

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

CRIMINAL APPEAL NOs.1224 and 1313 of 2010

DATED:29-06-2016

Criminal Appeal No.1224 of 2010

Between:

Vithanala Yesu  
and others ... Appellants

And

The State of Andhra Pradesh  
Rep. by its Public Prosecutor  
High Court of A.P., Hyderabad ... Respondents

COUNSEL FOR THE APPELLANTS: Mr. N. Siva Reddy

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

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Criminal Appeal No.1313 of 2010

Between:

Gummadi Yesu  
and others ... Appellants

And

The State of Andhra Pradesh  
Rep. by its Public Prosecutor  
High Court of A.P., Hyderabad ... Respondents

COUNSEL FOR THE APPELLANTS: Mr. A. Prabhakar Rao

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

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THE COURT MADE THE FOLLOWING:

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

Criminal Appeal No.1224 of 2010 is filed by accused Nos.7 to 10 and Criminal Appeal No.1313 of 2010 is filed by accused Nos.1 to 6 in Sessions Case No.391 of 2009 on the file of the VI Additional Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry.

2. The case of the prosecution in brief is that accused No.1 and accused No.2 are the sons of accused Nos.3 and accused No.4. Accused No.5 is the wife of accused No.1 and accused No.6 is the wife of accused No.2. Thus accused Nos.1 to 6 constitute one family. Accused No.8 is the mother of accused No.7 and accused No.10 is the mother of accused No.9. Accused Nos.7 to 10 are the relatives of accused Nos.1 to 6. The two deceased – Yadla Subba Rao @ China Subba Rao and Panda Chinnari (hereinafter referred to as deceased No.1 and deceased No.2 respectively) – are siblings and residents of Bhupalapatnam Village in Rajanagaram Mandal. P.Ws.1 to 3, 8, 9 and 10; and L.Ws.4, 8 and 9 are the residents of Bhupalapatnam Village, in Rajanagaram Mandal. P.Ws.1 to 3, L.W.4 and P.W.8 are blood relatives of the deceased. Among them, P.Ws.1 to 3 are the injured witnesses. P.Ws.9 and 10, and L.W.8 are the neighbours of the deceased and eyewitnesses to the occurrence. L.W.9 is the husband of deceased No.2. P.W.12, and L.Ws.12 and 13 are the mediators and inquest panchayatdars. P.Ws.4, 5, 6 and 11 are Medical Officers. P.W.7 is the Magistrate who recorded the dying declaration. P.W.14 is the Sub-Inspector of Police, Rajanagaram Police Station and P.W.15 is the Inspector of Police, Rajahmundry (Rural), who conducted the investigation and filed charge sheet. The

parents of the deceased had four daughters and three sons. P.W.8 is the eldest son, P.W.3 is the second son and deceased No.1 was the younger son. L.W.4 is the second daughter, deceased No.2 was the third daughter and P.W.1 is the younger daughter to their parents. Their another sister by name Nagamani is residing at Chakradwaraband Village. After the death of her husband, P.W.2 is maintaining her family. P.Ws.1, 3 and 8 are unmarried. About six months prior to the date of offence, L.W.4 along with her husband came over to the house of P.W.2 at Bhupalapatnam Village and were residing in a room separately. Deceased No.2 along with her husband – L.W.9 came over to the house of P.W.2 immediately after their marriage and were residing in a room separately. P.Ws.1 to 3 and 8 and deceased No.1 were residing together in their own house.

On the morning of 30.11.2005 P.W.1 and accused No.5 quarrelled with each other at the public tap, pulled and pushed each other due to which accused No.5 fell down and sustained injury and she has bitten the finger of P.W.1. Following the same, P.W.1 and deceased No.2 on one side and accused No.5 on the other side lodged their respective complaints in Rajanagaram Police Station. Case and counter case were booked under Section 160 IPC and both the parties were directed to attend the Court on 3.1.2006. Since then, the relationship between the two families got strained and the accused developed grudge against P.W.1 and her family members.

On 31.12.2005 at about 7.45 p.m., while P.W.3 was returning to his house, accused No.2 came across him at the centre near their house, abused him on the pretext that P.W.1 filed a false case against accused No.5, sister-in-law of accused No.2, and threatened him, that himself and his family members would kill P.W.3 and all his family members. At that juncture, P.W.3 revolted against accused No.2 and as a result, scuffle ensued and later they went to their houses. After his return to the house, P.W.3 informed this incident to P.Ws.1, 2 and 8, L.W.4 and both the deceased. P.W.2 told her children that she

would question accused No.2 about his warning. At about 8.00 p.m. on the same night, all the accused formed themselves into an unlawful assembly and armed with knives and axe went to the house of P.Ws.1 to 3, and 8 and L.W.4, questioned them about filing of false cases against accused No.5. Accused No.1 instigated accused Nos.4 and 6 to catch hold of P.W.1 by uttering that she is responsible for the disputes. While accused Nos.4 and 6 caught hold of P.W.1, accused No.1 aimed a knife, which was in his hands, to hack on the neck of P.W.1 and when she avoided the blow, she sustained a bleeding cut injury on her left shoulder. Again when accused No.1 aimed the knife to hack P.W.1, she warded off the blow with her hands and she sustained bleeding injuries on her right upper arm and left fingers. Accused No.2 also hacked P.W.1 on her right upper arm with an axe and caused a bleeding injury. On seeing the violent acts of the accused, deceased No.2 went to the rescue of P.W.1. Accused No.3 caught hold of the hair of deceased No.2, accused No.2 hacked near the right and left elbows of deceased No.2 with the axe, accused No.1 hacked her on the neck, left side of chest and left palm with the knife, as a result of which she fell down and died on the spot. When deceased No.1 interfered, accused No.1 hacked on his frontal neck, right cheek, left wrist and below the right knee with the knife and accused No.2 hacked below the right knee of deceased No.1 and he also fell down and died on the spot. On noticing all this, when P.W.2 went to the rescue of the deceased, accused No.5 stopped and caught hold of her, accused No.1 hacked on her right upper arm and right wrist with the knife and accused No.2 hacked on her right palm with the axe and caused bleeding injuries to her. On seeing the same, P.W.3 started running away. Accused No.1 aimed to hack on P.W.3's neck with the knife, and it hit on his neck and he sustained a bleeding injury. Accused Nos.3, and 7 to 9 chased P.W.3, caught hold of him and when he fell down on the ground they beat him with hands, and dragged him on the ground, and he resisted and escaped from them.

Later P.W.5 took P.Ws.1 and 2 to the District Head Quarters Hospital, Rajahmundry, and admitted them for treatment, and P.W.15 sent P.W.3 to the same Hospital, for treatment.

3. On receipt of telephonic information about the occurrence, P.W.14 visited the Hospital, collected the medico legal case (MLC) intimation in respect of P.Ws.1 and 2 and recorded the statement of P.W.1. P.W.7 recorded the dying declaration of P.Ws.1 and 2. P.W.14 registered the MLC intimation and the statement of P.W.1 as First Information Report under Sections 147, 148, 307, 302 read with Section 149 of IPC, on 1.1.2006 at 5.00 a.m. P.W.15 took up the investigation of the case. During the investigation, P.W.15 examined P.Ws.1 to 3, 8 to 10 and L.W.4, 8 and 9 on 1.1.2006 and 2.1.2006, recorded their statements, inspected the scene of offence in the presence of P.W.12 and L.W.12 on 1.1.2006, got the scene of offence photographed by P.W.13, and seized blood stained earth, control earth, two chappals of P.W.3 and two black chappals and the cycle of accused No.1 from the scene of offence under the cover of an observation report drafted by P.W.12 and L.W.12. P.W.15 prepared a rough sketch of the scene of offence, held inquest over the dead bodies of the deceased in the presence of P.W.12, and L.W.12 and 13 at the scene of offence and dispatched the corpse for post-mortem examination. P.W.5 conducted autopsy over the dead body of deceased No.1 and certified that the death was due to shock and haemorrhage due to multiple injuries. P.W.6, who conducted autopsy over the dead body of deceased No.2 certified that deceased No.2 died due to antemortem multiple (incised) injuries followed by antemortem haemorrhage and shock. P.W.15 arrested the accused on 2.1.2006 at the community hall at Bhupalapatnam Village and separately interrogated each of the accused and got their confessional statements recorded by P.W.12 and L.W.12. In pursuance of the confession, P.W.15 seized the knife, the axe and the blood stained clothes of accused Nos.1 and 2 under the cover of mediators' report,

and sent all the accused to the Court on 3.1.2006, which remanded the accused to judicial custody. On 2.1.2006 P.W.15 also got the two black rexin chappals and the cycle belonging to accused No.1 seized from the scene of offence, identified by accused No.1, and got drafted a mediators' report. P.W.15 also forwarded the seized crime weapons and blood stained clothes of both the deceased, the injured, P.Ws.1 to 3 and accused Nos.1 and 2 to Regional Forensic Science Laboratory, (RFSL), Vijayawada, for analysis with a letter of advice. P.W.11, the Medical Officer, who examined P.Ws.1 and 2 certified that the injuries found on them are grievous in nature. P.W.4, who examined P.W.3 certified that the injury sustained by him is simple in nature. On receipt of the analysis report from RFSL, Vijayawada and after completion of investigation, P.W.15 filed charge sheet.

4. Based on the charge sheet, the trial Court has framed separate charges against the accused. When questioned by the Court, the accused denied the charges and preferred to be tried. During the course of trial, the prosecution has examined P.Ws.1 to 15 and marked Exs.P.1 to P.20, and produced M.Os.1 to 18. On behalf of the defence, no oral evidence was let in, however, Exs.D.1 to D.3 were marked.

5. On appreciation of the oral and documentary evidence, the trial Court has found all the accused guilty of the offences under Section 302 read with Section 149 IPC and Section 307 read with Section 149 of IPC. Accused Nos.1 and 2 were convicted for the offence under Section 302 read with Section 149 of IPC and sentenced to suffer life imprisonment and also to pay a fine of Rs.3,000/- each, in default to suffer rigorous imprisonment for six months. Accused Nos.1 and 2 were also convicted for the offence under Section 307 read with Section 149 IPC and sentenced to suffer rigorous imprisonment for five years, and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for six months. Accused Nos.3 to 10 were convicted for the offence under Section 302 read with Section 149 IPC and sentenced to suffer life imprisonment, and to pay a fine of Rs.1,000/-

each, in default to suffer rigorous imprisonment for three months. Accused Nos.3 to 10 were also convicted for the offence under Section 307 read with Section 149 IPC and sentenced to suffer rigorous imprisonment for five years, and to pay fine of Rs.500/- each, in default to suffer rigorous imprisonment for one month. All the sentences were directed to run concurrently.

6. Before proceeding further, it needs to be noted that during the pendency of the appeals, accused No.3 (appellant No.3 in Criminal Appeal No.1313 of 2010) died. Accused Nos.4 to 6 (appellant Nos.4 to 6 in Criminal Appeal No.1313 of 2010) were released by the Government extending the benefit of remission, being women prisoners. Similarly, accused Nos.8 and 10 (appellant Nos.2 and 4 in Criminal Appeal No.1224 of 2010) were also released. Thus, Criminal Appeal No.1313 of 2010 survives to the extent of accused Nos.1 and 2 (appellant Nos.1 and 2 therein) and Criminal Appeal No.1224 of 2010 survives to the extent of accused Nos.7 and 9 (appellant Nos.1 and 3 therein).

7. We have heard Mr. A. Prabhakara Rao, learned counsel for appellant Nos.1 and 2 in Criminal Appeal No.1313 of 2010 and Mr. N. Siva Reddy, learned counsel appearing for appellant Nos.1 and 3 in Criminal Appeal No.1224 of 2010.

8. Before discussing the case of accused Nos.1 and 2, we would like to examine the case of the prosecution as regards the common object of the accused in committing the alleged offence. As discussed above, accused Nos.1 to 6 belong to one family and accused Nos.7 to 10 belong to another family. It has come on record that in connection with a quarrel that has taken place on 30.11.2005 between P.W.1 and accused No.5, a case and a counter case were registered under Section 160 IPC against both parties. Based on the report given by P.W.1, a case was registered against all the accused, including accused Nos.1 and 2. It is with regard to this aspect that a quarrel has again taken place on 31.12.2005 when accused No.2 has questioned

P.W.3. The manner in which the incidents allegedly leading to the taking place of the offence as projected by the prosecution if examined carefully, it is not possible to accept the theory of all the accused forming themselves into an unlawful assembly at the scene of offence with a premeditated intention and with common object of committing the offence. Before the actual offence has taken place, a quarrel ensued between P.W.3 on one side and accused No.2 on the other side, at 7.45 p.m. on 31.12.2005, and within fifteen minutes of the said quarrel all the accused have allegedly assembled at the scene of offence. In our opinion, it is not possible for as many as ten accused to come together, confabulate and assemble at the scene of offence within such a short duration. This apart, even as per the case of the prosecution, except accused Nos.1 and 2, no other accused was armed with any weapon, leave alone deadly weapon. If there were to be any premeditated attack with a common object, every person participating in the offence is expected to hold a weapon in his hand, whether deadly or otherwise. In addition to this, no role has been attributed to the accused other than accused Nos.2 and 3, except that accused Nos.4 and 6 allegedly catching hold of P.W.1, as per the latter's version, accused No.3 allegedly catching hold of deceased No.2, accused No.5 catching hold of P.W.2, and accused Nos.7 to 10 allegedly instigating accused Nos.1 and 2 to do away with the lives of the family of P.Ws.1 to 3 and the deceased, as per the version of P.W.2. P.W.3 also spoke about accused No.3 catching hold of hair of deceased No.2. Except these overt acts, none of the prosecution witnesses have alleged serious overt acts against accused Nos.3 to 10. P.W.2 in her cross-examination admitted that she did not state before the Magistrate that accused Nos.7 to 10 instigated accused Nos.1 and 2 to kill the deceased and P.Ws.1 to 3. P.W.15 admitted in his cross-examination that P.W.2 did not state before him that she intervened to rescue her son deceased No.1, that she did not state before him that accused No.5 caught hold of her while accused No.1

was hacking her.

On a careful consideration of the case of the prosecution, the evidence on record and the facts and circumstances of the case, we are of the opinion that the common object theory is not supported by proper evidence and the prosecution has miserably failed to prove the same. Therefore, the Court below has committed a serious error in convicting the accused for offence under Section 149 IPC.

9. Coming to the part allegedly played by the each accused, it is the case of the prosecution that accused No.4 and accused No.6 caught hold of P.W.1, accused No.1 with the knife aimed at hacking P.W.1's neck, P.W.1 tried to avoid the blow and sustained bleeding injury on her left shoulder, and that when accused No.1 again tried to hack, P.W.1 warded off and received bleeding injuries on right upper arm and left fingers. That accused No.2 hacked on right upper arm of P.W.1 with the axe causing bleeding injury, that when deceased No.2 came to the rescue of P.W.1, accused No.3 caught hold of her hair, and accused No.2 hacked deceased No.2 near right and left elbows with the axe, and that accused No.1 hacked deceased No.2 on neck, left side of cheek and left palm with the knife. That when deceased No.1 intervened, accused No.1 hacked the former with the knife on frontal of neck on right cheek, left wrist and below right knee. That accused No.2 hacked deceased No.1 below right knee and that accused No.5 stopped P.W.2 when she sought to go to the rescue of the deceased and caught hold of her wrist with the knife. That when P.W.2 started running away, accused No.1 aimed to hack on his neck with the knife and caused bleeding injuries, that accused Nos.3, 7 and 9 chased P.W.3, caught hold of him and when he fell down, they beat him with hands and dragged him on ground. In the light of these overt acts alleged against the accused, it would be appropriate to deal with each of the four accused - accused Nos.1, 2, 7 and 9 with respect to whom the appeals survive.

10. As regards the part allegedly played by accused Nos.1 and 2 in

Ex.P.1, statement given by P.W.1 based on which the FIR was registered, it was alleged that accused No.1 was armed with the knife and accused No.2 with the axe. Accused No.1 allegedly instructed accused Nos.4 and 6 to caught hold of P.W.1 saying that she was responsible for the disputes, aimed the knife, which was in his hands, to hack on her neck and it landed on her left shoulder, that when she put her hands, accused No.1 hacked on her right upper arm and left fingers, that on seeing the same, deceased No.2 came to her rescue and that thereupon accused No.3 caught hold of hair of deceased No.2, and accused No.2 hacked her indiscriminately as a result of which she fell down. When deceased No.1 intervened, accused Nos.1 and 2 hacked him indiscriminately as a result of which deceased No.1 fell down. When P.W.2 came to the scene of offence, accused No.5 caught hold of her, and accused No.1 hacked on her left shoulder with the knife, that when P.W.2 tried to ward off, accused No.1 hacked on her right hand, and that when P.W.3 tried to run away, P.W.1 also escaped into her house due to fear. In her evidence, P.W.1 repeated the contents of Ex.P.1 regarding the roles played by accused Nos.1 and 2. In her cross-examination she has stated that while deceased No.2 has received four injuries, deceased No.1 has received five injuries.

It is worth-noticing that P.W.1 has not attributed any overt acts qua deceased No.1 against accused No.2. In her evidence though she has admitted that both in Ex.P.1 and in her statement given to Police she has deposed that accused No.2 hacked deceased No.1 with the axe on right knee. In her evidence P.W.2, mother of the deceased, also did not allege any overt acts against accused No.2 in relation to deceased No.1, while she has completely corroborated the evidence of P.W.1 regarding the overt acts against accused No.1, qua deceased No.1. Similarly, even P.W.3 also did not allege that accused No.2 has attacked deceased No.1. His testimony against accused No.1 attacking deceased No.1 is consistent with that of P.Ws.1 and 2. All

these witnesses in one voice also spoke that accused No.1 while trying to hack P.W.1 on her neck caused injury to her shoulder and also to her left hand when the latter has tried to ward off the blow. Their further evidence is to the effect that when deceased No.2 intervened, accused No.1 hacked on her neck and on the left side of her face with the knife. Thus, the prosecution is able to prove that accused No.1 has caused multiple injuries to deceased No.1, leading to his instantaneous death.

11. We shall now see whether the evidence of P.W.1 is supported by medical evidence. Ex.P.3 is the post-mortem certificate of deceased No.1. He suffered the following injuries: (1) A cut injury on the front neck below the mandibular border, transverse, spindle shaped, extending from the left sterno mastoid muscle to the right sterno mastoid muscle on the thyroid cartilage margins clean cut, edges everted, exposing the severed structures of that area on the neck including skin, muscles, vessels, nerves, cervical vertebra, bones, thyroid cartilage, cricoid cartilage wind pipe and food pipe, thyroid gland, carotid and jugular vessels measuring about 6" x 2" x 4" deep cutting the vertebral column covered with blood clots; (2) a cut injury on the right side of the face on the cheek extending from the right angle of the mouth to the right mastoid muscle, transverse spindle shaped below the right ear with clean cut margins and everted edges exposing the severed structures of that area including skin, muscles, vessels, nerves, bones, mandible and teeth on the right side covered with blood clots with its continuity into the mouth measuring 4" x 2" x 1" deep with deformity; (3) a cut injury with traumatic amputation of the left hand at the level of the left wrist with clean cut edges exposing the severed structures of that area including skin, muscles, vessels, nerves, bones of the left wrist covered with blood clots; (4) a cut injury on the right leg below the right knee on the anterior aspect vertical, spindle shaped with clean cut margins with everted edges measuring 4" x 3" x bone deep exposing the severed structures of that area including skin,

muscles, vessels, nerves and bone covered with blood clots; and (5) a cut injury on the right leg below the right knee right and parallel to the external injury No.4, vertical, measuring 4" x 3" x bone deep with avulsion of skin and muscles on the wound to its lower pole covered with blood clots exposing the severed structures of that area including skin, muscles, vessels, nerves and bone. Injury Nos.1 to 5 mentioned in Ex.P.3 were clearly spoken to by P.W.1 as noted above. P.W.5 - the Doctor, who conducted autopsy on deceased No.1 and issued Ex.P.3, opined that there was a possibility of all the injuries found on the body of deceased No.1 being caused with M.Os.1 and 2. He has denied the suggestion that the injuries found on deceased No.1 are only possible with a heavy cutting object like M.O.2 and that he is deposing falsely. He has further denied the suggestion that if a person caused injury with M.O.1 like object, there will be corresponding injury on the backside of the neck due to its curve. P.W.2 fully corroborated the testimony of P.W.1. P.W.3 also corroborated the evidence of P.Ws.1 and 2 in this regard. P.W.3 deposed that when accused No.1 was attacking his mother, he and P.W.2 intervened to rescue her and accused No.1 tried to hack on his neck with M.O.1 and in the process of his escaping he received injury on the right side of the neck. Though Ex.P.2 wound certificate mentioned four injuries on P.W.3, injury Nos.1 and 2 correspond to the overt acts spoken to by him against accused No.1.

Ex.P.4 is the post-mortem certificate pertaining to deceased No.2. Injury Nos.1 and 2 in Ex.P.4 support the testimony of P.W.1 in this regard. P.Ws.2 and 3, and P.W.10, who is not related to the family of P.W.2, fully corroborated the version set out by P.W.1 regarding accused No.1 attacking both the deceased. Similarly, P.W.1 has alleged that accused No.1 while trying to hack her on neck caused injury on her shoulder and again when accused No.1 tried to hack on her neck, she raised her hand resulting in injury to her left hand. Injury No.1 mentioned in Ex.P.7 showing lacerated injury on left shoulder as

well as left side chest corresponds to overt acts alleged by P.W.1 against accused No.1. P.W.1 also spoke about accused No.1 hacking P.W.2, her mother, on her right shoulder and when he sought to give another blow P.W.2 raised her hand and then received injury on right palm and again when he attacked, she received injury on right hand. P.W.2 also spoke in similar fashion about the injuries caused to her by accused No.1. Injury No.2 in Ex.P.6 shows that P.W.2 has received lacerated injury on metacarpo phalragical joint of right ring finger 1" x ½ x joint space, in addition to lacerated injury over anterior fold of the axilla exposing right shoulder 5" x 3" x joint deep. The Doctor opined that the injuries are grievous in nature. The above discussed evidence clearly proves that accused No.1 has attacked both the deceased as well as P.Ws.1, 2 and 3. Since P.Ws.1 to 3 are injured witnesses, though they are interested witnesses, their testimony deserves higher probative value, as ordinarily they are not expected to shield the real culprits and make false implication of others.

12. Similarly, the evidence of PWs.1 to 3 is consistent as regards the part played by accused No.2. They spoke in unison that accused No.2 hacked P.W.1 on her right hand and left shoulder. It was observed by the Court while recording the evidence that she has shown her right wrist and left shoulder upon which the Court observed stiches. She has further deposed that accused No.2 hacked deceased No.2 with the axe on her two hands due to which the said deceased fell down. Injury Nos.3 to 4 in Ex.P.4, post-mortem report pertaining to deceased No.2, correspond to the overt acts spoken to by P.Ws.1 to 3 against accused No.2. Injury Nos.1 to 3 mentioned in Ex.P.7 wound certificate of P.W.1 co-relate with the overt acts spoken to by P.W.1 against accused No.2. P.W.6, who conducted autopsy over deceased No.2 opined that the injuries found on deceased No.2 may be possible with both M.Os.1 and 2. The afore-discussed evidence, in our opinion, clearly proves that accused No.2 has attacked deceased No.2 and P.W.1. Ex.P.11 is the mediators report containing parts of

confessional statements of accused No.1 and accused No.2, leading to the discovery and seizure of M.Os.1 and 2 from accused Nos.1 and 2 and blood stained clothes from accused No.1. P.W.12 is the panch witness for Ex.P.13, mediators' report evidencing the seizure of M.Os.1 and 2, the knife and the axe, and M.Os.13 and 14, bloodstained shirt and pant from the possession of accused Nos.1 and 2. Thus the oral testimony of P.Ws.1 to 3, the medical evidence, the seizure of the crime weapons and the cloths clingly establish the guilt of accused Nos.1 and 2 beyond all reasonable doubt.

13. As regards accused Nos.7 and 9, except a vague statement by P.W.1 and parrot like repetition by P.Ws.2 and 3, that they along with rest of the accused have instigated accused Nos.1 and 2 to kill the prosecution party, no incriminating material was placed against them to lend support to their oral testimony. P.W.10, who is not related to the deceased and to the family of P.W.2, has not uttered a word on the participation of the other accused in the commission of offence. It appears that accused Nos.7 and 9 have supported the accused in connection with the quarrel that has taken place on an earlier occasion as a result of which they were also arrayed as accused in the complaint given by P.W.1. Therefore, they appeared to have been falsely implicated in the present case as well. We have therefore no hesitation to hold that the prosecution failed to prove that accused Nos.7 and 9 have instigated accused Nos.1 and 2 to kill the prosecution party and their conviction is therefore wholly unsustainable.

14. For the above-mentioned reasons, Criminal Appeal No.1224 of 2010 is allowed and Criminal Appeal No.1313 of 2010 is dismissed in the following terms.

The conviction against accused Nos.1 and 2 (appellant Nos.1 and 2 in Criminal Appeal No.1313 of 2010) in Judgment dt.28.9.2010 in Sessions Case No.391 of 2009, on the file of the VI Additional Sessions Judge (Fast Track Court), East Godavari District, at

Rajahmundry, is modified to that of the offences under Section 302 IPC and Section 307 IPC, while confirming the sentence imposed against them. The conviction and sentence recorded against accused Nos.7 and 9 (appellant Nos.1 and 3 in Criminal Appeal No.1224 of 2010), are set aside, and they shall be set at liberty forthwith, if they are not required in any other case or crime and the fine amount, if any, paid by them shall be refunded to them.

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C.V. NAGARJUNA REDDY, J

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G. SHYAM PRASAD, J

29.6.2016

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