

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

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

Criminal Appeal No.835 of 2010

Dated: 21st March, 2016

Between

Angadi Chinna Ramudu,
S/o Angadi Naganna and five others.

.....Appellants/Accused Nos.1 to 6

And:

The State of A.P., rep.by the
Public Prosecutor

.....Respondent

**Counsel for the Appellants: Sri T.Bal Reddy, Senior Counsel
for Sri K.Suresh Reddy**

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

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

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

Criminal Appeal No.835 of 2010

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

This Criminal Appeal is filed by accused Nos.1 to 6 in Sessions Case No.188 of 2006 on the file of the learned V Additional Sessions Judge, Fast Track Court, Kurnool at Nandyal, whereby the learned Judge has convicted them for the offence under Section 148 IPC and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/- each, in default to suffer simple imprisonment for one month each; accused Nos.1 and 3 to 6 were convicted for the offence under Section 302 read with 149 IPC and sentenced them to suffer imprisonment for life and to pay a fine of Rs.1,000/- each, in default to suffer simple imprisonment for two months each; accused Nos.1, 2, 5

and 6 were convicted for the offence under Section 307 IPC for attempting to murder PW.1, LW.3, Surasura Bujji Babu, PW.2 and PW.3, respectively and were sentenced to suffer imprisonment for seven years each and to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for one month each. All the sentences were directed to run concurrently.

For convenience, the parties are referred as they were arrayed before the lower Court.

The case of the prosecution, in brief, is that accused Nos.1, 2 and 5 are residents of Mahadevapuram Village, Sirvel Mandal, Kurnool District, accused No.12 is a resident of Guntur, accused Nos.3, 4, 6 to 11 and 14 are residents of Ahobilam Village and accused No.13 is a resident of Nandyal.

PWs.1 to 3 and LW.3 are residents of Mahadevapuram Village, Sirvel Mandal. On 30.11.2004 at about 7 am., PW.1, who is a basket maker was tearing bamboo sticks for making baskets on the cement road in S.T.Colony, Mahadevapuram Village. At about 9.00 am., accused No.1 came to him, objected for tearing of bamboo sticks on the road, asked him to go to his house and do the work. PW.1 told accused No.1 that after tearing of two bamboo sticks, he will go home. Meanwhile, accused No.2, the younger brother of accused No.1, joined accused No.1 and both of them asked PW.1 to leave the place. PWs.2 and 4 came to that place and an altercation ensued among all of them. At that time, one Chintakunta Baludu (deceased) and others came and pacified both the groups.

PW.1 and others were selling baskets to the deceased who was doing the business in selling baskets. This was not relished by accused No.1, who was also doing the same business as that of the deceased, and he was curbing enmity as, PW.1 and his men were not selling baskets to him. There was also enmity between the deceased, PW.1 and his men and accused No.1 and his men.

On 30.11.2004, at about 9.30 pm., accused Nos.1 to 14 by forming

themselves into an unlawful assembly armed with deadly weapons like daggers, knives, hunting sickles and sticks and in prosecution of their common object to kill the deceased, boarded a jeep bearing registration No.AP 21 A 2324, driven by accused No.14, went to the house of PW.1 in S.T.Colony, Mahadevapuram Village and stopped the same in front of the house of PW.1. On hearing the sounds, PW.1 came out of the house and saw the parked jeep in front of his house. Accused Nos.1 to 14 holding deadly weapons in their hands got down from the jeep and immediately accused No.1 stabbed PW.1 on his left shoulder with a dagger resulting in bleeding injury to him. LW.3, PWs.2 and 3 came to the rescue of PW.1. Accused No.2 hacked LW.3 on his head with a hunting sickle resulting in bleeding injury to him. Accused No.5 stabbed on the back of PW.2 with a dagger causing bleeding injury. Accused No.6 dealt a blow on the head of PW.3 with a sickle causing bleeding injury. The deceased, Chintakuntla Suseelamma, Narasapuram Lingamaiah and Bunnedri Narasimhulu (LWs.5, 6 and 10 respectively), and PWs.4 to 6 came to the rescue of PWs.1 to 3 and LW.3.

On seeing the deceased, accused No.1 exhorted accused Nos.2 to 14 to attack him by stating that he is the main supporter of PW.1 and his group. So doing, accused No.1 stabbed the deceased on his left shoulder with a dagger. On receipt of the blow, the deceased shouted "Amma". Accused No.2 hacked the deceased on his head with hunting sickle causing bleeding injury. Afterwards, accused Nos.6 to 14 surrounded the deceased, beat and hacked him with weapons (daggers, sticks, hunting sickles, etc.,) indiscriminately. PW.6 yelled out saying that the deceased is being killed and when he tried to intercept the accused, they pushed him aside. On seeing, LWs.5 to 10 including PWs.4 to 6, who came to the scene of offence and witnessed the murder, accused Nos.1 to 14 boarded the jeep and drove away towards Mahanandi. The said witnesses have identified the accused in the glow of the street lights glowing in front of the house of PW.1 and also that of Ankamma-opposite to the house of PW.1. The injured persons and the deceased were shifted by their relatives in two auto rickshaws to the

Government Hospital, Nandyal. The deceased succumbed to the injuries by the time they have taken him to the hospital. The injured were admitted for treatment in the Government Hospital, Nandyal. On 30.11.2004, at 23.30 hours, at Government Hospital, Nandyal, PW.9 recorded the statement of PW.1 in the presence of PW.10, Medical Officer, who certified that PW.1 was conscious. PW.9 transmitted the death intimation of the deceased, the statement of PW.1 and the MLC intimation of PWs.1 to 3 and LW.3 to PW.11. On 01.12.2004, at about 2.00 am., PW.11 received the statement of PW.1, recorded by PW.9, along with the MLC intimation of PWs.2 and 3 and LW.3 and the death intimation of the deceased through P.C.No.978 of Nandyal II Town Police Station, on the basis of which, he registered a case in Crime No.182 of 2004 for the offences under Sections 147, 148, 324, 307 and 302 r/w 149 IPC, issued First Information Report to the officers concerned and investigated into the case.

On 01.12.2004, at about 11.00 am., PW.12 seized the blood stained cotton pant of PW.1, T-shirt and white banian of PW.2, half shirt of LW.3, light green colour sweater and white banian of P.W-3 under the cover of panchanama in the presence of Kammagalla Venkata Subbaiah (LW.11) and PW.7. On 01.12.2004 at 3.00 pm., PW.12 prepared Ex.P3, Observation Panchanama of the scene of offence, seized blood stained black slab and control slab under it and prepared a rough sketch of the scene of offence, Ex.P12. PW.8, Deputy Civil Surgeon, who treated the injured, PWs.1 to 3 and LW.3, opined that the injuries found on their person are simple and issued Exs.P5 to P8, wound certificates. PW.10 conducted autopsy over the dead body of the deceased at around 23.15 hours on 30.11.2004 at the District Hospital, Nandyal and opined that he would appear to have died due to shock and haemorrhage due to injuries to vital organs, *i.e.*, brain and lungs,. On 12.12.2004, at 9.00 am, PWs.11 and 12 and supporting staff, in the presence of PW.7 and P.Ibrahim (LW.13), while waiting opposite to the school at Pacherla on Nandyal-Giddalur road saw a jeep coming from Giddalur, which was

stopped by them, and five persons jumped from the rear side of the jeep and tried to flee away into the forest. The Police chased and caught them. The Police made all the persons, viz., accused Nos.1 to 12, staying in the jeep alighted therefrom, arrested them and found one dagger, two knives with hilt, three knives used for tearing bamboos made up of iron, which were stained with blood, (M.Os.7 to 9) under the seats of the jeep and later, they were seized under the cover of Ex.P4. On 13.12.2004, accused Nos.1 to 12 and 14 were produced before the Judicial First Class Magistrate, Allagadda for their remand to judicial custody. On 10.01.2005, accused No.3 surrendered before PW.12 at 0730 hours and he was produced before the Judicial First Class Magistrate, Allagadda for his remand to judicial custody. Later, all the accused were released on bail. After completion of the investigation, PW.12 filed the charge sheet.

In support of its case, the prosecution examined PWs.1 to 12 and marked Exs.P1 to P14, besides producing MOs.1 to 9. On behalf of the defence, no witness was examined. However, Exs.D1 to D3 were marked.

Based on oral and documentary evidence, the lower Court while acquitting accused Nos.7 to 14, convicted the accuseds/accused Nos.1 to 6 and sentenced them as referred to above.

Sri T.Bal Reddy, learned Senior Counsel appearing for the accuseds, submitted that the prosecution failed to prove the motive for the accuseds to commit the offence. That there are conflicting versions regarding motive and therefore, it is not safe to accept the case of the prosecution regarding motive and in the absence of strong motive, the accuseds ought not to have been convicted. The learned Senior Counsel further submitted that though PWs.1 to 3 are injured witnesses, their evidence does not inspire confidence as they are all interested witnesses and conviction cannot be based on such unreliable evidence. Alternatively, he has submitted that PWs.1 and 2 who are the crucial witnesses have not spoken to the presence of accuseds Nos.3 and 4 at the scene of offence and the evidence of PW.3 who was just about 12

years of age at the time of incident and spoke about the presence of accused Nos.3 and 4 was not lent corroboration by other witnesses and that even PW.3 has not attributed specific overt acts to the said accused. He has, therefore, strongly pleaded for acquittal of accused Nos.3 and 4.

The learned Senior Counsel has also submitted that once accused Nos.3 and 4 are acquitted, there remains only four accused and consequently, Section 149 of IPC which requires five or more persons for commission of offence to fall under the said provision will not get attracted. He has further argued that accused No.5 has allegedly injured PW.3 by giving just one blow which was simple in nature as per the medical evidence and that therefore, at the worse, he is liable to be convicted for the offence under Section 324 IPC.

The learned Public Prosecutor has opposed the above submissions and made strong efforts to convince this Court to confirm the judgment of the lower Court.

Having regard to the respective submissions of the learned counsel for the parties, the point that arises for consideration is whether the prosecution has proved the guilt of the accuseds beyond all reasonable doubt?

We shall first deal with the aspect of motive. It is the consistent case of the prosecution as could be seen from Ex.P1, the report given by PW.1, Ex.P2, the inquest report, and the evidence of PWs.1 and 2 that due to certain disputes between accused No.1 on one side and the deceased, PW.1 and others on the other side over sale and purchase of bamboo baskets, accused No.1 has developed motive against the deceased and other prosecution witnesses. The learned Senior Counsel, however, drew the attention of this Court to the evidence of PW.12 wherein he has *inter alia* deposed as under:

“It is true in the remand report, dated 13.12.2004, the motive for the offence mentioned that elder brother of PW.1 misbehaved with the daughter of A.1 for which there was a quarrel between PW.1, his brother and A.1.”

In the remand report pertaining to accused Nos.1 to 12 and 14, it

is stated that the motive for the offence is that the elder brother of the *de facto* complainant (PW.1) misbehaved with the daughter of accused No.1 and that the latter quarrelled with the prosecution party prior to this offence. It is also stated therein that the business rivalry between accused No.1 and the deceased also led to the commission of offence.

It is, therefore, clear from the record that there appeared to be two different reasons for the accused to develop motive to attack the deceased and the prosecution party. In fact, the defence itself suggested to P.W-1 in his cross-examination that for P.W-1 allegedly harassing the daughter of accused No.1, a Panchayat was held on the date of the incident. It is relevant to re-produce this portion of the deposition of PW.1 as under:

“It is not true to suggest that on the date of the incident a panchayat was held in my house complaining that my brother is harassing the daughter of A.1 to marry him. It is not true to suggest that in the panchayat the people from both sides quarrelled with each other.”

From this material, it is clearly evident that though PWs.1 and 2 spoke about one of the reasons for the accused to develop motive, from the very suggestion put by the defence to PW.1, it appears that due to above-mentioned two reasons, the accused developed motive. In any event, if there is credible evidence on record to prove the guilt of the accused, through the evidence of eye witnesses who are also injured is available on record, motive does not play significant role.

In ***Shivaji Genu Mohite V. State of Maharashtra***^[1], the Supreme Court held that evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence, that such evidence would form one of the links in the chain of circumstantial evidence in such a case, but, that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if motive is properly proved such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion, but that does not mean that if motive is not established the evidence of an eye-witness is rendered

untrustworthy.

In a catena of decisions, the Supreme Court held that even if the absence of motive as alleged is accepted, that is of no consequence and it pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to the commission of an offence, the motive part loses its significance and if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance (*Hari Shanker V. State of U.P.*^[2], *Bikau Pandey and Others V. State of Bihar*^[3], and *Abu Thakir and others V. State of Tamilnadu*^[4]).

In *Suresh Chandra Bahri Vs. State of Bihar*^[5], the Supreme Court held that a motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention, that in a case where there is clear proof of motive for the commission of the crime, it affords added support to the finding of the court that the accused was guilty of the offence charged with, but it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless becomes untrustworthy and unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime. In *Ujagar Singh V. State of Punjab*^[6], the Supreme Court reiterated its view that motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

In *Subedar Tewari V. State of Uttar Pradesh*^[7], the Supreme Court observed that the evidence regarding existence of motive which operates in the mind of an assassin is more often than not within the

reach of others and that the motive may not even be known to the victim of the crime.

In the light of the settled legal position as above, if the prosecution has let in the evidence of eye-witnesses which is found trustworthy, the accused is liable to be convicted even if motive is not fully established.

Hence, we have to see whether there is credible evidence on record to prove the guilt of the accused irrespective of whether strong case of motive has been made out by the prosecution or not.

We have as many as three injured witnesses in the present case. In addition to that, LW.3 has received injuries and died before the commencement of trial. PW.1 has deposed that in the morning of the day of occurrence at about 9.00 am when he was attending to his professional work of making bamboo baskets, accused No.1 came there and asked him to go away from the said place, that accused No.2 joined him and an altercation took place between accused Nos.1 & 2 and P.Ws.1 and 2 were also present at that time, that the deceased and PW.4 intervened and pacified both the groups, that on the same day at about 9.00 or 9.30 pm while PW.1 was in his house, he has heard noise of arrival of a jeep, that on hearing the same, he came out of his house and saw that the jeep was stopped near the house of one Surasura Naganna, that in the electric light, he noticed that the jeep is of commander make and its registration number is AP21 A 2324. The witness further deposed that he saw all the accused getting down from the jeep armed with knives and hunting sickles and sticks. That on seeing the witness, accused No.1 raised hue and cry and stabbed him with a knife on his left shoulder and accused No.5 stabbed PW.2 on his back. At that time, LW.3 and PW.3 came there, upon which, accused No.2 has hacked LW.3 with hunting sickle on his head, accused No.6 hacked PW.3 with hunting sickle on his head and meanwhile, PW.6 and the deceased came to the scene and on seeing them, accused No.1 shouted that the deceased is responsible for the disputes and stabbed him with a knife on his left shoulder and accused No.2 dealt a blow with a hunting sickle on his head upon which, the deceased fell on the

ground and that the other accused beat the deceased with their hands and also kicked him. That when PW.6 raised cries that the deceased is killed, the accused pushed him aside. On seeing Narsapuram Lingamaiah and Bunnedri Narasimhulu (LWs.6 and 10), PWs.4 and 5, the accused fled away in their jeep.

PW.2 who is the younger brother of PW.1 testified almost on the same lines as PW.1 did and no material discrepancies could be found between the testimonies of PWs.1 and 2. Significantly, while they spoke to the overt acts against accused Nos.1 and 2 in a graphic manner without any variation, as regards the participation of accused Nos.3 and 4, both of them were silent, except making a generic statement that after the deceased fell down, all the accused surrounded him and beat him with their hands and also kicked him. The only witness who has spoken to the presence of accused Nos.3 and 4 is PW.3. In his evidence, he has stated that accused No.3 was armed with machu katti and accused No.4 was armed with pattudu stick. However, he has not spoken to either of these two accused attacking any of the persons. No doubt, Ex.P1 referred to the names of accused Nos.3 and 4 among others and even Ex.P2, inquest, also contains their names. It needs to be remembered that accused No.3 was Sarpanch and accused No.4 is his wife. Therefore, if they were really part of the unlawful assembly armed with weapons, there could be no reason for PWs.1 and 2 not to refer to their names and attribute specific overt acts to them. Thus, the testimony of PW.3 did not receive corroboration from the most important witnesses. In our opinion, based on Exs.P1 and P2 and the evidence of PW.3, who as mentioned above was just 12 years old at the time of incident, it is not safe to conclude that accused Nos.3 and 4 have participated in the commission of offence. As their presence at the scene of offence was very much doubtful, they deserve benefit of doubt.

Once the presence of accused Nos.3 and 4 at the scene of offence is disbelieved, only four accused are left at the scene of offence. Section 141 IPC defines unlawful assembly as under:

“141. Unlawful Assembly: An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First: To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second: To resist the execution of any law, or of any legal process; or

Third: To commit any mischief or criminal trespass, or other offence; or

Fourth: By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth: By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation- An Assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

Section 149 IPC reads as under:

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object: If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

In **Mohan Singh and another v. State of Punjab**^[8], a Constitution Bench of the Supreme Court held that one of the essential ingredients of Section 149 IPC is that the offence must have been committed by any member of an unlawful assembly and Section 141 IPC makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied, that it is an essential

condition of an unlawful assembly that its membership must be five or more and that once some of the accused are acquitted whereby reducing the membership of the assembly to below five, Section 141 is not applicable which inevitably leads to the result that Section 149 cannot be invoked against the remaining accused. This ratio was reiterated by a two-judge bench of the Supreme Court in a very recent judgment in **Ramanlal and another v. State of Haryana**^[9].

Following the ratio in the above-mentioned judgments, on the facts of the present case, with the exclusion of accused Nos.3 and 4, Section 149 of IPC ceases to apply. Consequently, this Court needs to consider the charges against the remaining accused i.e., accused Nos.1, 2, 5 and 6 based on the overt acts attributed to them individually.

As regards accused Nos.1 and 2, all the prosecution witnesses, namely, PWs.1 to 6, have deposed in one voice that accused No.1 stabbed the deceased with a knife on his shoulder and accused No.2 hacked him on his head. This evidence is amply supported by medical evidence. Ex.P9 is the post-mortem certificate issued by PW.10. It is mentioned in the certificate that the following three injuries were found on the body of the deceased:

- “1) An elliptical cut injury over the left side parietal area near the midline longitudinally placed size 4” x 1” x skull deep. Blood clots present.
- 2) An elliptical stab injury over the back of the chest wall on left side below the neck size 2” x 1” piercing deep, obliquely present edges clear cut. Blood clots present.
- 3) An elliptical stab injury over the left shoulder, transversely place, size 2” x 1½” x muscle deep, edges clear cut.”

In his evidence, PW.10 opined that the cause of death was due to shock and haemorrhage due to damage to vital organs, such as, brain and lungs, and the injuries could be caused with a knife or a penknife. Considering the nature of the injuries and the opinion of the doctor as referred to above, the evidence of PWs.1 to 6 is wholly supported by medical evidence and therefore, the prosecution is able to prove the

participation and the attack of the deceased by accused Nos.1 and 2 which resulted in causing his death.

Coming to accused Nos.5 and 6, PWs.1, 2 and 3 consistently deposed that accused No.5 stabbed PW.2 on his back and accused No.6 attacked PW.3 on his head. Exs.P6 and P7, wound certificates of PWs.2 and 3 issued by PW.8, corroborates the evidence of these witnesses and as per these certificates, the injuries are simple in nature. Therefore, accused Nos.5 and 6 are liable for conviction under Section 324 IPC.

In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against accused Nos.1 and 2 in judgment, dated 29.06.2006, in Sessions Case No.188 n of 2006, on the file of the learned V Additional Sessions Judge, (FTC), Kurnool at Nandyal are confirmed. Insofar as accused Nos.3 and 4 are concerned, they are acquitted of all the charges for which they are charged and accordingly, 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. As regards accused Nos.5 and 6, the conviction recorded by the lower Court is modified to that of the offence punishable under Section 324 IPC and accordingly, they are sentenced to undergo rigorous imprisonment for a period of three years, while maintaining the sentence of fine imposed against them. The period of sentence already undergone by them is directed to be set off.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

21st March, 2016
DR/VGB

[\[1\]](#) AIR 1973 SC 55

[\[2\]](#) (1996) 9 SCC 40

[\[3\]](#) (2003) 12 SCC 616

[\[4\]](#) (2010) 5 SCC 91

[\[5\]](#) 1999 SCC (1) Supp. 80

[\[6\]](#) (2007) 13 SCC 90

[\[7\]](#) 1989 Supp (1) SCC 91

[\[8\]](#) AIR 1963 SC 174

[\[9\]](#) (2015) 11 SCC 1