4 hacked PW.1 with axe on her right index finger; that in the meanwhile, when the deceased ran towards the village, he was chased by the accused; that PW-1 ran behind the accused; that he also ran behind PW-1 and that when the deceased fell down on the road near the house of PW.6, the accused hacked the deceased indiscriminately. His testimony reveals that a kerosene lamp was burning on that night near the cot of the deceased. PW-2 further deposed that there was a street light to the electrical pole at that place.

16. Apart from this evidence, the testimony of PW.3, a resident of the same village, reveals that that at about 01:00 a.m. he saw the deceased and PW.1 with the injuries by the side of the house of PW.6 under the illumination of the street light; that he called an auto from Markapur over phone and within half an hour auto reached there; that the deceased and PW.1 were shifted to the Area Hospital, Markapur with the assistance of PW-5 and Immadi Kasamma; that PW.1 was conscious at that time and speaking and that the deceased was unconscious.

17. PW.6 is another eye witness in this case. Her testimony reveals that she saw the deceased running towards her house by raising slogans as "*save me, save me*"; that Accused Nos.1 and 2 were chasing the deceased having hunting sickles with them; that Accused Nos.3 and 4 were also chasing with axes; that when the deceased reached near her house, Accused Nos.1 to 4 hacked the deceased on his head and the deceased fell down; and thereupon, the accused went away. She has further deposed LW.7 – Immadi Koteswara Rao, who is her son and LW.9 – Immadi Balaiah, LW.10 – Immadi Subbulu and LW.11 - Immadi Mallikarjuna also witnessed the

incident. PW-6 further deposed that PWs.1 and 2, LW.2 – Thippanaboina Subbaiah and LW.4 – Thippanaboina Audilaxmi and the mother of the deceased came there to the scene of offence, after she went there. PW-6 also testified that PW.1 was having injuries at that time and that PW.1 and deceased were shifted to Area Hospital, Markapur. She also testified that there was a tube light near her house and that she has witnessed the incident in that light. During her cross-examination, PW-6 deposed that the accused hacked the deceased indiscriminately after the latter fell down; and that she was at a distance of four feet from the place where the deceased was hacked. PW-6 has further deposed that she has stated before the police that after the deceased fell down, the accused went away towards Ramalayam Temple by stating that the deceased lost his breath. The testimony of this witness corroborates the evidence of PWs.1 to 3.

18. The testimony of PW.7 reveals that his house was situated by the house of PW.6; that on the fateful day at 12:30 mid night while he was sleeping outside his house, he heard some cries and woke up and saw the deceased running towards the house of PW.6; that he saw the Accused Nos.1 to 4 running behind the deceased; that the deceased fell down near the house of PW.6, that Accused Nos.1 to 4 hacked the deceased with hunting sickles and axes and that after declaring the accused dead, they left that place. He also testified about the gathering of PW.6, LW.9 – Immadi Balaiah at the time of the incident. He also states that Immadi Kasamma, Immadi Venkateswarlu and LW.10 – Immadi Subbulu took the injured to the hospital in an auto called by PW.3. PW-7 deposed that he has witnessed the incident in the illumination due to the street light near the house of PW-6.

19. PW.4 is the inquest punch witness who testified to the effect

that the investigation officer has held inquest over the dead body of the deceased in his presence and in the presence of LW.19 – Mediga Sreenu and LW.20 – Immadi Venkateswarlu and other family members of the deceased.

20. PW-5 acted as the mediator for Ex.P-2 - observation of the scenes of offence. Ex.P-4 is the mediatorsnama, whereunder, the police seized M.O.1 - two hunting sickles, and M.O.2 – axe, used in the commission of offence from the Beedu land at the land of Immadi Thirupalu, at the instance of the accused. He also spoke about the seizure of the blood stained mosquito net, marked as M.O.3, at the house of the deceased and blood stained earth and control earth, marked as M.O.4 and M.O.5, respectively, near the house of PW-6.

21. PW-8, the then Head Constable of Martur Rural Police Station, deposed about his receiving intimation, Ex.P-5, from Markapur Area Hospital at 3 a.m. on 9-10-2005, his reaching the hospital by 3.15 a.m. and recording Ex.P-6 statement of PW-1 and his obtaining the endorsement of the Duty Doctor on the said statement who certified that PW-1 was 'conscious'. He deposed that the deceased with injuries and in unconscious state and therefore he could not record his statement. He has further deposed that he went back to the Police Station and handed over Ex.P-6 to the Sub-Inspector of Police, who registered the FIR by 4.00 a.m. He denied the suggestion that Ex.P-6 statement of PW-1 was prepared on the following day after 10.00 a.m.

22. PW-11 was the Civil Assistant Surgeon in the Area Hospital, Markapur, who has treated both PW-1 and the deceased, initially on 9-10-2005. He found the following injuries on the person of PW-1 :

1. A stab injury noted over lower chest – 3 cms. X 1 cms. In size – skin deep.
2. A laceration over right index finger 3 x ½ cms. In size – muscle deep.
3. A vertical laceration over left side of scalp 5 x ½ cms. In size – bone deep.

He issued Ex.P-8 wound certificate of PW-1. He has further deposed that he sent Ex.P-5 intimation to the police; and that PW-1 was conscious and coherent when the police recorded her statement-Ex.P-6.

PW-11 observed the following injuries on the body of the deceased:

1. A laceration over right scalp of size 15 cms. x 2 cms.
2. A laceration over the back of neck of size 6 cms. x 1 cm. – muscle deep. Blood clots seen.
3. A laceration over right side of mouth – 6 x 2 cms. in size – bone deep
4. A laceration over right fore arm – 6 x 2 cms in size – bone deep
5. A laceration over middle of right fore arm 5 x 2 cms. in size – bone deep
6. A laceration over right upper leg 4 x 1 cms. in size - muscle deep
7. A laceration over left arm – 4 x 1 cms. in size – muscle deep

PW-11 deposed that at the time of his examination, the deceased was unconscious. Ex.P-9 is the wound certificate of the deceased issued by him. He opined that injury No.1 is grievous in nature and the other injuries are simple in nature and could have been caused with an axe; that the laceration injuries may be possible to be caused with weapons like axe and sickle if they are caused on bony surfaces or if their edges are not sharp; that the injuries noted in Exs.P-8 and P-9 are possible to be inflicted with weapons like M.Os.1 and 2; and that both the injured were referred to the Government General Hospital, Guntur for better treatment.

23. PW-9, the Professor of Neuro Surgery at the Government General Hospital, Guntur at the relevant point of time, deposed that the deceased was brought to the hospital in unconscious state. He further deposed that the CT scan showed hemorrhage in right temporo parietal region; right frontal depressed fracture and right fronto parietal fracture; that the deceased was admitted in Neuro Surgery Department

and was kept in Intensive Care Unit; that the deceased received treatment for the wounds and the head injury and that he was also examined by Orthopedic Surgeon for a fracture of the right fore arm; that the deceased continued to be unconscious and subsequently required ventilator support and that the deceased died on 20-10-2007 at 4.00 a.m. Ex.P-7 is the case sheet of the deceased.

24. PW.12 was the Sub-Inspector of Police during the relevant period and who registered the crime initially under Section 307 r/w. Section 34 of I.P.C. and issued Ex.P-10-original FIR, on receiving the Section 161 Cr.P.C. statement of PW.1 recorded by PW.8. PW-12 deposed about his visiting the hospital, examining PW-1, PW-2, LW.2 – Thippanaboina subbaiah and LW.4 – Thippanaboina Audilaxmi and recording their statements in detail, reaching the village at 8.15 a.m. on 9-10-2015 along with PW-2, securing the presence of PW-5 and LW-16, who acted as mediators, seizing the mosquito net containing blood stains, marked as MO.3, at the first scene of offence, and preparing Ex.P-11-rough sketch of the first scene of offence. He deposed that he found a kerosene lamp on the edge of the verandah but he did not seize the same. PW-12 also deposed that he found a pool of blood at the second scene of offence and that he seized blood stained earth and control earth, M.Os.4 and 5, respectively. He has further deposed about the presence of an electrical pole with a bulb fixed to it at the second scene of offence. He prepared Ex.P-2-observation report for both the scenes of offence. Ex.P-12 is the rough sketch of the second of scene of offence prepared by PW-12. He deposed about the recording of statements of certain witnesses, receiving the death intimation of the deceased, and issuing Ex.P-14 altered FIR, to Section 302 r/w. Section 34 IPC. and assisting PW-14 in the investigation. _

25. PW.14 was the Inspector of Police, Markapur at the relevant point of time. He deposed about his receiving Ex.P-14 – altered FIR on 20-10-2015, taking up the investigation, receiving Ex.P-15 – death intimation from the Government General Hospital, Guntur, on

21.10.2005 at 08:00 a.m., from the Government General Hospital, Guntur and handing over the same to PW.12 for forwarding the same to the Judicial Magistrate of I Class, Markapur, his conducting inquest over the dead body of the deceased at 08:30 a.m. at the Government Hospital, Mortuary in the presence of PW.4 and other witnesses and sending the dead body to post mortem examination. He has deposed that on 27-10-2005 at 12.30 p.m. he has arrested A-1, A-2 and A-4 at the house of Accused No.1; that A-3 was absconding; and that A-1, A-2 and A-4 voluntarily confessed in the presence of PW-5 and another about the commission of the offence, culminating in recovery of M.Os.1 and 2. at their instance. He deposed that M.Os.1 to 5 were sent to the Regional Forensic Science Laboratory under Ex.P-17 letter of advice, for opinion and that Ex.P-18 is the report of the said laboratory.

26. The evidence of PW-1 and PW-2 reveals that the deceased was hacked with hunting sickles and axes on his head when he was sleeping in the front yard of his house; that on being hacked by the accused, the deceased began running into the village; that the accused chased the deceased; that the deceased fell down at the second scene of offence i.e., near the house of PW-6, where the accused hacked him again with hunting sickles and axes indiscriminately. The evidence of PW-1 and PW-2 is corroborated by PW-6 and PW-7, who saw the deceased running towards the second scene of offence and the accused hacking the deceased indiscriminately and leaving the place. PW-3 saw the injuries on PW-1 and the deceased and rendered assistance in shifting them to the hospital in an auto. Nothing material is elicited in the cross-examination of PW-1, PW-2, PW-3, PW-6, PW-7 to disbelieve their version that the accused hacked the deceased indiscriminately and also caused injuries to PW-1.

27. Ex.P-16 is the post mortem report issued by Dr. P. Srinivasa Rao. As he was no more, PW-13 identified the handwriting and

signature of Dr.P. Srinivasa Rao during the trial, and opined that the deceased died due to Septicemia consequent to the infected injury over the right cerebral hemisphere. PW-11 spoke about the injuries suffered by PW-1 and the deceased. Though certain discrepancies viz., the patient's name was found struck off and the number appearing on O.P. receipt being different from the number mentioned in the case sheet, were pointed out during his cross-examination, PW-9 has explained that since the patient's name was recorded against the column pertaining to the name of the hospital, the same was struck off and written properly; and that the number mentioned in the case sheet was in-patient number. He denied the suggestion that the case sheet does not pertain to the deceased.

28. The evidence of PW-1, PW-2, PW-3, PW-6 and Pw-7 is corroborated by the medical evidence on record with regard to the injuries suffered by PW-1 and those found on the body of the deceased and that the deceased died as a result thereof.

29. The testimony of PW-12 clearly corroborates the evidence of PWs.1 and 2 that there was a kerosene lamp at the first scene of offence. It is a common sight that kerosene lamps would be used in villages. As PW-1 and PW-2, the direct eye witnesses, have spoken about presence of the kerosene lamp at the first scene of offence, it is obvious that there was a kerosene lamp at the first scene of offence, and in the illumination of that lamp, they have identified the accused. However, the non-seizure of the lamp by the Investigating Officer is not fatal to the case of the prosecution since all the accused are known to the material prosecution witnesses, including PW-1 and PW-2, as they are residents of the same village, and therefore they could have easily identified the accused. Further, all the eye-witnesses spoke about the existence of the street light at the second scene of offence and that in that illumination they identified the accused and witnessed the incident. Nothing is elicited in the cross-examination of PW-1, PW-2, PW-3, Pw-6 and PW-7 to discredit their evidence. Their evidence is

consistent, cogent and trustworthy with regard to the identity of the accused and causing injuries to PW-1 and the deceased.

30. The testimony of PW-12 further reveals that he saw a pool of blood near the second scene of offence and has seized the control earth and bloodstained earth under the cover of panchanama and the same clearly supports the version of the prosecution that the accused chased the deceased till the second scene of offence and when the deceased fell down, he was again hacked indiscriminately causing injuries. The testimonies of PWs.8, 12 and 14 clearly reveals the investigation done by them and recovery of MOs.1 to 5 in the presence of the mediators.

31. As regards the submission of the learned Counsel for the appellants that there is discrepancy in the evidence of PWs.1 and 2 and that of PW-12, with regard to the location of the kerosene lamp, in the present case, PW.1 is the injured eye witness and she had clearly deposed about the presence of the kerosene lamp and that in that illumination she has identified the accused. The evidence of PW-2 also discloses that a kerosene lamp was burning at the time of the incident.

32. In ***Lachman Singh Vs. State of Haryana***^[1], the Supreme Court held that the minor discrepancies in the evidence of injured eye witnesses would not dilute the otherwise cogent evidence of injured eye witnesses about the role played by the accused persons.

33. In the facts and circumstances of the case, we are of the opinion that discrepancy in the evidence with regard to the location of the kerosene lamp at the house of the deceased at the time of the incident need not be taken into consideration while appreciating the evidence on record and doubt the credibility of the evidence of the eye witnesses.

34. The report of the Regional Forensic Science Laboratory reveals

that blood was detected on item Nos.4 to 6 of the letter of advice, which were marked as M.O.1 (two sickles) and M.O.2 (axe) and on item No.3, marked as MO-3 (mosquito net) and that the blood detected on the above mentioned M.Os. is of human origin, but the blood group could not be detected. The R.F.S.L. report clearly supports the version of the prosecution that M.Os.1 and 2 were used in the commission of the offence and that is why human blood was found on the said weapons. The blood stains found on M.Os.1 to 4 clearly prove the version of the prosecution with regard to the incident of the accused attacking the deceased and PW-1 causing them injuries at both the places, resulting in the death of the deceased.

35. So far as motive is concerned, it is the case of the prosecution that on the suspicion that the deceased was having illicit intimacy with the wife of A-1, the accused nurtured grudge against the deceased and attacked him. In this regard, PW-1 categorically deposed that about 20 days prior to the incident she came to know from the deceased that A-1 beat him at Markapur on the suspicion that the deceased was having illicit intimacy with his wife and therefore the accused killed her husband by hacking him with hunting sickles and axes. PW-2 also deposed on similar lines. PW-10, the brother of PW-1, deposed that he knows the accused; that 20 days prior to the incident, he went to Markapur for some provisions; that after purchasing the provisions, when he was waiting at the Cumbum bus stand centre, he saw A-1 and the deceased scolding and beating each other; that the passers-by and those gathered there interfered and separated them; and that after some time when he enquired with the deceased as to why they were quarrelling, the deceased stated that suspecting that he was having illicit intimacy with the wife of A-1, the latter scolded and beat him.

36. A faint attempt is made by the learned Counsel for the appellants/accused to impress upon this Court that the

appellants/accused have been implicated in this case because of political rivalry. During the cross-examination, it was elicited from PW-1 that the deceased was a follower of Telugu Desam Party and one Metta Balaraju belongs to Congress Party; and that the deceased participated in the election campaign of Janke Venkat Reddy, the then M.L.A. PW-1 however deposed that the deceased was never arrested and remanded to judicial custody. PW-2, during his cross-examination, deposed that he does not know whether Immadi Venkata Narayana and his two brothers belong to Telugu Desam Party; that he knows Metla Balaraju, but does not know to which Party the said Balaraju belongs to. It was elicited from PW-2 that the deceased was one of the accused in a bomb blast case and that the said case was filed by Metla Balaraju. Except the said evidence of PW-1 and PW-2 with regard to the alleged political rivalry, there is no further evidence brought on record by the appellants/accused in support of their plea that they have been falsely implicated in the case. Though PW-3, PW-6, PW-7 and PW-10 also belong to the same village, no suggestion was put to the said witnesses with regard to the political rivalry in the village nor anything was elicited from the said witnesses during their cross-examination to the effect that the appellants/accused have been implicated in the case because of political rivalry. PW.1 is an injured eye witness to the incident and we do not find any reason for her to falsely implicate the accused. In view of the categorical evidence of PW-1, PW-2 and PW-10, we are of the opinion that the prosecution is able to establish the motive on the part of the accused for commission of the offence, being the suspicion that the deceased had illicit intimacy with the wife of A-1.

37. With regard to the overt-acts, it is true that PW.1 stated in her statement recorded under Section 161 Cr.P.C. that the accused caused injuries to her husband but she has not given specific overt acts caused of each of the accused. However, in her evidence, PW-1

has specified the specific overt-acts of the accused. She deposed that at the first scene of offence, A-1 hacked the deceased with hunting sickle on his head; that when she went to the rescue of the deceased, A-2 hacked her with hunting sickle on her head; A-3 hacked her with an axe over her right chest; and that when she requested them with folded hands, A-4 hacked her with an axe on her right index finger; and that when the deceased started running towards bazaar, all the accused chased him by saying "*champandi raa naa kodukunu*"; that the deceased fell down near the house of PW-6; and that A-1 to A-4 hacked the deceased indiscriminately and retreated towards Ramulavari Temple. PW-2 deposed that when PW-1 intervened and prayed the accused not to kill the deceased, A-2 hacked PW-1 with hunting sickle on her head; A-3 hacked her with an axe below her right chest and A-4 hacked her with an axe on her right index finger; that when the deceased ran towards the village he was chased by the accused and behind the accused PW-1 was running and that he was running behind PW-1; and that when the deceased fell down on the road near the house of PW.6, the accused hacked the deceased indiscriminately.

38. F.I.R. is not an encyclopedia and it need not contain all the details of the offence and the role played by each of the accused. PW-1 is an injured eye witness to the incident and saw A-1 to A-4 causing injuries to the deceased. Her evidence is amply corroborated by the evidence of PW-2. In view of the evidence of PW-1 and PW-2, we are unable to agree with the submission of the learned Counsel for the appellants that PW-1 did not go to the second scene of offence and therefore she had not mentioned the overt-acts of the accused in her statement.

39. Learned counsel for the appellants contended that P.Ws.1, 2 and 10 are highly interested witnesses; that there are discrepancies in their evidence and therefore reliance cannot be placed on their

evidence.

40. In ***Ram Bharosey Vs. State of U.P.***^[2], the Supreme Court observed that merely because a witness is close relative of the deceased he does not become an interested witness and that an Interested witness is one who is interested in securing conviction of a person out of vengeance or enmity or due to disputes relating to the properties. As observed hereinbefore, the appellants were unsuccessful in proving previous enmity/political rivalry between them and the family of the deceased. PW-1 is the injured witness and we find no reason for her to falsely implicate the appellants/accused. As a matter of fact, there are no contradictions marked in the evidence of the prosecution witnesses. The occurrence of the incident was not only spoken by PW-1 and PW-2, who are the wife and brother of the deceased, but the same was spoken to even by the independent eye witnesses i.e., PW-6 and PW-7. Therefore, we do not find any force in the submission of the learned counsel for the appellants that there are discrepancies in the evidence of the prosecution witnesses.

41. In ***C. Magesh and others Vs. State of Karnataka***^[3], the rationale laid down by the Supreme Court is that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasize, consistency is the keyword for upholding the conviction of an accused. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so", hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the Court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses.

42. In the case of ***State of M.P. Vs. Ratan Lal***^[4], the Supreme Court held that in a case where various links have been satisfactorily made out and the accused did not offer any explanation consistent

with his innocence, the absence of such explanation itself is an additional link which completes the chain.

43. In the present case, though the prosecution made allegations against the accused that PWs.1, 2, 6 and 7 have seen them causing injuries to the deceased and PW.1 and though the material objects have been seized at their instance with blood stains of human origin and though the motive for commission of the offence was stated as the illicit intimacy between the deceased and wife of Accused No.1, during their examination by Court under Section 313 Cr.P.C., except denying the case of the prosecution as false, the accused have not explained any circumstances to prove their innocence. Therefore, the evasive answers given by the appellants/accused would go a long way in completing the chain of circumstances establishing their guilt.

44. Having regard to the facts and circumstances of the case, we are of the opinion that the prosecution has proved the guilt of the accused beyond reasonable doubt. We do not see any infirmity or illegality in the impugned judgment of the trial Court. Accordingly, the Criminal Appeal is dismissed.

REDDY, J

C.V. NAGARJUNA

J

G. SHYAM PRASAD,

Date: 05-06-2016.

Jsk/Dsh

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[\[1\]](#) LAWS (P&H) 1986-9-33

[\[2\]](#) 2010 (1) SCC 722

[\[3\]](#) 2010 (5) SCC 645

[\[4\]](#) AIR 1994 SC 458