

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

MONDAY, THE 04th DAY OF APRIL,
TWO THOUSAND AND SIXTEEN

PRESENT
THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL Nos.966 and 1041 of 2010

Between:

Kuruba Kallialithamma (A.6)
Kuruba Kalli Vannurappa (A.1)

..... APPELLANTS

AND

State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

Counsel for the Appellant : **Sri C.ADISESHA REDDY**
For SRI M.KARIBASAI AH

Counsel for the Respondent : **PUBLIC PROSECUTOR (A.P.)**

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 Nos.966 and 1041 of 2010

COMMON JUDGMENT: (Per Hon'ble Sri Justice M.S.K.Jaiswal)

These two criminal appeals arise out of judgment dated 28.07.2010 in S.C.No.217 of 2008 on the file of Family Court-cum-Additional District and Sessions Judge, Anantapur.

2. Criminal Appeal No.966 of 2010 is filed by A.6 whereas Criminal Appeal No.1041 of 2010 is filed by A.1 in the Sessions Case.

3. A.6 was convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- for the offence punishable under Section 302 IPC. A.1 was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- for the offence punishable under Section 302 IPC., and he was further convicted and sentenced to suffer R.I. for a period of two years for the offence punishable under Section 354 IPC. The remaining accused viz., A.2 to A.5 and A.7 to A.11 were acquitted.

4. The facts in brief are as under:-

Kuruba Kalli Chinna Vannurappa had six sons. They are A.1, A.2, A.4, A.7, A.9 and A.11. A.6, A.3, A.5, A.8 and A.10 are the respective wives of A.1, A.2, A.4, A.7 and A.11. During the pendency of the trial, the *de facto* complainant (LW.1) and his son Kuruba Janakiramudu (LW.4) died. PW 1-Laxmamma was the wife of LW 1.

PW.2 – Kuruba Parvathi was grazing her cattle near the sugarcane fields of one Nettikallappa on 20.09.2007 at about 12.00 noon. One of the bulls strayed into the fields of Nettikallappa, due to which, she went inside the fields. Observing that PW.2 was alone, A.1 came to her, caught her and attempted to rape her, but however, PW.2 rescued herself from the clutches of A.1, returned

home and informed the same to her husband – Darganna (hereinafter referred to as the deceased) and also her father-in-law (the *de facto* complainant) and her mother-in-law (PW.1). In the evening, at about 06.00 p.m., when A.1 was passing from the house of the deceased, the latter chastised him for molesting his wife but A1 left the place without uttering any word. Thereafter, at about 07.00 p.m., when P.Ws.1 to 3 and the deceased were in the house, all the accused formed themselves into an unlawful assembly armed with deadly weapons like sticks and iron rods, came against the house of the deceased and challenged the deceased to come out and when PW.2 – the wife of the deceased came out, A.1 instigated other accused to beat her, that A.2 and A.3 beat PW.2 with sticks, causing bleeding injuries, that when the deceased came to her rescue, A.1 who was armed with an iron rod beat him over his head causing fracture to skull, that A.4, A.5, A.10 and A.11 (non-appellants) beat the deceased with hands and legs, that they also beat PW.2, that A.9 and A.10 (non-appellants) beat Janaki Ramudu (LW.4/since died) with sticks, that the incident was witnessed by P.Ws.4 to 6 who came to their rescue. It is further alleged that PW.2 and the deceased were taken to Government Hospital, Guntakal and from there they were referred to Government Medical College, Kurnool and while undergoing treatment, the deceased died at 06.00 a.m., on 21.09.2007, that thereafter at 09.00 a.m., the *de facto* complainant filed a complaint – Ex.P.8, on the basis of which, Cr.No.54 of 2007 was registered for the offences punishable under Sections 147, 148, 324, 302 read with 149 IPC., and the investigation was taken up. After conducting inquest, the dead body was subjected to post-mortem examination by PW.11, who opined that the cause of death of the deceased was due to head injury. During investigation, the scene of offence was

examined, statements of witnesses were recorded, wound certificate of PW.2 was obtained, the accused were arrested, incriminating material objects were recovered at their instance. After the investigation was completed, chargesheet was filed.

5. Learned Sessions Judge framed charge under Section 354 IPC., against A.1, Section 148 IPC., against A.1 to A.11, Section 324 IPC., against A.2 and A.3, Section 302 IPC., against A.1 to A.11, and Section 324 IPC., against A.9 and A.10.

6. During the course of trial, the prosecution examined P.Ws.1 to 13, produced Exs.P.1 to P.16 and M.Os.1 to 7. When examined under Section 313 Cr.P.C., the accused denied the evidence on record. Except for producing Exs.D.1 to D.6, no other evidence is produced on behalf of the accused.

7. Upon perusing the oral and documentary evidence on record and hearing the arguments of both sides, the trial Court convicted and sentenced A.1 and A.6 as stated above, and acquitted the rest.

8. Learned Counsel appearing for the appellants/A.1 and A.6 submitted that the evidence of P.Ws.1 to 10 which is highly interested is inconsistent and contradictory and the learned Sessions Judge has erred in relying upon their testimony. He has further submitted that the evidence on record clearly shows that the prosecution has suppressed the earliest complaint and the statements of the witnesses which are borne out from the record; that Ex.P.8 which is lodged at 09.00 a.m., on 21.09.2007 i.e., three hours after the deceased died and nearly 14 hours after the alleged incident, cannot be said to be the report emanating spontaneously and it amply demonstrates that after due consultations, confabulations and discussions, the entire family of the accused consisting of the parents, sons and daughters-in-law were

implicated. Learned Counsel further submitted that a perusal of Exs.D.1 to D.6 clearly shows that the police had information about the incident long prior to the lodging of Ex.P.8. He has also submitted that according to the prosecution witnesses, the weapons used in the commission of the crime are cart peg and Gorru Medithoka whereas M.Os.2 and 3 which are said to be the weapons recovered at the instance of the accused are iron rod and five sticks in number. Learned Counsel submitted that the trial Court having acquitted A.2 to A.5 and A.7 to A.11 on the ground that they are falsely implicated erred in convicting the appellants/A.1 and A.6. Learned Counsel submitted that the Judgment of the learned Sessions Judge cannot be sustained and hence the appeals.

9. On the other hand, learned Public Prosecutor submitted that the entire evidence, both oral and documentary, was meticulously discussed by the learned trial Court and while benefit of doubt was extended to the accused other than the appellants, the trial Court rightly found the appellants guilty of the charges and since the same is based on legally acceptable evidence, there are no grounds to interfere and hence the appeals are liable to be dismissed.

10. The point for consideration is as to whether the prosecution proved its case against the appellants/A.1 and A.6 beyond reasonable doubt so as to sustain their conviction and sentence or whether the same need to be set aside, modified or varied?

11. Briefly stated, the case of the prosecution is that in retaliation of the incident which took place in the morning on 20.09.2007 wherein A.1 is alleged to have attempted to outrage the modesty of PW 2, the substantive incident of attack and assault have taken place on the same

day between 06.00 and 07.00 p.m. It is alleged that as many as 11 accused beat the deceased, PW.2, the wife of the deceased and one Janaki Ramudu (LW 4), who was the brother of the deceased, with iron rods, sticks, hands and legs. Immediately, all the injured with others went in an auto to Government Area Hospital, Guntakal and after rendering first aid and applying sutures to PW.2, the deceased being in critical condition was referred to Government Medical Hospital, Kurnool, where he died at about 06.00 a.m on 21.09.2007. The father of the deceased (LW 1 since died) lodged Ex.P8 complaint at about 09.00 a.m with Vajrakarur Police Station, which was at a distance of about two kilometres from the village where the incident took place.

12. The contention of the accused is one of denial. His defence is that the deceased and his wife PW 2 were in the habit of stealing sugarcane from the fields of Nettikallappa, and they were beaten by the landowners. It is also their defence that in between the deceased and his own brother Janaki Ramudu there were property disputes, due to which the deceased was beaten, resulting in fracture of his leg. The suspicion of the deceased and PW 2 was that it is A.1 who was passing on information to the landowners and with that grudge, even though the deceased was beaten by the landowners, the accused have been falsely implicated. It is submitted that the entire family of the accused, consisting of father, mother, sons and daughters-in-law were all implicated.

13. As per the complaint and the charge sheet, it is A.2 and A.3 who beat PW.2 with sticks. A.1 beat the deceased with iron rod over the head. A.4, A.5, A.10 and A.11 beat the deceased with hands and legs. A.9 and A.10 beat Janaki Ramudu (LW 4). The incident was witnessed by PWs 4 to 6 and others.

14. As per the evidence of PW.1, it is A.2 and A.3 who beat PW 2 on head, that when the deceased intervened, A.1 and A.6 beat him with iron rod on the head, that Janaki Ramudu (LW 4) was beaten by A.1,

A.5, A.7 to A.11 with sticks and thereafter all the accused beat the deceased with iron rods, sticks, fisted with hands and kicked with legs.

15. According to PW 2, it is A.2 and A.3 who beat on her head with sticks, causing bleeding injuries, that when her husband deceased intervened, A.1 and A.6 beat him with iron rods on his head, A.4, A.5, A.10 and A.11 beat the deceased with cart pegs over his head, that when Janaki Ramudu (LW 4) intervened, A.7 to A.9 beat with cart pegs over his back and front portion, causing injuries, that again A.1 and A.6 beat the deceased with iron rods over his entire body and thereafter, all the accused surrounded her and her husband, fell them down and beat them with hands and legs indiscriminately.

16. PW 3 was the daughter of the deceased and PW.2. She was aged about 14 years at the time of incident. She deposed that A.1 started beating PW.2, that then A.2, A.11 and their wives beat PW.2, due to which, PW.2 sustained bleedings injuries over head, that when her father intervened, A.1 and A.6 beat him with iron rods over head, due to which, he sustained injuries, that when Janaki Ramudu (LW 4) intervened, A.4, A.7 and A.9 beat him, and thereafter, all the accused fisted her father and also beat him with sticks.

17. PW 4 is said to be one of the eyewitness to the incident. According to him, A.1 and A.6 beat the deceased with iron rods on head, A.2 and A.3 beat PW.2 with cart pegs over head, that all the accused fell down PW.2 and deceased on the ground and beat them with cart pegs, that when Janaki Ramudu (LW 4) tried to separate PW.2 and deceased from the hands of the accused, he too was beaten by the accused.

18. PW 5 is another eyewitness to the incident. According to him, he heard galata at the house of the deceased, went there and found the deceased lying on the ground with injury on the head, that PWs 1 and 2 were weeping and that the accused were present when he went there. He denied having witnessed the incident.

19. PW 6 is another independent eyewitness. He stated that he was in house and having heard galata and cries, he went towards the house of the deceased and found the deceased lying on the ground with injury over head and the accused was also there and that the deceased was taken in an auto. He did not speak about PW 2 having sustained injury, so also about injuries of Janaki Ramudu (LW 4). The evidence of PW.6 was not challenged by the prosecution when he deposed in the above manner.

20. PW 10 is the Medical Officer, who treated PW.2 and the deceased while they were firstly taken to Guntakal hospital on 20.09.2007. The Medical Officer examined PW.2 at 06.30 p.m and found a cut and lacerated injury on the head and blunt injury over back of her body. According to the Medical Officer, the first injury could have been caused with a sharp edged weapon, second injury was not visible and it was only complaint made by PW.2 about it.

21. The medical evidence is contrary to the claim of PW.2. According to PW.2, she was beaten by a stick on head by A.2 and A.3. She also claims to have beaten by all the accused with sticks, hands and legs after making her fall down. The medical officer did not find any injuries other than the two, referred to above. According to PW.2, no sharp edged weapon was used by any of the accused, but whereas the medical officer found a cut injury on the head of PW.2.

22. The above evidence insofar as it relates to the attack on PW.2 and Janakiramudu (LW.4) was disbelieved by the Court below for valid and cogent reasons and all the accused have also been found not guilty of the offences punishable under Sections 148 and 324 IPC., and the same is not challenged. However, the learned Sessions Judge has believed the evidence of the prosecution witnesses and held that A.1 and A.6 are guilty of the offence punishable under Section 302 IPC., and A.1 additionally for the offence punishable under Section 354 IPC. We have perused the evidence on record on this aspect. For the

reasons set forth hereinafter we find ourselves unable to accept the evidence of the eyewitnesses to the incident as being sufficient for holding that the prosecution has proved its case against A.6 for the offence punishable under Section 302 and A.1 for the offences punishable under Sections 302 and 354 IPC.

23. According to PW.1, A.1 and A.6 beat the deceased with iron rods on head due to which he fell down and vomitted blood. She further deposed that after the accused beat PW.2 and Janakiramudu, they again came to the deceased and beat him with iron rods and fisted him with hands and kicked him with legs indiscriminately. In the cross-examination, PW.1 would have it that that the deceased sustained injuries over chest and stomach and there were bleeding injuries and blood was oozing from the above parts. She further stated that there were about 10 to 12 bleeding injuries over the chest and stomach of the deceased, and 5 or 6 bleeding injuries over legs, and 7 or 8 bleeding injuries on hands.

24. As against the above, it is in the evidence of PW.2 that A.1 and A.6 beat her husband with iron rods over head and caused bleeding injuries, and thereafter, again A.1 and 6 beat her husband with iron rods over body and thereafter all the accused surrounded her and her husband, fell her down and beat them with hands and legs. In the cross-examination, she, however, stated that after A.1 and A.6 beat the deceased with iron rods over head at the first instance, the deceased fell down and thereafter, the other accused fisted and kicked and beat the deceased with cart pegs, and that he was beaten like that for about five or ten minutes.

25. PW.3 deposed that A.1 and A.6 beat her father with iron rods and the other accused were holding cartpegs. She further stated that afterwards all the accused fisted her father and beat him with sticks.

26. PW.4 deposed that A.1 and A.6 beat the deceased with iron rods over his body, that himself and others were sitting on the pial of

Peddamma Temple which is at a distance of 10 metres from the scene of offence, that he went near the place of incident and noticed that the accused fell PW.2 and the deceased on the ground and beat them with cartpegs. In the cross-examination, PW.4 asserts that the deceased sustained only one injury.

27. A perusal of the above testimony of the witnesses, shows that the same is inconsistent and discrepant on material aspects. That apart, their evidence does not get support from the medical evidence on record. If what P.Ws.1 to 4 say is true, the deceased would have sustained multiple bleeding injuries all over his body. It is in their evidence that all the accused beat the deceased indiscriminately with iron rods, cartpegs, hands and legs and as a matter of fact, PW.1 claims to have observed as many as 10 to 12 bleeding injuries over chest and stomach, 5 or 6 bleeding injuries on legs and 7 or 8 bleeding injuries on hand. The Medical Officer-PW.11, who conducted autopsy, has found the following injuries on the deceased:-

- 1) Contused abrasion of 0.5 x 0.05 cms., over right lower back, just above to level of ant, superoid iliac spine. 5 cm lateral to mid line with swelling in 3 cm in diameter.
- 2) Lacerated injury of 1 x 0.5 cm x sclt tissue deep over left parietal eminence.
- 3) whole par5tial occipital part of scalp is contused with a think layer haematoma of 102 mm thick over this part.
- 4) Fissure fracture of 17 cms., length present over left parietal bone extending to mid line.
- 5) Epidural haematoma of 40-50 cc present over left parital area
- 6) Subdural haematoma of 25-30 cc noted over right parital temporal area.

The Medical Officer further stated that out of the above injuries, only two injuries are external injuries and the remaining injuries are internal injuries and blood clots. The Doctor further clarified that injuries 3 and

4 are internal injuries, and injuries 5 and 6 are not separate injuries but they are the result of cut of blood vessels and clotting of the blood over the surface of brain. No other injuries were noticed by the Doctor other than referred to above. The medical evidence falsifies the evidence of the eyewitnesses that as many as eleven persons beat the deceased indiscriminately for 5 to 10 minutes with deadly weapons such as iron rods, cartpegs, hands and legs.

28. In addition to the above, the other suspicious circumstance is that according to the prosecution witnesses, the deceased was attacked with iron rods by A.1 and A.6. The investigating agency has recovered M.O.2 which is said to be the weapon used by the accused in the commission of the crime. PW.9 who acted as panch witness for confession and recovery, clearly stated in the evidence that M.O.2 is an iron pipe but not iron rod and that he knows the difference between an iron rod and an iron pipe. Similarly, the Investigating Officer – PW.13 admitted that M.O.2 is a pipe but not an iron rod and that an iron rod is different from an iron pipe. Therefore, when it is the consistent evidence of the prosecution witnesses that A.1 and A.6 beat the deceased with iron rod, the same has not been recovered and instead, M.O.2 an iron pipe has been planted by the investigating agency. Similarly, the five sticks that are recovered at the instance of the accused are marked as M.O.3. All the eyewitnesses in categorical terms admit that sticks are different from cartpegs and that the accused used cartpegs for assaulting the prosecution witnesses and the deceased, but whereas only sticks have been recovered allegedly at the instance of the appellants.

29. Yet another circumstance noticed from the record is that after conducting the post-mortem examination, PW.11 reserved the final opinion about the cause of death pending report from the Regional Forensic Science Laboratory. Neither the report of the Forensic Science Laboratory is placed before the Court nor is there final and

conclusive opinion given by the Doctor who conducted the post-mortem examination as to the cause of the death of the deceased.

Suppression of original complaint by the investigating agency:

30. It is the case of the defence that the deceased was already suffering from certain ailments and injury and on the date of incident, he was beaten by the landowners in the afternoon of 20.09.2007 and a compliant to that effect was originally made on the night of 20.09.2007 itself, but the same has been suppressed and only on 21.09.2007 at about 09.00 a.m, after the death of the deceased, the present complaint came to be filed, implicating the entire family of the accused. The oral and documentary evidence on record probabalizes the said defence of the accused.

31. According to the prosecution witnesses, the incident is said to have taken place at about 07.00 p.m on 20.09.2007 and thereafter, the injured were shifted to Guntakal hospital, which is at a distance of more than 17 kilometres, as admitted by PW 7-the village sarpanch. When the incident took place at 7 p.m at such a far off place, the claim of the medical officer (PW.10) that he treated PW.2 and others at about 6.30 p.m, makes the claim of the prosecution witnesses suspicious and strengthens the defence of the appellants.

32. It may be recalled that the incident is said to have taken place on 20.09.2007 and immediately the deceased, the injured and others were taken in an auto to Guntakal hospital which was at a distance of about 17 kilometres. After rendering first aid, since the condition of the deceased was critical, he was advised to be taken to Kurnool hospital and on 21.09.2007 at about 06.30 a.m in the early morning the deceased succumbed to injuries. Three hours thereafter, Kuruba Kalli Vannurappa (LW 1), father of the deceased, lodged Ex.P8 complaint with Vajrakarur Police.

33. According to PW.1, the distance between her village and Vajrakarur is about three miles, and that one has to go to Guntakal

hospital from their village via Vajrakarur police station, which is by the side of the main road. PW.1 further admitted that Vajrakarur police people came to the village on receipt of the information over telephone. She further stated that Sub Inspector of Police, Vajrakarur police station examined the deceased, enquired from them as to how and in what manner the attack took place and drafted a complaint, and her husband LW 1 signed on such complaint. That from there, they went to Guntakal hospital and the police persons followed them, and that Sub Inspector of Police, Vajrakarur got the deceased admitted in Guntakal Hospital.

34. PW.8 is the Village Revenue Officer. According to him, on coming to know about the incident at about 08.00 p.m, he went to Guntakal hospital. He admitted that as a Village Revenue Officer, it is his primary duty to report the matter to police whenever an offence took place. However, he stated that he cannot say any reason as to why he did not inform the police about the incident on 20.09.2007 itself, even though he came to know about it at about 8 p.m. He also admitted that he came to know that the police personnel visited the scene of offence on the night of 20.09.2007 itself, i.e., even prior to the death of the deceased and that Ex.P8 was lodged on 21.09.2007 at about 09.00 a.m.

35. PW 10-Medical Officer at Guntakal deposed that immediately after the injured persons came to the hospital, she has sent the intimation to the police about the medico legal case. The medical officer also admitted about the medical records Exs.D1 to D.6, which are to the effect that both PW.2 and the deceased were treated in Guntakal hospital, and also with reference to Ex.P14 and Ex.P15, the medical officer stated that jurisdictional police were informed about the medico legal case at about 08.00 p.m on 20.09.2007 itself.

36. In contrast to the above evidence, there is evidence of PW.12, who was the Sub-Inspector of Police and Station House Officer of Vajrakarur Police Station on 20th and 21st September, 2007. He

denied the entire case of the prosecution witnesses and also the medical evidence on record in so far as information received by the police about the incident is concerned. According to PW.12, they had no information whatsoever about the incident said to have taken place, and that Ex.P8 came to be lodged on 21.09.2007 at about 09.00 a.m. The investigating officer wavered when he was confronted with the information that the police had knowledge about the incident on the night of 20.09.2007.

37. In ***Thulia Kali v. State of Tamil Nadu***^[1], H.R. Khanna, J, has highlighted the importance of the FIR in a criminal case. It was held that FIR is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial and that the importance of the report can hardly be overestimated from the standpoint of the accused, that the object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence and that delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. It was further held that on account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation and that it is therefore essential that the delay in the lodging of the FIR should be satisfactorily explained.

38. In ***Meharaj Singh v. State of U.P.***^[2], the Supreme Court held that with a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks; one of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate; if this report is received by the Magistrate late, it can give rise to an inference

that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate and that the object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, weapons, if any, used, as also the names of the eyewitnesses, if any. If the report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate.

39. From the above evidence on record, it is manifest that Ex.P8 which was lodged on 21.09.2007 at about 09.00 a.m is not the First Information Report of the incident and that as a matter of fact, the investigation was commenced on the night of 20.09.2007 itself and therefore, it is hit by the provisions of Section 162 Cr.P.C. The evidence on record clearly shows that immediately after the incident took place on 20.09.2007, the police people were informed and they came to the village, recorded the statements of the injured and the deceased and shifted the injured and the deceased to Guntakal hospital and got them admitted there. Even thereafter, the medical intimation was sent to the police in the night of 20.09.2007 itself. Suppressing all these facts, the investigating agency has come up with the plea that Ex.P8 is the earliest complaint about the incident received by police on 21.09.2007 at about 09.00 a.m.

38. The above suspicious circumstances and *lacunae* in the case of the prosecution probabalize the case of the defence that taking advantage of the already existing injuries on the person of the deceased and also an attack on him said to have been made by the

landowners of the sugarcane from where PW.2 and the deceased were committing theft and in view of suspicion that it is A.1 who was passing on information to the landowners, the complaint Ex.P8 was lodged, implicating the entire family of the accused.

39. Insofar as the charge against A.1 for the offence under Section 354 I.P.C., is concerned, excepting for the evidence of PW.2 that A.1 caught hold her hand when she went into his sugarcane fields, there is no other evidence on record and for the reasons discussed above, we do not feel it proper to base the conviction of the appellant/A.1 solely on her testimony. It may also be stated that when the incident is said to have taken place at about 10.00 a.m., in the morning, till the incident of attack took place at about 07.00 p.m., nobody were informed about the said act of the appellant/A.1. In view of the foregoing discussion, we find it difficult to sustain the conviction of the appellants for the offences for which they were charged as the prosecution cannot be said to have proved the guilt of the accused beyond reasonable doubt. The point is answered accordingly.

40. In the result, both the Criminal Appeals are allowed. The conviction and sentence of the appellant/A.1 for the offences punishable under Sections 302 and 354 of I.P.C., and the conviction and sentence of the appellant/A.6 for the offence punishable under Section 302 I.P.C., are set aside. Consequently, the appellants/A.1 and A.6 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.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date:04.04.2016

Dsr/smr

[\[1\]](#) AIR 1973 SC 501

[\[2\]](#) (1994) 5 SCC 188