THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL APPEAL No.472 OF 2010
AND
CRIMINAL REVISION CASE No.480 OF 2009

C O M M O N J U D G M E N T
(per Hon'ble Sri Justice Sanjay Kumar)

By judgment dated 14.11.2008 in Sessions Case No.199 of 2006, the learned Principal Sessions Judge, Kurnool, acquitted A1 to A6 of the charges under Sections 147, 148, 326, 307 and 302 read with Section 149 IPC. Aggrieved by the said acquittal, the State is in appeal, under Section 378(1) & (3) Cr.P.C, in Criminal Appeal No.472 of 2010, while P.Ws.1 and 2 (P.W.2, wrongly described as P.W.5) filed a revision under Sections 397 and 401 Cr.P.C. in Criminal Revision Case No.480 of 2009. P.W.1 is a friend of Boya Chandranna, the deceased, while P.W.2 is his nephew.

The gravamen of the prosecution's case against A1 to A6 was that they committed the murder of Boya Chandranna and also attempted to kill Boya Pathikonda Ranganna (P.W.1) on 13.09.2005 at about 8.30 PM at the pipeline near the Village Vanka close to Ibrahimpuram Village. Be it noted that the name of Boya Pathikonda Ranganna (P.W.1) is wrongly shown as Boya Pathikonda Naganna in the charge sheet and consequently, in the charges framed by the Sessions Court.

The case of the prosecution before the Sessions Court:

Boya Pathikonda Ranganna (P.W.1) came to Nandavaram Police Station on 14.09.2005 at about 2.00 AM and submitted an oral complaint to the Sub-Inspector of Police, Nandavaram Police Station (P.W.11). Thereupon, P.W.11 recorded the statement of P.W.1 and

registered a case in Crime No.45 of 2005 under Sections 147, 148, 324, 307 and 302 r/w 149 IPC. Ex.P10 is the FIR. P.W.11 then sent P.W.1 to the Government Hospital, Yemmiganur, along with PC No.1113, for treatment. P.W.11 sent Ex.P10 FIR to the learned Judicial Magistrate of First Class, Yemmiganur, through PC No.301. The Inspector of Police, Adoni Circle (P.W.13), was instructed over the telephone on 14.09.2005 at 3.00 AM by B.V.R.Prasad, Deputy Superintendent of Police, Adoni, to take up investigation in the subject Crime No.45 of 2005. P.W.13 reached Nandavaram Police Station at about 5.20 AM and took up the CD file for investigation. He examined and recorded the statement of P.W.1, who was at the police station at that time, and left the police station at about 6.15 AM, along with the Sub-Inspector of Police and the staff, and visited the scene of the offence at about 6.45 AM. He secured the presence of Ediga Seshaiah (L.W.8), Ediga Rajasekhar (P.W.7) and Golla Umapathi (L.W.10). He then secured the presence of Boya Thota Ramudu (P.W.3), Boya Rangamma (L.W.4), Boya Sankaramma (P.W.4) and Boya Venkateswarlu (P.W.2), examined them and recorded their statements. He commenced inquest proceedings over the dead body of Boya Chandranna at 7.00 AM and completed the same by 9.30 AM, in the presence of panchas, Ediga Seshaiah (L.W.8), Ediga Rajasekhar (P.W.7) and Golla Umapathi (L.W.10). Ex.P3 is the inquest panchanama. He then seized the bloodstained earth (MO.6) and controlled earth (MO.7) at the scene of the offence. He also effected paper seizure of the terricotton shirt (MO.1), banian (MO.2), full drawer (MO.3), dhoti (MO.4) and waist thread (MO.5) of the deceased and instructed PC No.1423 to collect these case properties after completion of the post-mortem. P.W.13

also prepared the rough sketch of the scene of the offence (Ex.P11). At about 10.00 AM, he visited Kottalu Village and examined and recorded the statement of Boya Beesamma (P.W.5). From there, he went to Ibrahimpuram Village and examined and recorded the statement of Gunda Siva Kumar (P.W.6). On 30.09.2005, P.W.13 sent the material objects to the Forensic Science Laboratory under a Letter of Advice (Ex.P12).

While so, the Inspector of Police, Yemmiganur Circle (P.W.14), received reliable information at about 12.00 noon on 04.10.2005, when he was in Nandavaram Police Station, about the whereabouts of the accused. He then left the police station along with his staff and reached Ibrahimpuram Village at about 12.30 PM. He secured the presence of N. Utcha Reddy (P.W.8) and DSR Mohan Rao (L.W.12) and they left the village in the police jeep. When they reached the Eswara temple, which was at a distance of 1 KM from Kalidevakunta, they found six persons sitting near the temple, who tried to run away towards Mantralayam fields on seeing them. However, P.W.14 and his staff apprehended the six persons and brought them to the Eswara temple. They were identified by the constable and head constable as A1 to A6 in Crime No.45 of 2005 on the file of Nandavaram Police Station. A1 was stated to have disclosed, during his interrogation, that the hunting sickles used in the commission of the offence were hidden under a slab near the Eswara temple and handed over the same to P.W.14. Ex.P13 is the relevant portion of the statement made by A1. MOs.8 to 10 are the three hunting sickles produced by A1 which were seized under cover of a panchanama. P.W.14 stated that he took the accused back to Nandavaram Police Station and detained them after arrest. They were produced before the Judicial Magistrate

of First Class, Yemmiganur, on 05.10.2005 for remand. P.W.14 stated that after he received the Forensic Science Laboratory Report (Ex.P14) and upon completion of the investigation, he laid a charge sheet before the Judicial Magistrate of First Class, Yemmiganur, on 03.12.2005.

Upon committal, the Sessions Court framed six charges which read as under:

> "FIRSTLY : That you A.1 to A.6 on 13-09-05 at about 8-30 pm near the Pipeline near Village Vanka near Ibrahimpuram Village, were members of an unlawful assembly and did in prosecution of the common object of such assembly to wit., to attack and kill the deceased Boya Chandranna and attempt to murder Boya Pathikonda Naganna committed the offence of rioting and at that time you A.1 was armed with a spear and you A.2 to A.6 were armed with hunting sickles, and that you thereby committed an offence punishable U/Sec.148 I.P.C. and within my cognizance.
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> SECONDLY :- That you A.1 to A.6 on the same day, time and place as mentioned in Charge No.1, supra, did commit murder by intentionally or knowingly causing the death of Boya Chandranna, by stabbing him with a spear by you A.1 and by hacking him with hunting sickles by you A.2 to A.6 and that you thereby committed an offence punishable U/Sec.302 I.P.C. and within my cognizance.
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> THIRDLY: That you A.4 on the same day, time and place as mentioned in Charge No.1 supra, did an act to wit., hacked Boya Pathikonda Naganna with a sickle on his chest, with such intention or knowledge and under such circumstances viz., by such hacking that if by that act you had caused the death of Boya Pathikonda Naganna, you would have been guilty of murder and that you caused hert to the said Boya Pathikonda Naganna, by the said act and that you thereby committed an offence punishable U/Sec.307 I.P.C. and within my cognizance.
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> FOURTHLY: That you A.3 on the same day, time and place as mentioned in Charge No.1, supra, did an act to wit., hacked

Boya Pathikonda Naganna, with a hunting sickle on his left hand fingers, with such intention or knowledge and under such circumstances viz., by such hacking, that if by that act you had caused the death of Boya Pathikonda Naganna, you would have been guilty of murder and you caused hurt to the said Boya Pathikonda Naganna by the said act, and that you thereby committed a n offence punishable U/Sec.307 I.P.C. and within my cognizance.

FIFTHLY:- That you A.1, A.2, A.5 and A.6. on the same day, time and place as mentioned in Charge No.1 supra, were members of an unlawful assembly in prosecution of common object of you A.1 to A.6, when A.4 of you committed an offence viz., attempting to murder Boya Pathikonda Naganna, punishable U/Sec.307 I.P.C. you are thereby U/Sec.149 I.P.C. guilty of committing offence U/Sec.307 I.P.C. and within my cognizance.

SIXTHLY:- That you A.1, A.2, A.4 to A.6 on the same day, time and place as mentioned in Charge No.1, supra, were members of an unlawful assembly in prosecution of common object of you A.1 to A.6, when A.3 of you committed an offence viz., attempt to murder Boya Pathikonda Naganna, an offence punishable U/Sec.307 I.P.C. you are thereby U/Sec.149 I.P.C. guilty of committing the offence punishable U/Sec.307 I.P.C. and within my cognizance."

A1 to A6 pleaded innocence and claimed to be tried. The prosecution thereupon examined 14 witnesses during the trial and marked 14 exhibits. Case properties were marked as MOs.1 to 10. The defence did not choose to lead any evidence.

On due consideration of the evidence, oral and documentary, the Sessions Court acquitted A1 to A6 of all charges. Hence, this appeal and revision by the State and P.Ws.1 and 2 respectively. The issue before us presently is whether the acquittal of the accused on all the charges leveled against them is sound and proper or warrants interference in exercise of appellate or revisional jurisdiction. In this

regard, this Court must be conscious of the fact that it is exercising appellate/revisional jurisdiction and apply settled tenets of judicial review applicable to a judgment of acquittal. Useful reference may be made to case law in this regard.

In ***DILAWAR SINGH V/s. STATE OF HARYANA***[1], the Supreme Court observed that a Court of appeal would ordinarily not interfere with an order of acquittal unless the approach is vitiated by manifest illegality and not merely because, on the evaluation of the evidence, a different plausible view may arise.

In ***DR.SUNIL KUMAR SAMBHUDAYAL GUPTA V/s. STATE OF MAHARASHTRA***[2], the Supreme Court reiterated the established principle that while dealing with a judgment of acquittal, the appellate Court must consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial Court were perverse or otherwise unsustainable and in that process, assess whether in arriving at a finding of fact, the trial Court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence or had taken into consideration evidence brought on record contrary to law. The Supreme Court observed that the appellate Court should not ordinarily set aside a judgment of acquittal if two views are possible, though the view of the appellate Court may be the more probable one, as the trial Court would have had the benefit of watching the demeanour of witnesses and would be the best judge of the credibility of such witnesses.

Earlier, in ***HIMMAT SUKHADEO WAHURWAGH V/s. STATE OF MAHARASHTRA***[3], the Supreme Court accepted that when the

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[1] (2015) 1 SCC 737
[2] 2011 CRI.L.J. 705
[3] (2009) 6 SCC 712

trial Court, on a minute examination of the evidence, thought it fit to record an order of acquittal, the High Court would not be justified in re-appreciating the evidence and arriving at a different possible conclusion as an accused would be presumed to be innocent till held guilty by a competent Court and this principle would be immeasurably strengthened where the trial Court made an order of acquittal. The Supreme Court referred to its earlier decision in ***CHANDRAPPA V/s. STATE OF KARNATAKA***[4], wherein it had been observed that the appellate Court would have full authority to re-appreciate and reconsider the evidence in a case of acquittal, barring a case where two views are possible on the evidence and one favouring the accused had been taken. However, on facts, the Supreme Court found that the judgment of the trial Court was based on a complete misreading of the evidence and the view in favour of the accused was not justified and therefore, the High Court would have failed in its duty if it did not interfere.

In ***STATE OF U.P. V/s. M.K.ANTHONY***[5], the Supreme Court observed that if the Court, before whom the witness gives evidence, had the opportunity to form an opinion about the general tenor of evidence given by the witness, the appellate Court, which does not have such benefit, has to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons, weighty and formidable, it would not be proper to reject such evidence on the ground of minor variations or infirmities in trivial details.

Juxtaposed to the aforestated precedential law, the law laid down in ***KARNEL SINGH V/s. STATE OF M.P.***[6] must also be given

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[4] (2007) 4 SCC 415
[5] AIR 1985 SC 48
[6] (1995) 5 SCC 518

due respect. Therein, the Supreme Court, having scrutinized the evidence, found that the Investigating Officer had not taken the care expected of him and the investigation was casual and defective but despite the same, as the Courts below had recorded a conviction, the Supreme Court opined that in cases of defective investigation, the Court has to be circumspect in evaluating the evidence and it would not be right in acquitting an accused person solely on account of the defect as to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. The Supreme Court concluded that on closer scrutiny, the loopholes in the investigation in the said case were to help the accused at the cost of prosecutrix and to acquit solely on that ground would be adding insult to injury.

Balancing these dual perspectives, this Court must review the order of acquittal under appeal. In this context, the evidence adduced before the Sessions Court manifests the following salient points:

Boya Pathikonda Ranganna (P.W.1), the injured eyewitness, stated that on 13.09.2005 at about 8.30 PM, the deceased was murdered. On that day at 6.30 PM, P.W.1 said that the deceased asked him to come along with him to Ibrahimpuram Kottalu and thereupon, they both went to ask Gunda Siva Kumar (P.W.6) to lend his motorcycle to them to go to Kottalu. P.W.6 was stated to have given them his motorcycle. P.W.1 said that the deceased and he then went to the house of the deceased where the deceased informed his wife, Boya Sankaramma (P.W.4), that he was going to Kottalu. P.W.1 said that at 7.00 PM, they started on the motorcycle to go to Kottalu and upon reaching there, the deceased informed Boya Beesamma (P.W.5) that he required coolies. P.W.5 was stated to have replied that

she had some work and asked for time to go and speak to the coolies. From there, P.W.1 said that the deceased and he went to Rama Temple at Kottalu on the motorcycle. There, the deceased was stated to have parked the vehicle and while P.W.1 was waiting near the vehicle, he went into the camp and returned after one hour. Upon his return, P.W.1 stated that he and the deceased started on the motorcycle to come back to the village. He said that they started from Kottalu at 8.20 PM on the motorcycle and that they were proceeding slowly with the headlight on. He further stated that there was good moonlight as Mala Punnami (full moon) was only five days away. He said that on the way, they reached near the Vanka where there was a pipeline. There, A1 to A6 were stated to have come from the eastern side of the road. Five of them were stated to be holding hunting sickles while Chinna Narasimhulu (A1) was holding a spear. A1 was stated to have assaulted the deceased with the spear on the right side above the waist and the deceased fell. When he fell down, the other five accused were stated to have assaulted him with the sickles, each giving a blow. P.W.1 stated that when he tried to intervene to save the deceased, A4 hacked him with a sickle on his chest on the right side and A3 also tried to attack him. P.W.1 raised his left hand to ward off the blow and the sickle landed on his left palm. P.W.1 stated that he feared for his life and came away from the place. The accused were stated to have left towards the river, Mantralayam Yeru. P.W.1 said that he then reached Nandavaram Police Station, where the Sub-Inspector was present and he narrated to him as to what had happened. The Sub-Inspector of Police was stated to have recorded the statement, read it over to him and then got his right thumb impression affixed thereon as he was an illiterate and as his left hand

was injured. P.W.1 confirmed that Ex.P1 was the statement made by him and recorded by the Sub-Inspector of Police, Nandavaram. P.W.1 further stated that the Sub-Inspector then sent him to the hospital at Yemmiganur, along with a constable, where he was examined and treated by a doctor, and then referred to the Government General Hospital, Kurnool, for further treatment. P.W.1 stated that the constable then took him back to the police station and at about 6.00 AM, the Circle Inspector came to the police station and examined him. He was then sent along with a constable to the Government General Hospital, Kurnool, and they reached there at about 10.00 AM. Upon the request made by the constable, P.W.1 stated that he removed his bloodstained shirt, banian and towel and as the constable said that he would take these bloodstained clothes later, P.W.1 said that he kept them there. P.W.1 stated that he was treated in the said hospital for the injuries sustained by him and claimed ignorance as to what had happened to his bloodstained clothes. He further stated that he was discharged from the hospital at 6.00 PM on the same day. According to P.W.1, the motive for A1 to A6 to attack the deceased was that there had been enmity between the accused and the deceased for about nine years due to panchayat elections and cases were also filed against each other.

P.W.1 admitted in his cross-examination that his first wife, Ramakka, was the daughter of the junior paternal uncle of A1. He further admitted that he had deserted his first wife and married Santhamma, with whom he had six children. He also stated that Narsamma was the senior paternal aunt of his first wife and that he was one of the accused in the murder case of Narsamma's daughter. He stated that the distance between Ibrahimpuram and

Ibrahimpuram Kottalu was 1 KM and the scene of the offence was situated between the two villages. He said that the mother of the deceased was the Sarpanch of the village at the relevant point of time. He further stated that the distance between Ibrahimpuram and Kalidevakunta was 4 KMs and that Kalidevakunta was situated between Mantralayam and Yemmiganur. He stated that there was regular vehicular movement on the road between Yemmiganur and Mantralayam. The distance between Kalidevakunta and Nandavaram was stated to be 20 KMs, while the distance between Kalidevakunta and Yemmiganur was stated to be 18 KMs. He admitted that by the time of the incident, the wife, mother and brothers of the deceased were in the village. He said that immediately after the incident, he rushed to Nandavaram without going to Ibrahimpuram and he reached Nandavaram without touching any village. Even upon reaching Nandavaram, P.W.1 stated that he did not inform any of the family members of the deceased about his death. He further stated that on 14.09.2005 at about 7.00 PM, he reached Ibrahimpuram Village and till that time, he did not inform the villagers about the death of the deceased. According to him, by the time he reached Nandavaram, the Sub-Inspector of Police and the Inspector of Police were available in the station. He further stated that the Sub-Inspector of Police examined him while the Inspector of Police examined him on the next day morning. He said that he was in Nandavaram Police Station upto 3.00 AM. He further stated that a lady doctor examined him at Yemmiganur Hospital. P.W.1 admitted that his village and Nandavaram Police Station were situated within the Circle Office of Yemmiganur and that the Inspector of Police, Yemmiganur, came to Nandavaram Police Station at about 6.00 AM

on 14.09.2005. He categorically stated that the Inspector of Police, Yemmiganur, examined him and recorded his statement. He further stated that except the Sub-Inspector of Police, Nandavaram, and the Inspector of Police, Yemmiganur, no other police officials examined him. He said that he and the constable went to Yemmiganur Hospital from Nandavaram on a lorry and he again went to Nandavaram Police Station from Yemmiganur Hospital in an auto. He stated that he and the constable went to the Government Hospital, Kurnool, from Nandavaram via Yemmiganur in a bus. He said that he left Nandavaram to go to Government Hospital, Kurnool, at about 6.10 AM and reached the Government Hospital, Kurnool, at about 10.00 AM. He said that he lost his bloodstained clothes at the Government General Hospital, Kurnool, at the time of examination by the doctor as he kept the said clothes on the table as per the directions of the constable. According to him, the Government Doctor at Yemmiganur gave him two injections but did not clean his wound and the Duty Doctor, Government General Hospital, Kurnool, cleaned and sutured the wound and discharged him on the same day at about 7.00 PM. He categorically stated that except himself and the deceased, no one was present at the scene of the offence at the time of the incident. He admitted that the incident took place in the rainy season. He said that the motorcycle fell on the left side of the road leading from Ibrahimpuram Kottalu to Ibrahimpuram village and the deceased fell on the road margin. He confirmed that the deceased received the spear injury while he was on the motorcycle and the other injuries, after he fell down. He stated that when he tried to intervene to rescue the deceased, A4 inflicted an injury on his chest. He confirmed that the deceased received injuries and died in his presence. He also

confirmed that he sustained injuries on the fingers of his left hand at the hands of A3. He stated that A1 to A6 belonged to Congress party while the deceased and his mother belonged to Telugu Desam party. He categorically stated that the Inspector of Police, Adoni, did not examine him and record his statement. He confirmed that there were rains prior to and after the incident and denied the suggestion that 13.09.2005 was a cloudy day. He also denied the suggestion that he did not inform the police that there was moonlight on 13.09.2005. He denied the suggestion that 13.09.2005 was a dark night and there was no possibility to see anything. He denied the suggestion that due to fear he went to his village and concealed himself. He also denied that he had gone to the village to dress up his wound, remove his bloodstained clothes and hide himself till the arrival of the police at the village. He denied the suggestion that the police came to Ibrahimpuram village in the early hours and took him to the scene of the offence. He denied the suggestion that the complaint was prepared at the scene of the offence. He also denied the suggestion that his party leaders brought a police officer of their choice so as to foist a false case against the accused.

Boya Venkateswarlu (P.W.2) stated that the deceased was his junior paternal uncle. He also claimed to have been an eyewitness. He stated that on the fateful day, he went to his fields at about 5.00 PM to water the crop. He said that he put water in the field upto 8.00 PM and when he was returning home by walk, he reached near Galeppa's land which was at the Vanka and the pipeline. He said that he then saw a motorcycle coming from Kottalu side, which was a small motorcycle on which the deceased and P.W.1 were coming. He stated that he saw that the deceased was driving while P.W.1 was the

pillion rider. He said that when he was at Galeppa's land, the motorcycle reached there and the six accused came from the pipeline side and A1 hit the deceased with a spear on the right side of his neck. P.W.2 said that upon receiving the said blow, the deceased fell on the road and the motorcycle that he was riding fell at a little distance from him on the down margin of the road. The other five accused were stated to have hacked the deceased with hunting sickles. P.W.2 stated that when P.W.1 interfered to save the deceased, A4 hacked him with a sickle on his chest and A3 attempted to hack him with a sickle and when P.W.1 raised his left hand to ward off the blow, the sickle landed on his left palm and he received a bleeding injury. After the said assault, P.W.2 stated that P.W.1 moved aside. P.W.2 further stated that fearing that if he interfered he would also be killed, he hid himself and after the accused fled towards the Yeru side and P.W.1 went towards Nandavaram side, he went to the deceased and found him dead. He stated that he did so twenty minutes after the accused left that place. He then went home and informed his father, his paternal aunt and his grandmother. He said that they all then came to the spot. P.W.2 stated that as P.W.1 would report the matter to the police, he did not give any report about the incident as they were all in a sorrowful mood. He said that the police came and examined him about the incident later in the morning. As to the motive for the assault, P.W.2 said that the accused belonged to Congress party while the deceased belonged to Telugu Desam party. In the Sarpanch election, on the support of the deceased, P.W.2 stated that his grandmother was elected as the Sarpanch and there was enmity between the accused and the deceased on that count.

In his cross-examination, P.W.2 admitted that he, his father and the deceased were the accused in a criminal case registered under Section 307 IPC, relating to Harijana Yesanna. He further admitted that his father and the deceased were the accused in another case, Crime No.1 of 1995 on the file of Nandavaram Police Station. He said that his land was situated on the south-east of the scene of the offence at a distance of half a mile. The distance between his land and his village *via* agricultural fields was stated to be half a kilometer. He stated that in the year 2005, he raised mirchi crop in his land and that a bore well was available in the said land, the extent of which was 4 acres. On the date of the incident, he said that he went to the land to water the crop at about 5.00 PM. He denied the suggestion that there was no necessity to water mirchi crop during rainy season. He categorically stated that he witnessed the incident from a distance of ten feet on the southern side of the road. He confirmed that he saw P.W.1 at the scene of the offence and also saw P.W.1 being beaten by the accused. He said that he did not make a hue and cry on seeing the incident and did not accost P.W.1. He said that he did not know whether P.W.1 saw him at the scene of the offence. He said that he went to his village and immediately brought his relations to the scene of the offence at about 9.30 PM. The mother and wife of the deceased were stated to have come there at that time. He said that they were at the scene of the offence till the next day morning. One constable was stated to have come to the scene of offence at about 6.30 AM.

These two witnesses, P.Ws.1 and 2, were the crucial witnesses for the prosecution. However, though P.W.2 stated that he witnessed the incident from a distance of only ten feet and P.W.1 insisted that it

was a moonlit night, P.W.1 did not even see P.W.2. Further, whether P.W.2 would have remained mute and stood by as a silent spectator while A1 to A6 attacked the deceased and P.W.1 is debatable. His own evidence shows that he figured as an accused in a crime registered under Section 307 IPC. His claim of helplessness in the face of the alleged attack upon the deceased and P.W.1 does not jell with this fact. P.W.1's conduct also raises any number of doubts. When he was attacked in such close proximity to Ibrahimpuram Village, his conduct in rushing to Nandavaram Police Station at a distance of 10 KMs. without even going to the village is suspicious. P.W.1's claimed reticence in informing the family members of the deceased of his death also appears suspicious. According to P.W.11, P.W.1 reached Nandavaram Police Station at about 2.00 AM on 14.09.2005. P.W.1 had suffered injuries to his chest and left hand and with these bleeding injuries, he is stated to have covered this long distance by foot! It is relevant to note that the bloodstained clothes of P.W.1 were not seized and never saw the light of day. Dr. K.Hanumantha Reddy (P.W.9), the Civil Assistant Surgeon at Yemmiganur Community Health Centre, was not asked as to whether P.W.1 was brought there in clothes stained with blood. P.W.9 however confirmed that he examined P.W.1 on 14.09.2005 at about 2.50 AM and found the following injuries:

1) Incised injury of 1x4 cm of 6 cms in depth situated obliquely at Right sterno-clavicular joint.
2) Incised injury of 1/8x1/8 of 4cms seen at left hand started from first phalanx of little finger extended upto first phalanx of the point finger.
3) Tenderness and swelling present at left hand thumb.

These were stated to be grievous injuries caused by a sharp edged weapon. P.W.9 also conducted the post-mortem examination of the body of the deceased and confirmed that Ex.P6 was his report in this regard. He stated that the external injuries 1 and 9 found by him on the body of the deceased were possible with a spear while injuries 2, 3 to 8 and 10 to 13 were possible with sharp edged weapons like the hunting sickles shown to him in Court. He confirmed that the cause of death of the deceased was shock and hemorrhage due to the injuries suffered by him.

Dr. K.Thamaraveni (P.W.10), the Doctor at the Government Medical College, Kurnool, who examined P.W.1, stated that she received an X-Ray requisition from the Casualty Medical Officer, Government General Hospital, Kurnool, on 14.09.2005 and that Ex.P7 was the said requisition. She stated that she took the X-Rays of P.W.1's chest and left hand. She certified that Ex.P8 was the set of three X-Ray films while Ex.P9 was the Radiologist report. In her cross-examination, she stated that P.W.1 might have reported in the casualty ward or in the Radiology Department at about 7.00 AM on 14.09.2005 as per Ex.P7.

Upon analysis of the aforestated evidence and the other material on record, this Court finds that a crucial circumstance which undermines the case of the prosecution is the fact that the investigation was taken up by multiple officers and at that, by those who had no jurisdiction in the matter. Admittedly, the scene of the offence fell within the jurisdiction of Nandavaram Police Station which, in turn, falls in Yemmiganur Circle. Therefore, the Inspector of Police, Adoni, had no jurisdiction over the subject investigation. It is however stated that because of the intervention of one

B.V.R.Prasad, Deputy Superintendent of Police, Adoni, the investigation was taken up by the Inspector of Police, Adoni. No explanation was put forth before the Sessions Court as to why the Inspector of Police, Adoni, was brought into picture to the exclusion of the jurisdictional Inspector of Police, Yemmiganur (P.W.14). Given the suggestion to P.W.1, in his cross-examination, that his party leaders had brought a police officer of their choice so as to foist a false case against the accused, the said Deputy Superintendent of Police, Adoni, necessarily had to explain his conduct in this regard. He did not choose to do so. Further, the evidence of the Inspector of Police, Yemmiganur (P.W.14) reflects that he also conducted part of the investigation, including the apprehension of the accused and effecting recovery of case properties, MOs.8 to 10. He also admitted that it was he who laid the charge sheet against the accused.

There is any amount of confusion created owing to the simultaneous investigation by various officers. It is an admitted fact that when P.W.1 reached Nandavaram Police Station, P.W.11 reduced his oral complaint into writing in Ex.P1 report. However, P.W.1 stated at one stage in his cross-examination that by the time he reached Nandavaram Police Station at 2.00 AM in the morning, the Sub-Inspector of Police and the Inspector of Police were both available in the station! He also stated that the Sub-Inspector of Police examined him then and the Inspector of Police examined him on the next day morning. This corroborates the statement made by him in his chief examination that after he was taken to the hospital at Yemmiganur, the constable brought him back to the police station and at 6.00 AM, the Inspector of Police examined him. In his cross-examination, he confirmed that it was the Inspector of Police, Yemmiganur, who

examined him and recorded his statement. He further confirmed that the Inspector of Police, Adoni, did not examine him and record his statement. This is in direct contradiction to the claim of P.W.13, the Inspector of Police, Adoni, who said that he examined and recorded the statement of P.W.1 on 14.09.2005 at 5.20 AM. P.W.13 further claimed that he reached Nandavaram Police Station at about 5.20 AM. If the Inspector of Police, Yemmiganur, recorded the statement of P.W.1 at about 6.00 AM at the said police station, the claim of P.W.13 that he did not meet the Inspector of Police, Yemmiganur, and that he was not there when he reached Nandavaram Police Station is rendered doubtful. This claim of P.W.13 is further diluted by the statement of P.W.11, the Sub-Inspector of Police, Nandavaram, who said that except the Inspector of Police, Yemmiganur, no other police personnel visited Nandavaram Police Station on 14.09.2005. P.W.11 also confirmed in his chief examination that the Inspector of Police, Yemmiganur (P.W.14), visited Nandavaram Police Station on 14.09.2005 and though he could not say the exact time, he said that it may have been around 4.00 AM.

Another crucial fact is that P.W.11 handed over Ex.P10-FIR to PC No.301 to submit the same to the Judicial Magistrate of First Class, Yemmiganur. However, PC No.2787 of Yemmiganur Police Station ultimately submitted the said FIR to the Judicial Magistrate of First Class, Adoni. It is not explained as to how the FIR changed hands from PC No.301 to PC No.2787 and why it was taken to Adoni.

In a case involving a faction feud homicide, this Court would have to be mindful of the fact that there may be *post facto* planning and design to frame particular people and in this context, registration of the crime and investigation by the police would assume

significance and would have to be reviewed carefully. In the present case, the alleged incident was stated to have occurred on 13.09.2005 at about 8.30 PM. Information of this offence was stated to have been given to the police at Nandavaram Police Station only at 2.00 AM on 14.09.2005. The distance is shown in Ex.P10-FIR as 10 KMs from the police station. Ex.P5, wound certificate issued by P.W.9, indicates that P.W.1 was examined by him at 2.50 AM on 14.09.2005. The case of the prosecution is that the constable took P.W.1 back to the police station from Yemmiganur Community Health Centre and he was examined by the Inspector of Police, Yemmiganur or Adoni, at about 6.00 AM. According to P.W.1, he then left Nandavaram Police Station at around 6.10 AM and reached the Government General Hospital, Kurnool, at about 10.00 AM. This statement is shown to be factually incorrect as Ex.P7, the X-Ray requisition form, issued by the Government General Hospital, Kurnool, indicates that it was issued at 7.00 AM. This aspect was confirmed by P.W.10. No evidence was elicited from the doctors, either at Yemmiganur or at Kurnool, that P.W.1 was brought to them in bloodstained clothes. There is also no explanation as to how P.W.1 got a fresh set of clothes at Kurnool, if his bloodstained clothes were lost there.

Ex.P3, inquest report, indicates that the inquest proceedings were conducted on 14.09.2005 from 7.00 AM to 9.30 AM. Therein, P.W.2, who figured as a blood relation/witness, is shown as an eyewitness. However, as stated hereinbefore, the very presence of P.W.2 at the scene of the offence is rendered highly doubtful. As to whether he would have gone to his land at 5.00 PM and would have returned therefrom at 8.00 PM and would have been walking along the road at night with no light whatsoever is a suspicious fact in

itself. Apart from this, would P.W.1 have failed to see him if he was standing at a short distance of just ten feet from the scene of the incident. Be it noted, P.W.2 recounted with great detail the particulars of the attack upon the deceased as well as P.W.1, though he contradicted P.W.1 in claiming that the initial spear attack by A1 was on the deceased's neck. P.W.2 also stated that he identified that the deceased was driving the motorcycle while P.W.1 was riding pillion and that they were coming from Kottalu side. As P.W.2 was returning to Ibrahimpuram Village, the motorcycle would have been coming from behind him and if so, he could not have seen as to who was driving the motorcycle and who was riding pillion, as the headlight which was on would have been in his eyes. These doubtful factors, cumulatively, lead to the conclusion that P.W.2 is a planted witness and that he was not even there.

On the other hand, P.W.1 was an injured witness and his presence at the scene of the incident carries more weight. However, as to whether he could have seen all the accused clearly in the dark, given his admission that it rained before and after the incident implying that it must have been a cloudy night, and whether the assailants, allegedly six in number, would have allowed him to survive after having mounted an attack on him also is doubtful. Indubitably, there was a homicidal attack on the deceased but given the lacunae in the investigation and the discrepancies in the time factors in relation to P.W.1, this Court must invariably entertain a doubt as to the sanctity and fairness of the investigation and the findings thereof. It is an admitted fact that the bloodstained clothes of P.W.1 never saw the light of day and that is a crucial weakness in the prosecution's case. Though the police claimed that the hunting

sickles used in the commission of the offence were seized under a recovery panchanama (Ex.P13) at the instance of the accused, P.W.14 admitted that there were no bloodstains on the sickles. Further, these sickles were not even sent to the Forensic Science Laboratory for chemical examination. There is no explanation forthcoming for this crucial lapse also.

In the light of the aforestated discrepancies, contradictions and lapses, this Court finds no irregularity or illegality in the judgment under appeal, acquitting the accused of all charges. Though the prosecution cited P.W.1 as an eyewitness, the lapses in the investigation and the discrepancies as pointed out *supra*, give rise to a genuine doubt as to the veracity of his evidence and the truth of the prosecution's case. The benefit thereof undoubtedly had to be given to the accused. The Sessions Court did so.

The Appeal and Revision therefore fail and are accordingly dismissed.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

16th SEPTEMBER, 2016

PGS