

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL NO.211 OF 2011

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 25.01.2011 rendered by the learned IV Additional Sessions Judge, Kurnool, in Sessions Case No.274 of 2008, convicting A1 to A7 therein under Section 148 IPC, A1 and A2 under Section 302 IPC, A3 to A7 under Section 302 IPC read with Section 149 IPC and A8 under Section 147 IPC and also under Section 302 IPC read with Section 149 IPC. A9 and A10 were however found not guilty for the offences under Sections 148 and 302 IPC read with Section 149 IPC and were acquitted under Section 235(1) CrPC. In consequence, A1 to A7 were sentenced to rigorous imprisonment for a period of one year and also pay a fine of Rs.500/-, in default of which they were to suffer simple imprisonment for one month, for their conviction under Section 148 IPC; A8 was sentenced to rigorous imprisonment for one year and pay a fine of Rs.500/-, in default of which he was to suffer simple imprisonment for one month, for his conviction under Section 147 IPC; A1 and A2 were sentenced to imprisonment for life and pay a fine of Rs.2,000/- each, in default of which they were to suffer simple imprisonment for six months, for their conviction under Section 302 IPC; A3 to A7 were sentenced to imprisonment for life and pay a fine of Rs.2,000/- each, in default of which they were to suffer simple imprisonment for six months, for their conviction under Section 302 IPC read with Section 149 IPC; A8 was sentenced to imprisonment for life and pay a fine of Rs.2,000/-,

in default of which he was to suffer simple imprisonment for six months, for his conviction under Section 302 IPC read with Section 149 IPC. Aggrieved by the convictions and sentences imposed upon them, A1 to A8 are in appeal.

The case of the prosecution, in brief, was as under: The Sub-Inspector of Police, Dhone (P.W.11), received Ex.P1 written report from P.W.1 at the Police Station on 12.03.2007 at 12.00 noon in relation to the murder of his father, Paalam Nagi Reddy, by A1 to A8 and registered a case in Crime No.45 of 2007 under Sections 147, 148, 302 IPC read with Section 149 IPC. Ex.P8 is the FIR. Thereupon, the Inspector of Police, Dhone Circle (P.W.12), took up investigation, upon receipt of information from P.W.11 about Ex.P1 report. He reached Dhone Police Station at 12.45 PM. P.Ws.1 to 4 were present at the Police Station at that time and having received a copy of the FIR, he left Dhone Police Station at 1.00 PM along with P.Ws.1 to 4 and the mediators, P.W.7, B.Guru Swamy (L.W.10) and Gorukallu Kumara Swamy (L.W.11). They reached the scene of the offence, which was on the road from Dhone to Kocheruvu-Hussainapuram villages near 3/6 KM stone and the Anjaneya Swamy idol by the side of a mango grove, at 1.15 PM and found the auto bearing No. AP 21X 3262 halted on the eastern edge of the road facing south. The body of the deceased was lying with the head towards the eastern edge and the remaining body on the eastern road margin turned to its left. P.W.12 served summons upon P.W.1, P.W.7, B.Guru Swamy (L.W.10) and Gorukallu Kumara Swamy (L.W.11) to act as mediators and conducted an inquest over the dead body at the same spot in their presence. The inquest commenced at 1.30 PM. He also examined P.Ws.1 to 4 and recorded their detailed statements.

The dead body was found in a pool of blood and he collected blood-stained earth and controlled earth (M.Os.7 and 8) from the scene of the offence. He seized the auto bearing No.AP 21X 3262 (M.O.13). All the case properties were seized under the cover of Ex.P3 inquest report. He also seized the clothes of the deceased (M.Os.1 to 6). He drafted a rough sketch of the scene of the offence (Ex.P9). The body of the deceased was then sent to the Government Hospital, Dhone, for post-mortem at about 4.00 PM. P.W.12 secured the presence of P.W.6 and T.Yanganti Reddy (L.W.6) and recorded their statements. He then visited the houses of the accused but found them absconding. On the next day, 13.03.2007, P.W.12 secured the presence of Rachapogu Sreenivasulu (L.W.7) and P.W.5 and recorded their statements. He secured witnesses from Dhone, Gosanipalli, Kocheruvu and surrounding fields at the scene of the offence, but none came forward to give their statements. On 14.03.2007, the blood-stained clothes of the deceased (M.Os.1 to 6) were forwarded to the Court along with a letter of advice for onward transmission to the Forensic Science Laboratory, Kurnool, for chemical examination. Ex.P10 is the requisition and Ex.P11 is the letter of advice. On 31.03.2007 at about 6.00 AM, P.W.12 rushed to Dhone Police Station, having received credible information as to the whereabouts of the accused, and secured two mediators, K.Sathyanarayana (L.W.12) and P.W.8 and proceeded to Chigurumanumetta in a police jeep. They reached there at 7.00 AM and found nine persons sitting on a pial under a tree. They thereupon surrounded and apprehended them. P.W.12 interrogated all of them, one after the other, and recorded their confessional statements. He also seized one dagger (M.O.14) from the possession of A9. He then arrested A1 to A9 and

pursuant to their confessional statements, they were led to a thorny bush in the vanka adjoining a hillock, namely, Boykonda at about 9.30 AM. This spot was on the eastern side of the scene of the offence at a distance of 50 yards. There, A1 removed four hunting sickles from a hidden place and identified one of them, measuring 24½ inches in length with an aluminum grip (M.O.9), as the one used by him at the time of committing the crime. A2 identified a hunting sickle, 31½ inches in length (M.O.10), as the weapon used by him in the commission of the offence. A3 identified a sickle, 24 inches in length (M.O.11), as the weapon used by him. A7 identified a sickle measuring 21½ inches (M.O.12) as the weapon used by him. Thereupon, P.W.12 seized M.Os.9 to 12 under cover of Ex.P4 seizure panchanama, wherein he obtained the signatures of the mediators and also on the slips affixed upon the material objects. The accused were brought to the Police Station at 11.00 AM and were produced before the Court along with the remand report, seized property and the letter of advice for onward transmission to RFSL, Kurnool. Ex.P12 is the requisition and Ex.P13 is the letter of advice. On 04.04.2007 at about 7.30 AM, P.W.12 received information about A10 and having secured the presence of K.Sathyanarayana (L.W.12) and P.W.10, he proceeded to Bharat Hotel situated beside Patha Sunkulamma temple on Kurnool-Dhone road (National Highway 7) at about 8.00 AM. They found one person standing on the western side in front of a hotel (A10) and he was taken into custody. He also confessed to committing the murder of the deceased by joining the other accused. He was arrested and brought to the Police Station and on the same day, he was produced before the Court along with remand report. Further investigation was taken up by the successor

Inspector of Police, Dhone Circle (P.W.13) on 09.04.2007. Having received the post-mortem examination report under Ex.P6 on 12.04.2007 and the Forensic Science Laboratory reports (Exs.P14 and P15) on 18.04.2007, he completed the investigation and laid a charge sheet against A1 to A10.

Upon committal, the Sessions Court framed the following charges:

Firstly:- That you A1 to A10 on 12th day of March, 2007 at Kocheruvu Junction Mango Garden of Telugu Mukkinti Yellappa of Gosanipalli village which is near 3/6 K.M. Stone on Dhone-Kocheruvu Road, were the members of the unlawful assembly and in prosecution of the common object of such assembly to murder paalam Nagi Reddy, who is resident of Hussainapuram village armed with hunting sickles and committed the offence of rioting, and thereby committed an offence punishable under section 148 of IPC and within my cognizance.

Secondly:- That A1 and A2 of you on the same day, time, place of offence as mentioned in charge No.1 supra and during the course of same transaction as mentioned in charge No.1 supra, did committed murder of Pallam Nagi Reddy of Hussainapuram village by hacking him all over the body and that you thereby committed the offence punishable under section 302 IPC and within my cognizance.

Thirdly:- That A3 to A10 of you on the same day, time, place of offence as mentioned in charge No.1 supra and during the course of same transaction as mentioned in charge No.1 supra, did committed murder of Pallam Nagi Reddy of Hussainapuram village by hacking him all over the body and that you thereby committed the offence punishable under section 302 read with 149 IPC and within my cognizance.'

All the accused pleaded not guilty and claimed to be tried.

Thereupon, the prosecution examined 13 witnesses and marked 15 exhibits in evidence. Case properties were shown as M.O.s 1 to 14. No oral evidence was let in by the accused but they

marked in evidence Exs.D1 and D2, relevant portions in the statements of P.W.3 and P.W.4 respectively under Section 161 CrPC.

Salient points emerging from the evidence may now be noted.

P.W.1, the son of the deceased, stated that he knew all the accused who were residents of Hussainapuram, except A10 who was a resident of Rangapuram, Peapully Mandal. He said that there were long standing disputes between their family and the accused's group and the same escalated after the panchayat elections. He said that some incidents occurred amongst them and criminal cases were also filed against each other. He said that the accused developed enmity and were waiting for a chance to do away with the life of his father. He adverted to police picketing in their village because of their political factions. He said that on 12.03.2007, he and his father went together to Dhone on their personal work in the morning hours. After completing their work, they came to Kocheruvu Circle at Dhone and were waiting in front of Anil Medical Stores at about 10.15 AM and, in the meanwhile, P.W.2, P.W.3 and P.W.4 also came there and joined them. All of them were waiting for a bus to go back to their village but the bus did not come even though they waited for more than 15 minutes. They then boarded the auto rickshaw of A8 bearing No. AP 21X 3262. He said that five or six other passengers also boarded the auto in the same bus stop. He said that they were going to their village, Hussainapuram, while the other passengers were going to their villages. He said that the auto started at Kocheruvu Circle at 10.45 AM and after it reached the idol of Lord Anjaneya Swamy, three kilometers from Dhone near Gosanipalli Village, at about 11.00 AM, all of a sudden A1 to A7 came from the eastern side from a mango grove and the auto was stopped by A8 upon seeing them. He said

that they were all armed with sickles when they surrounded them. He said that when his father got down from the auto, A8 caught hold of him by his hands and instigated the other accused by saying:

P.W.1 said that P.W.2, P.W.3, P.W.4 and he ran way up to some distance towards Dhone to escape and when they turned back to look for his father, he saw A1 hacking his father with a sickle on his head and A2 also hacked him with a sickle on his head. He said that his father then fell down on the ground and A3 to A7 also attacked his father and beat him with sickles over his head, chest, hands and also on the back. He said that the accused looked towards them and in the meanwhile, another auto from Dhone side came and upon seeing some passengers getting down from the said auto, all the accused fled, running towards the same mango grove. P.W.1 said that he and the other persons, P.W.2, P.W.3 and P.W.4, rushed to the spot and found that the brain of his father was crushed and that he had died. He said that immediately he rushed to the Police Station at Dhone, along with P.W.2, P.W.3 and P.W.4 and gave a report (Ex.P1). He said that the Sub-Inspector of Police received his report and the Inspector of Police then came to the Police Station within ten minutes. He said that the Inspector of Police and he then went to the spot where the incident had occurred and found the body of his father. He said that he was examined by the Inspector of Police who obtained his detailed statement at the place of occurrence. He said that after they reached the spot, P.W.2, P.W.3 and P.W.4 also came there. In his cross-examination, P.W.1 said that their village was a moderately big village, having nearly 1000 residential houses with 1400 voters. He said that their village was at a distance of 19 kilometres from Dhone, which was on the

northern side, and their village was followed by Boyapalli and the approach road to Utakonda, Chigurumanumetta, Kocheruvu, Chintapeta and Gosanipalli, before Dhone. He admitted that there are a number of autos traveling between his village and Dhone, carrying passengers. He also admitted that there were five or six autos of his own villagers. He said that it would take nearly 45 minutes by auto from his village to Dhone. He also said that buses were plying from Dhone to his village very often. According to him, disputes originally started between his family and the accused's group about four to five years prior to the panchayat elections. P.Ws.2 and 3 were stated to be the followers of his father from the beginning. P.W.4 belonged to Peddapaya Village, at a distance of 10 kilometres from his village. He said that he knew P.W.4 since 25 years. The younger brother of P.W.4 is T.Yanganti Reddy (L.W.6). He said that there were some money transactions between his father and P.W.4. Jayalakshmi, daughter-in-law of Maruthi Narasimhulu, was stated to be the Chairperson of Dhone Municipality. Maruthi Narasimhulu was a native of Hussainapuram Village. P.W.1 said that Venkata Lakshmi, their Village Sarpanch, won the election over Venkata Ramanamma, who was supported by his father. Maruthi Narasimhulu supported Venkata Lakshmi. P.W.1 however denied the suggestion that there were no cordial terms between his father and Maruthi Narasimhulu. He said that it was true that criminal cases were filed against each other and were pending in Dhone Court as on the date of the incident. He admitted that A2 had filed a criminal case against him, P.W.2 and his son and brother, apart from P.W.3 and his brother. He said that he did not remember about the evidence given by A3 and A9 in the said criminal case filed by A2 in the Dhone

Court. He said that P.W.2 also filed a criminal case against A1, A2, A3, A7 and A9. He admitted that he gave evidence in the case of P.W.2 along with Sowreddy and Krishna Reddy. He said that Sowreddy was the brother of P.W.3's grandfather. P.W.2's aunt's son was Krishna Reddy. He said that A4 had filed a criminal case against him, his brother, Bhaskar Reddy, P.W.3 and others for an attempt on his life but the same ended in acquittal. He admitted that his father had two wives. His mother was Padmavathi and the other wife's name was Vanajakshamma. He denied the suggestion that he put up a separate family from his father and that his house was at the Buruju of his village. He admitted that he had a Hero Honda Passion motorcycle. His father had a landline phone at his residence. He admitted that he had not mentioned in Ex.P1 report or in his statement given to the police about the actual work for which he and his father went to Dhone and as to whom they met there. He said that they went to Dhone in an auto rickshaw but he could not give the auto rickshaw number. He said that the place where they had work at Dhone was at a distance of two furlongs from the old bus stand. He said that they went to Dhone to meet M.L.A. Sujathamma. He admitted that Kocheruvu Circle comes after two railway gates of Dhone and that the road towards Bethamcherla and Dharmavaram and other villages also passes from Kocheruvu Circle, a business locality. He admitted that he did not mention the timing of their starting from Kocheruvu Circle, by boarding an auto, and also for reaching the scene of the offence, in his report (Ex.P1) or in the statement given to the police. He said that P.Ws.2, 3 and 4 joined them at Kocheruvu Circle within two or three minutes after their reaching there. He said that there were some flower gardens on either

side of the road, after crossing Dharmavaram Village, and there were no mango groves. He admitted that when his father was murdered, it was mango season and there would be watchmen in the mango gardens there. He said that Gosanipalli was at a distance of two kilometers from the place where his father was murdered. He said that the Pulverizer factory was at a distance of one kilometer from Hussainapuram Village. According to him, no other auto followed their auto till they reached the spot and there was no other auto going ahead of them. He said that he did not observe the presence of any other persons on the road. He said that the road where the incident occurred was of 15 feet width, with a road margin of 5 feet on either side. The auto was stated to have stopped on the left side of the road and not on the margin. He admitted that none of them tried to rescue his father when A8 caught hold of him. He said that they ran up to a distance of 25 to 30 feet from the spot and then halted. He said that he looked back after taking a turn towards the place of the occurrence, after going to a distance of 25 to 30 feet, and that his father was attacked on the margin of the road and fell down facing upwards. He said that he could not say how many blows were given and with what weapon and on which part of the body of his father, by A3 to A7. He said that he did not state to the police when he was examined as to how A2 to A7 beat his father, as narrated in his chief-examination. He said that he fell over the body of his father and wept, due to which his shirt was also blood-stained. He admitted that he did not hand over his shirt to the police as he was not asked. He said that he did not move the dead body of his father from the spot where he had collapsed. He said that they were present at the scene of the offence for about 15 or 20 minutes before going to the Police

Station. He said that he did not keep any person near the dead body of his father as he, P.W.2, P.W.3 and P.W.4 all went to the Police Station. He admitted that P.W.2, P.W.3 and P.W.4 were all his people. He said that the Police Station was at a distance of two furlongs, in Dhone. He said that he got drafted Ex.P1 after going to the Police Station and on seeing the presence of the Sub-Inspector in the Police Station. He said that he did not remember who supplied the paper and pen for his drafting the report. He denied the suggestion that his father was having illegal contact with a married woman who was a labourer in the Pulverizer factory. He denied the suggestion that he and his father did not go to Dhone on the date of the incident and that his father went to the Pulverizer factory to meet the woman with whom he was having illegal contact before 9.00 AM and that he was murdered at that time. He denied the suggestion that he went to the scene of the offence after knowing about the killing of his father by somebody and later, he, P.W.2, P.W.3 and P.W.4 consulted leaders at Dhone and gave a false report against the accused. He admitted that his father was neither an accused nor a witness in any of the criminal cases filed in the Court at Dhone.

P.W.2 stated that he was a resident of Hussainapuram and that he lived by cultivation. He said that he knew P.W.1 and his father, the deceased, and also all the accused. He said that there were two groups in their village, Hussainapuram - one attached to the deceased and the other to the accused. He said that there were long standing disputes between the two groups and the same escalated after the panchayat elections. He said that some more incidents occurred between their groups after the elections, which led to filing of some criminal cases against each other. He admitted that

he was one of the accused in the cases filed by the accused's group and the same were pending as on the date of this incident. He said that on 12.03.2007 at about 7.00 AM, he went to Dhone along with P.W.3 and P.W.4 on personal work. He said that they went to Kocheruvu Junction and joined P.W.1 and the deceased at about 10.30 AM and they waited for a bus to go to their village for a few minutes. He said that later, they boarded the auto of A8 to go to their village. He said that some more passengers also boarded their auto and totally there were 10 or 12 passengers and the auto started from Kocheruvu Circle at 10.45 AM. He said that the auto stopped after going near the idol of Anjaneya Swamy, upon seeing A1 to A7 coming from the eastern side mango grove. He said that they were all armed with hunting sickles. He said that the deceased then got down from the auto and they also did so and in the meanwhile, A8 caught hold of the deceased by his hands and instigated the others by saying

He said that he, P.W.1, P.W.3 and P.W.4 ran away from there towards Dhone side, being afraid of the situation, and they ran to a distance of 25 feet and turned to see. Then, A1 was hacking the deceased with a sickle over his head and A2 also hacked the deceased with a sickle over his head. He said that when the deceased fell down, he was surrounded by A3 to A7 who also beat him with sickles. In the meanwhile, he said that one auto rickshaw came with some passengers and on seeing them, all the accused fled towards the same mango grove. He said that he, P.W.1, P.W.3 and P.W.4 then rushed to the spot but by that time, the deceased had died as his brain ruptured. He said that they all then went to the Police Station after 15 minutes, where P.W.1 gave a report to the Police. He said that he was examined by the Inspector of

Police at the scene of the offence after they came back there. In his cross-examination, P.W.2 admitted that he did not give the details of his personal work, when examined by the Inspector of Police. He denied the suggestion that he did not mention 7.00 AM as the time at which they started to go to Dhone, and also the time of their reaching at Kocheruvu Junction, when he was examined. He said that he could not say how A3 to A7 attacked the deceased and how many blows were given and on which part of the body of the deceased. He said that it was true that he did not mention 25 feet as the distance that they ran from the spot when he was examined. He admitted that he did not raise any cries even after seeing the incident. He said that it was not true to say that P.W.1 and the deceased did not go to Dhone on the date of the incident and that no incident was witnessed by him or the others and that they were planted witnesses. He admitted that A2 had filed a criminal case against him, P.W.1, P.W.3 and others after the panchayat elections and that A3 to A9 gave evidence in this case. He admitted that he also filed a criminal case against the accused, in which P.W.1 gave evidence and P.W.3 was the other witness. He admitted that there were some cases pending in the Dhone Court as on the date of the incident, which later ended in acquittal. He denied the suggestion that he was giving false evidence due to political rivalry, after consulting their political leader.

P.W.3 stated that he was a resident of Hussainapuram and that he lived by cultivation. He said that he was the follower of the deceased and knew his son, P.W.1, and also P.W.2. He said that he knew all the accused. A1 to A9 were residents of Hussainapuram Village. A10 was the resident of N.Rangapuram Village. He said that there were long standing disputes between the groups of the

deceased and the accused, but the same escalated after the panchayat elections. Some incidents occurred between the two groups after the elections, which led to filing of criminal cases. He said that he also received injuries in the incident that had occurred. He admitted that he was one of the accused in a criminal case filed by the accused and that all the cases were pending as on the date of the incident. He said that on 12.03.2007, he went to Dhone on his personal work along with P.W.2 and P.W.4. After completion of their work, he said that they went to Kocheruvu Circle, where they met P.W.1 and the deceased. He said that they waited for a bus for some time to go to their village and as there was no bus, they boarded an auto. The auto started from Kocheruvu Circle at about 10.45 AM in which he, P.W.1, P.W.2, the deceased and P.W.4 were present and some other passengers were also present. He said that the auto, after going up to a distance of 2 or 3 kilometres, reached near the place where the idol of Anjaneya Swamy was located. He said that A1 to A7 came from the eastern side of the mango grove, armed with hunting sickles. He said that the auto was stopped by its driver, A8, after seeing the other accused coming. He said that in the meanwhile, the deceased got down from the auto and A8 immediately caught hold of him by his hands. A8 instigated the other accused by saying

He said that he, P.W.1, P.W.2 and P.W.4 immediately ran towards Dhone side to some distance. Then A1 was stated to have hacked the deceased with a sickle over his head and later, A2 hacked him with a sickle over his head. The deceased then fell down and all other accused surrounded and attacked him by beating with sickles. He said that when the accused looked towards them, they also found an auto coming and they fled towards the

same mango grove. He said that they immediately rushed to the spot and found the deceased with head injuries, as his brain ruptured, and he died. He said that P.W.1, P.W.2, P.W.4 and he then went to the Police Station, where P.W.1 gave a report to the Police. He said that the Police also came to the spot and recorded their statements. In his cross-examination, P.W.3 said that he could not say for how long there were disputes between the two groups but it was since a long time. He admitted that one Venkata Lakshamma was the Sarpanch of their village and Venkata Ramanamma, the opponent candidate, who was the follower of the deceased, had been defeated. He said that Venkata Lakshamma was the follower of Maruthi Narasimhulu. He admitted that P.W.2 filed a criminal case against the accused, because of the assault on P.W.2 and himself in the incident that occurred immediately after the elections. He said that the accused also filed a criminal case against them and that all the cases were pending as on the date of the incident. He said that he knew P.W.4 for about 15 years prior to the offence and that he was a friend. He admitted that he did not give the details as to when they started from their village or when they reached Dhone or with whom they met at Dhone. He said that they went to Dhone for their individual purposes. He said that he, P.W.2 and P.W.4 went to Kocheruvu Circle at the same time and that P.W.1 and his father, the deceased, were already present at Kocheruvu Circle before they went there. He denied the suggestion that he stated as in Ex.D1 before the police that they went to Kocheruvu Circle much earlier to the arrival of P.W.1 and the deceased. He said that there were totally 12 passengers in the auto, which was a seven seater, but he did not know the names and details of the other passengers. He said that no

other autos or buses were either following their auto or going ahead of them, when they proceeded to their village in the auto of A8. He said that he did not find any other persons on the road. He admitted that there was jowar crop in the low lying area near the scene of the offence, which was followed by wet land and thereafter, a mango grove. He said that the idol of Anjaneya Swamy was adjacent to the margin of the road on the left side. He said that there was only one mango grove beside the idol of Anjaneya Swamy. He said that the incident of hacking of the deceased by attacking with sickles started with A1 and A2 and later, others, after they ran up to some distance and turned back. He said that he could not say how A2 to A7 gave blows by attacking the deceased and on which part of his body. He said that the accused did not try to chase them as they saw the other auto coming with passengers. He admitted that none of them tried to interfere in the incident out of fear. He said that another auto came to the spot when the accused were trying to chase them. He said that Ex.P1 report was drafted by P.W.1 in the presence of the Sub-Inspector of Police but he could not say when P.W.1 commenced writing the report and when he completed it. He said that he did not know whether their M.L.A. was present in the guest house or not on the date of the incident and as to the distance between the guest house and the Police Station. He denied the suggestion that they did not go to Dhone on the date of the incident and did not join P.W.1 and his father at Kocheruvu Circle and that they did not then travel in the auto of A8 together and no incident was witnessed by him and that he was a planted witness. He denied the suggestion that he was giving false evidence because of the instructions of local leaders.

P.W.4 stated that he was a resident of Peddapayi Village and that he lived by cultivation. He said that he knew P.W.1 and his deceased father. He said that he knew all the accused. A1 to A9 were residents of Hussainapuram, while A10 belonged to Rangapuram Village. He said that P.Ws.1 and 2 were residents of Hussainapuram and that he knew them. He said that there were disputes between the groups of the deceased and the accused because of village politics. He said that after the panchayat elections, some incidents occurred between the two groups and criminal cases were also filed against each other. He said that on 12.03.2007, he went to Dhone on his personal work. He said that P.Ws.2 and 3 also came to Dhone from Hussainapuram. He said that P.Ws.2 and 3 joined him at Hussainapuram stage. After completion of their work, they went to Kocheruvu Circle in Dhone, where P.W.1 and his deceased father were present. He said that they all waited for a bus to go to their village but they did not find the bus and boarded the auto, of which A8 was the driver. Some more passengers boarded the auto and it started from Kocheruvu Circle at 10.45 AM. He said that after going a distance of 2 kilometres and upon reaching the idol of Anjaneya Swamy, where there was a mango grove on the eastern side, at about 11.00 AM, A1 to A7 came from the side of the mango grove, armed with hunting sickles. He said that the auto was stopped by A8 immediately and when the deceased got down from the auto, A8 caught hold of him by his hands and cried

He said that P.W.1, P.W.2, P.W.3 and he then ran towards Dhone side up to some distance and turned back and they found that A1 was hacking the deceased with a sickle over his head and A2 also hacked him with a sickle over his head. He said that the

deceased then fell down and the other accused also attacked him and beat him with sickles. He said that when the accused tried to chase them, they found one auto coming with passengers and upon seeing them, all the accused fled into the same mango grove. He said that they went back to the spot where the deceased was lying and saw that he was dead, as he had sustained head injuries with the brain ruptured. After a few minutes, he said that they all went to the Police Station and P.W.1 gave a report to the police. In his cross-examination, P.W.4 stated that Dhone was on the northern side of Hussainapuram, while the village, Peddapayi, was on southern side of Hussainapuram, at a distance of nearly 8 kilometres. He said that he knew the father of P.W.1 since 30 years. He said that he knew P.W.1 since his childhood. He said that he had many dealings, including money transactions, with the deceased. He said that he knew P.Ws.2 and 3 since 15 years but he did not have any dealings. He admitted that he did not state to the police, when he was examined, that P.W.2 and P.W.3 joined him at Hussainapuram bus stage. He also admitted that he did not give the details of the purpose for which he went to Dhone. He admitted that he did not know anything about the incidents that occurred and the criminal cases filed between the groups of the deceased and the accused. He said that they went to Dhone for their individual purposes and that he met P.Ws.2 and 3 on the way to Kocheruvu Circle. He said that P.W.1 and his father were already present at Kocheruvu Circle by the time they went there. He admitted that he did not state before the police as in Ex.D2, his statement recorded under Section 161 CrPC, that P.W.1 and the deceased joined them at Kocheruvu Circle. He said that he could not give the details as to how A3 to A7 beat the

deceased and on which part of his body. He said that he did not know the names and details of the other passengers in their auto. He said that he did not know about the details of the passengers in the other auto which came to the spot. He said that he did not know at what time P.W.1 started writing Ex.P1 report and how much time he took to complete it. He denied the suggestion that no incident had occurred in his presence and that he was giving false evidence as instructed by their leaders and that he was a planted witness. He admitted that Yaganti Reddy (L.W.6) was his younger brother and that he was also cited as a witness in this case.

P.W.5, a resident of Dhone, stated that he was running a medical store under the name and style of Anil Medical Store in Kocheruvu Circle, Dhone. He said that he was running the said shop since 18 years. He said that he knew the deceased since a long time and used to meet him at his medical shop when he came for the purpose of catching the bus to his village from Dhone. He said that the deceased came along with his son, P.W.1, on 12.03.2007 and met him at about 10.30 AM. He said that P.W.2, P.W.3 and P.W.4 also came and joined P.W.1 and his father, when they were waiting near his shop. They all left the place after five minutes by boarding one auto rickshaw to go to their village. He said that the auto started from there after a few minutes. He claimed that at about 12.00 noon, he came to know that the deceased was murdered by somebody near the mango grove. In his cross-examination, P.W.5 stated that there were a number of shops around Kocheruvu Centre and that there was always a Home Guard in the Centre to maintain traffic. He admitted that there was no vehicle stop in front of his shop. He also admitted that it was not always possible to observe the outside

passengers when the owners were busy with their business in their shops. He admitted that he did not mention the number of his shop when he was examined by the police. He said that Hussainapuram Village was under Dhone Constituency and Smt. Sujathamma was the M.L.A. during the relevant period. He said that he did not know whether the deceased was the follower of the M.L.A. He said that he knew the names of some other persons of Hussainapuram who were visiting his shop regularly but could not give details of the persons who visited his shop and the day or time when they did so. He claimed that he remembered the visit of P.W.1 and his father to his shop on 12.03.2007 as the father of P.W.1 was murdered on the same day. He could not give details of the deceased visiting his shop on any other previous day. He claimed that he knew the deceased from 7 or 8 years prior to his death but there were no dealings between them, except for purchase of medicines. He denied the suggestion that the deceased and his son did not come to his shop on 12.03.2007 and that he did not see them on that day at Dhone. He said that he knew the wife of the deceased who was present and sitting in Court but he did not know the two other persons who sat beside her. He said that he knew the Sub-Inspector of Dhone Rural Police Station who was also present and sitting in Court but denied that he was brought by the Sub-Inspector of Police and the wife of the deceased. He denied the suggestion that he did not have a medical shop and that he had nothing to do with Anil Medical Stores at Dhone and that he was a planted witness.

P.W.6, an auto driver and a resident of Hussainapuram Village, stated that he knew the deceased. He said that he also knew all the accused who were present in the Court. He however denied

knowledge of how the deceased died and stated that he did not know anything about the case and that he was not examined by the police. He was declared hostile and in his cross-examination by the prosecution, he denied that he was present in the auto in which the deceased and P.Ws.1 to 4 were traveling, driven by A8. He denied having witnessed the incident that occurred leading to the murder of the deceased. He denied having stated before the police as in Ex.P2 statement, his statement recorded under Section 161 CrPC, that he was threatened by A9 and A10. He denied that he was deposing falsely to help the accused.

P.W.7, a retired VRO of Jaladurgam Village, stated that he was staying at Hussainapuram and that he knew the deceased. He said that on the date of the incident, he was present at the MRO Office, Dhone, and was called by the police, along with Guru Swamy (L.W.10) and Kumara Swamy (L.W.11). He said that he went to the Police Station and they were then taken to the spot where the deceased was murdered, i.e., near Gosanipalli Village, at about 1.00 PM. He said that the Inspector of Police conducted an inquest over the body of the deceased at 1.30 PM and they were present, along with relatives of the deceased. He said that the dead body was found with injuries, twelve in number. He said that the Inspector of Police also seized the blood-stained clothes of the deceased, blood-stained earth and controlled earth along with an auto rickshaw, at the time of the inquest. Ex.P3 is the inquest report. He identified the case properties M.Os.1 to 8 and stated that he and the others attested Ex.P3 inquest report, after going through the contents thereof. He stated that they were all of the opinion that the cause of death of the deceased was due to hacking injuries over the head and other parts

of the body. In his cross-examination, P.W.7 stated that Jaladurgam Village was in Peapully Mandal and the MRO Office at Peapully was at a distance of 20 kilometres from Dhone. Muniswamy Reddy was stated to be the VRO of Kocheruvu, whose office was at a distance of 12 kilometres from Dhone. He stated that he was not served with any summons by the Police to act as a mediator for the inquest and that he did not obtain permission of his MRO to do so. He confirmed that the recital made in Column No.7 of the inquest report that the dead body was lying towards left was correct. He also confirmed that the hands of the body were folded upwards. He admitted that the mango grove of Yellappa was on one side and the flower garden of Narasamma was on the other side of the scene of the offence. He said that both of them were not present or examined at the time of the inquest by the police. He denied the suggestion that he and the others were not present when the inquest was held over the dead body and that he attested Ex.P3 and Ex.P4 at the Police Station.

P.W.8, a resident of Dhone, stated that he worked as the Village Revenue Officer, Kothakota, from 2005 till 2009. He said that he was called by the Dhone Police on 31.03.2007, along with Sathyanarayana (L.W.12), and both of them went to the Police Station. He said that the Inspector of Police and other staff took them to Chigurumanumetta and they reached there at about 7.00 AM. He said that they found nine persons sitting on a pial at Chigurumanumetta and the police surrounded and apprehended them. He said that he could not identify them due to lapse of memory and he did not remember whether the said persons also disclosed their identities by name. He however said that he knew that they belonged to Hussainapuram Village. He said that the police were led

to Gosanipalli Village where a mango grove was located on the way to Dhone and they were taken to the spot along with the apprehended persons and the Police recovered four sickles when pointed out by them from a hidden place near the vanka. He however said that he did not know the other seizures effected by the police. He identified M.Os.9 to 12 as the four sickles seized by the Police. He disclaimed knowledge of the seizure of a knife with grip and from whom it was seized. He said that the Police recorded the statements of all those persons, after arresting them in his presence. He said that he did not know what kind of statements were given by each of the arrested persons before the Police. He admitted that the Police prepared a report for the seizure of M.Os.9 to 12 (Ex.P4), which he attested. Ex.P5 was identified by him as his signature in the report. He said that Sathyanarayana (L.W.12) was also present along with him and attested the seizure report and another report at 7.00 AM. He said that Sathyanarayana (L.W.12) was no more. In his cross-examination, P.W.8 denied that he had not been taken by the Police anywhere and nothing was witnessed by him. He denied that he attested Ex.P4 seizure report and other reports at the Police Station only and that he was deposing falsely.

P.W.9, a Civil Assistant Surgeon at the Government Hospital, Dhone, stated that he received a requisition from Dhone Police Station to conduct the post-mortem examination of the body of the deceased and he commenced the same at 4.40 PM on 12.03.2007. He said that he completed the post-mortem examination by 5.50 PM and found twelve ante-mortem external injuries, which he detailed. He also spoke of the internal injuries found by him and opined that the cause of death was due to trauma, head injury, hemorrhage and

shock. He said that the deceased would appear to have died 5 to 6 hours prior to the post-mortem examination. He confirmed that Ex.P6 was the post-mortem report given by him. In his cross-examination, P.W.9 stated that injury Nos.7 and 8 were the injuries on the fingers of both hands and that the same might have occurred by way of defence, by raising the hands. He said that it was possible that injury No.4 may have been caused by a double-edged sharp weapon. He admitted that injuries 5 and 6 were not associated with injuries to the bone and might have been caused by blunt weapons. He said that it was possible to cause injury No.3 by a light cutting weapon and injuries 1, 2, 11 and 12 by means of heavy cutting weapons. He said that he could not give the conspicuous nature of the injuries because of mixing up of multiple injuries. He stated that, generally, one would take four hours for digestion and emptying of the stomach. He admitted that in his post-mortem examination of the body of the deceased, he found semi-digested rice in the stomach. In his further examination-in-chief by the prosecution, more than a month later, P.W.9 stated that it is possible that injuries 1, 2, 10, 11 and 12 could be caused by M.Os.9 to 12 hunting sickles. In his further cross-examination, P.W.9 stated that M.Os.9 to 12 were curved weapons with sharpness on one side. He admitted that the general characteristics of M.Os.9 to 12, when used as weapons, would first cause puncture wounds and then incised wounds. He admitted that it could not be elicited from his report that, by examination of the dead body, whether the injuries bore the above said characteristics as they were all mixed-up wounds and were not conspicuous enough to differentiate the shapes.

P.W.10, the VRO of Chinnamalkapuram Village, stated that he was present at the MRO Office, Dhone, at about 7.00 AM on 04.04.2007, when he was called by a Police Constable, Dhone, along with K.Sathyanarayana (L.W.12), who was also present. They were both taken to the Police Station and from there, to Bharat Hotel located on Kurnool-Dhone road. After they went there, they found one person already in the custody of the Police at the Hotel, at about 7.45 AM. He said that the Police informed him that he was an accused in Crime No.45 of 2007 of their Station. He however could not identify the said person due to lapse of memory. The Police were stated to have obtained his signature on the report already prepared but he did not know the contents thereof. He identified Ex.P7 as his signature in the said report dated 04.04.2007. He was declared hostile and cross-examined by the prosecution. He then stated that it was not true to say that he attested the prepared report by going through the contents and after witnessing the arrest of the accused at Bharat Hotel, Dhone. He denied that the accused gave a confession statement to the Inspector of Police in his presence and admitted that he committed the murder of the deceased by joining the other accused. He denied that he was giving false evidence to help the accused.

P.W.11, the Inspector of Police, Dhone, spoke of receipt of Ex.P1 written report from P.W.1. He stated that he submitted the original FIR to the Court and copies thereof to all concerned. In his cross-examination, P.W.1 admitted that the Police Station at Dhone was located at a distance of a few yards from the Court. He admitted that it was not mentioned either in Ex.P1 report or in Ex.P8 FIR that P.W.1 came to the Police Station along with P.Ws.2 to 4. He however

denied the suggestion that they did not come to the Police Station at 12.00 noon. He also denied the suggestion that Ex.P1 and Ex.P8 were manipulated after 12.00 noon by consulting the local MLA and local leaders. He volunteered that in Ex.P1, it was shown as if P.W.1 came to the Police Station along with his men.

P.W.12, the Inspector of Police, Dhone Circle, spoke of the various steps taken by him during the investigation. In his cross-examination, he stated that at the time he received information about this crime, he was at Tarakarama Nagar, Dhone, which was two kilometres from the Police Station. He stated that he was in bandobusth duty for the local MLA. He denied the suggestion that he did not reach the Police Station by 1.00 PM and that P.Ws.1 to 4 were not present there. He said that the contents of Ex.P3 inquest report were correct and denied the suggestion that P.Ws.1 to 4 did not give statements at the time of the inquest. He also denied the suggestion that no auto was found at the scene of the offence by the time he went there. He said that it was not true to say that M.O.13 auto was planted for the purpose of this case. He denied the suggestion that Ex.P9 rough sketch was not correct and that all these documents were prepared leisurely at the Police Station to suit the case. He admitted that P.W.1 did not mention the time of his reaching at Kocheruvu Circle and how long he waited there for the bus. He also admitted that P.W.1 did not specifically state that A2 to A7 beat his father with sickles over his head and hands when he examined him. He admitted that P.W.2 did not state before him that he had started to Dhone at 7.00 AM along with P.Ws.3 and 4. He also admitted that P.W.2 did not mention the time as 10.00 AM when he reached Kocheruvu Circle. He stated that it was true that P.W.2 did not

explain about running up to a distance of 20 to 25 feet from the place where the deceased was murdered after seeing the accused. He admitted that P.W.3 stated before him as in Ex.D1. He said that it was true that he did not state before him that they boarded an auto as a bus was not available. He stated that P.W.4 informed him as in Ex.D2. He said that it was true that P.W.4 did not state before him that he started at Hussainapuram and after reaching Hussainapuram bus stop he joined P.Ws.2 and 3 and about his boarding the auto because of non-availability of a bus. He stated that Chigurumanumetta is at a distance of 10 kilometres from Dhoni and it was a junction. He admitted that K.Sathyanarayana (L.W.12) was the VRO, Ungarani Bugga Village, which was situated on Dhoni-Peapully road at a distance of five kilometres. He admitted that P.W.8 was the VRO of Kothakota Village, which was at a distance of 15 kilometres from Dhoni. He admitted that Ex.P4 was not drafted by him. He denied the suggestion that he did not arrest any of the accused at Chigurumanumetta Village and that it was a concocted story. He denied the suggestion that his investigation was not proper and that none of the accused gave confessional statements and that no weapons were seized when pointed out by them. He denied the suggestion that his investigation was only on the lines suggested by the local MLA and leaders.

P.W.13, the Inspector of Police, Dhoni Circle, who took up investigation from P.W.12, spoke of receiving the post-mortem report and the FSL reports and filing of the charge sheet.

Upon a conspectus of the aforesaid evidence, oral and documentary, the Sessions Court framed the following points for consideration:

1. Whether all the accused formed themselves into unlawful assembly armed with deadly weapons to commit the offence of rioting?
2. Whether the accused attacked the deceased, Nagi Reddy with their common object to inflict the bodily injuries on him with their common object to kill him or had knowledge that the injuries as inflicted by them on the deceased are sufficient to cause his death in the ordinary course of nature?
3. Whether there was any delay in lodging of FIR and later by dispatching the same to the magistrate and the same is fatal to the case of the prosecution?
4. Whether the prosecution has established the guilt of the accused for the offence under section 147, 148 and 302 & 302 read with 149 IPC beyond all reasonable doubt?

Opining that there could be no doubt that the deceased had sustained fatal injuries on 12.03.2007 at about 11.00 AM and no circumstances had been elicited as to cause of death of the deceased being in connection with any other motive by a person related to the woman with whom he was alleged to have illegal contact and the accused could not produce any sort of evidence to probablize such a defence, the Sessions Court took note of the fact that there was admitted political rivalry between the deceased and his supporters and the accused who belonged to the same village. The Sessions Court further found the evidence of P.Ws.1 to 4 to be trustworthy and compelling. The Sessions Court observed that independent witnesses were also examined by the prosecution but they had turned hostile. Dealing with the discrepancies in the medical evidence as to the nature of wounds on the body of the deceased in juxtaposition to the hunting sickles alleged to have been used in the attack upon him, the Sessions Court concluded that the ocular evidence of P.Ws.1 to 4 outweighed such medical evidence. The Sessions Court therefore

concluded that the prosecution proved beyond reasonable doubt that A1 to A8 had accomplished their part of the role by actively participating in the killing of the deceased and that they were all members of an unlawful assembly armed with deadly weapons, hunting sickles. The Sessions Court also opined that the prosecution had proved that A1 and A2 caused fatal injuries on the head of the deceased, aided by others, thereby causing his death. Dealing with the delay in the lodging of the FIR and dispatch of the same to the Magistrate, the Sessions Court noted that the incident occurred at about 11.00 AM on 12.03.2007 and the report thereof, under Ex.P1, was given by P.W.1 on that day leading to registration of Ex.P8 FIR at about 12.00 noon. The Sessions Court noted that this incident occurred at a distance of three kilometres from the Police Station and therefore there was no apparent delay in the lodging of the report. The Sessions Court however found that Ex.P8 FIR was received by the Magistrate only at 5.40 PM on 12.03.2007 and that there was a delay of about five hours in the dispatch thereof to the Court. The Sessions Court however noted that no embellishments or manipulations were found in the FIR, so as to establish any improvement of the prosecution's story. The delay in the dispatch of the FIR to the Court was held to be due to reasons not explained by the prosecution but the Sessions Court observed that such delay would not vitiate the prosecution's case, when it was found to be free of embellishments or improvements. With this reasoning, the Sessions Court held that the delay of five hours was not fatal to the prosecution's case. As regards A9 and A10, the Sessions Court observed that the prosecution had failed to prove their guilt for the offences under Section 148 and Section 302 IPC r/w Section 149 IPC,

with which they were charged. On this analysis, the Sessions Court recorded convictions under various penal provisions against A1 to A8 and sentenced them, leading to this appeal.

Heard Sri P.Veera Reddy, learned senior counsel appearing for Sri P.Nagendra Reddy, learned counsel for the appellants/A1 to A8, and the learned Public Prosecutor for the State of Andhra Pradesh.

Sri P.Veera Reddy, learned senior counsel, would point out that though reference was made by the prosecution witnesses to various criminal cases pending between the rival groups and the political enmity between them, there was no indication of the deceased being arrayed either as an accused or as a witness in any of such criminal cases. Learned senior counsel would also point out that the deceased never contested in any election and that, even according to P.W.1, he had cordial relations with the leader of the rival group, Maruthi Narasimhulu. Learned senior counsel would further argue that the accused were falsely implicated in the homicidal death of the deceased caused by some unknown persons. He would attack the evidence of the professed eye witnesses, P.Ws.1 to 4, on the strength of diverse discrepancies therein. Learned senior counsel would point out that the delay of nearly five hours in the dispatch of the FIR clearly established that the entire case of the prosecution was built up over that period of time and the FIR was then lodged. He would point out that the question of embellishments or improvements did not arise as the FIR was prepared long after the event with a lot of forethought and manipulation of facts to suit the case of the prosecution. He would rely on the medical evidence to show that the case of the prosecution, resting upon the testimony of the so-called eye witnesses, could not be sustained and once even an iota of

suspicion arose as to the guilt of the accused, the benefit of doubt would naturally have to be given to them. He would also rely upon the fact that the so-called eye witnesses, P.Ws.1 to 4, never even spoke of the presence of A9 and A10 and they were dragged in, at a later point of time, to settle personal scores by implicating them in the charge sheet. He would point out the relationship between A4 to A6 and assert that A8 who was younger than them, would not have addressed them so disrespectfully. He would advert to the words allegedly uttered by A8 when he caught hold of the deceased, exhorting A1 to A7 to come and hack and kill him in this regard and point out that he allegedly instigated the accused by calling them ‘ ’, which would normally be used to address someone who is of the same age or younger. He would point out that A6 was A8’s father while A4 and A5 were his cousins, being the sons of A6’s brothers. He would therefore argue that A8 would not have used such a tone while addressing them. He would conclude by stating that the convictions and sentences under appeal are unsustainable as they were based on the oral evidence of witnesses who were planted and upon recoveries which were questionable.

Per contra, the learned Public Prosecutor would argue that the judgment under appeal is based on cogent reasoning and logical assessment of the evidence, oral and documentary, and therefore does not warrant interference. He would point out that unless it is established that the findings recorded by the Sessions Court were contrary to the evidence adduced, the appellate Court would not normally interfere. He would point out that the four eye witnesses spoke consistently of the incident and that minor omissions and contradictions on their part would not be sufficient to disbelieve

them. He would further assert that this Court ought not to go through the evidence with a fine toothed comb and pick on minute discrepancies so as to poke holes in the prosecution's case. He would concede that strict scrutiny would be necessary in cases involving a faction killing but even by applying such standards to the case on hand, the guilt of A1 to A8 was proved beyond reasonable doubt. He would therefore pray for dismissal of this appeal.

Be it noted that in ***HARIJANA THIRUPALA V/s. PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD***¹, the Supreme Court observed that the case of the prosecution must be judged as a whole, having regard to the totality of the evidence, and in appreciating the evidence, the approach of the Court must be integrated and not truncated or isolated. In other words, *per* the Supreme Court, the impact of the evidence in totality on the prosecution's case or innocence of the accused has to be kept in mind, in coming to the conclusion as to the guilt or otherwise of the accused. The Supreme Court cautioned that in reaching a conclusion about the guilt of the accused, the Court must appreciate, analyze and assess the evidence placed before it by the yardstick of probabilities and its intrinsic value and the animus of witnesses.

Further, in ***MUTHU NAICKER V/s. STATE OF T.N.***², the Supreme Court observed that in a faction-ridden society where an occurrence takes place in a village involving rival factions, it is but inevitable that the evidence would be of a partisan nature and it must be borne in mind that in such a situation, the easy tendency to involve as many persons of the opposite faction as possible, by merely naming them as having been seen in the melee, is a tendency which

¹ (2002) 6 SCC 470

² AIR 1978 SC 1647

is more often discernible and is to be eschewed and, therefore, the evidence must be examined with utmost care and caution.

The learned Public Prosecutor placed reliance on ***BRAHM SWAROOP V/s. STATE OF UTTAR PRADESH***³, wherein the Supreme Court observed that minor discrepancies on trivial matters, which do not affect the core of the prosecution's case, should not prompt the Court to reject evidence of a witness in its entirety. It was further observed that after exercising care and caution, sifting through the evidence to separate truth from untruth, exaggeration and improvements, the Court must come to a conclusion as to whether the residuary evidence is sufficient to convict the accused. *Per* the Supreme Court, undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the witness.

Learned Public Prosecutor also placed reliance on ***SHIVASHARANAPPA V/s. STATE OF KARNATAKA***⁴. Therein, the Supreme Court observed that behaviour of witnesses or their reactions would differ from situation to situation and individual to individual. Expectation of uniformity in the reaction of witnesses, *per* the Supreme Court, would be unrealistic but the Court cannot be oblivious of the fact that even taking into account unpredictability of human conduct and lack of uniformity in human reaction, whether in the circumstances of the case, the behaviour is acceptably natural allowing for variations. It was further observed that if the behaviour is absolutely unnatural, the testimony of the witness may not deserve credence and acceptance. Reference was made by the Supreme Court

³ (2011) 6 SCC 288

⁴ (2013) 5 SCC 705

to its earlier decisions in **GOPAL SINGH V/s. STATE OF M.P.**⁵, where the conduct of the alleged eye witness was unnatural, and **RANA PRATAP V/s. STATE OF HARYANA**⁶, wherein it was observed that every person who witnesses a murder reacts in his own special way and there can be no set rule of natural reaction, justifying discarding of the evidence of a witness on the ground that he did not react in a particular manner as the same would result in appreciation of the evidence in a wholly unrealistic and unimaginative way. It was again observed in **STATE OF H.P. V/s. MAST RAM**⁷ that there is no set rule that one must react in a particular way, for the natural reaction of man is unpredictable and every one reacts in his own way. It was therefore concluded that behaviour has to be appreciated in the context of the given facts and circumstances of the case.

The case of the prosecution rested mainly upon the eye witness accounts of P.Ws.1 to 4. The son of the deceased, P.W.1, spoke of how he and the deceased went to Dhone by an auto on 12.03.2007 in the morning hours. As rightly pointed out by Sri P.Veera Reddy, learned senior counsel, when P.W.1 admitted that he owned a motorcycle, no explanation was put forth as to why he and his father went by an auto to Dhone, which was at a distance of 19 kilometres. Further, he did not choose to elaborate on why they went to Dhone. Apart from these omissions, there are other vital discrepancies in his version. According to him, he and his father completed their work and came to Kocheruvu Circle in Dhone at about 10.15 AM. Though he stated that they were waiting in front of Anil Medical Stores, he did not say anything about both of them going into the said store and

⁵ (2010) 6 SCC 407

⁶ (1983) 3 SCC 327

⁷ (2004) 8 SCC 660

meeting P.W.5, but P.W.5 claimed it to be so. Though P.W.5 spoke of P.Ws.1 to 4 and the deceased boarding an auto at Kocheruvu Circle, Dhone, he admitted that there was no vehicle stop in front of his shop. He also conceded that it would not be possible to observe people outside when the owner of the shop is busy with his business. P.W.5's evidence is thus liable to be painted with the brush of doubt.

P.W.1 further stated that P.Ws.2, 3 and 4 came and joined them at Kocheruvu Circle and that they all waited for the bus to go back to their village. This statement is in direct contravention to what P.Ws.3 and 4 stated, as vouched for by the police (P.W.12) in Exs.D1 and D2, to the effect that P.W.1 and the deceased came to Kocheruvu Circle after them. To compound matters further, even if it is believed that they did board A.8's auto, there is no indication of A8 informing his henchmen that there was a possibility of settling scores with the deceased by attacking and eliminating him on the way from Dhone to Hussainapuram Village. Unless such information was conveyed, it is not explained as to how A1 to A7, armed with hunting sickles, would have been ready and waiting at the mango grove near the idol of Anjaneya Swamy, lying in wait for the auto carrying the deceased and his group. The only other passenger who was allegedly traveling in the same auto, P.W.6, turned hostile and did not support the prosecution's case. He denied that he was present in the said auto.

More importantly, when the prosecution witnesses spoke of enmity between the two groups - the deceased's group and the accused's group, and criminal cases were also filed and pending between them, no explanation was put forth as to why P.Ws.1 to 4, along with the deceased, boarded the auto of A8, the son of A6, knowing fully well that he belonged to the rival group. It is brought

out in the evidence that A8 also belonged to Hussainapuram Village and therefore, his allegiance to the rival group would have been well within their knowledge. Accepting that they did so, P.W.1's version of how the attack unfolded is also open to question. He said that the auto in which they were traveling was stopped by A8, its driver, upon seeing A1 to A7, who came out suddenly from the eastern side from a mango grove when they reached the idol of Lord Anjaneya Swamy at a distance of three kilometres from Dhone, near Gosanipalli Village. He specifically stated that A1 to A7 surrounded them and that they were all armed with sickles. There was therefore no doubt in his mind as to the weapons that they were carrying. He further stated that when his father got down from the auto, A8 caught hold of him by his hands and instigated the other accused to kill him. According to him, he along with P.Ws.2 to 4 ran away to escape and turned around at some distance to watch for his father. Significantly, P.Ws.1 to 4 did not even make an attempt to come to the rescue of the deceased. According to him, A8 caught hold of the deceased by his hands. A8 admittedly did not wield any weapon. It is difficult to accept that P.Ws.1 to 4, who clearly outnumbered A8, would not have tried to free the deceased, so that they could all escape together. P.W.1, being the son of the deceased, claims that he only looked to his own safety and tried to escape without even bothering about his father, who was aged over 60 years. This claim is difficult to accept on the face of it.

Significantly, P.Ws.1 to 4 who claimed to be eye witnesses to the entire incident did not even mention the presence of A9 and A10. According to the charge sheet laid by the prosecution, A9 who was hiding in the fields situated on the eastern side of the road with a dagger, along with A10, came on to the road and threatened the

passengers of the other auto which was going from Dhone to Hussainapuram Village and reached the spot where the attack on the deceased was in progress. According to the prosecution, A9 held out the dagger to threaten and keep at bay T.Yanganti Reddy (L.W.6), the brother of P.W.4, Rachapogu Sreenivasulu (L.W.7) and others along with A10, so as to prevent them from coming forward. As the attack on the deceased was stated to have taken place at the margin of the road, P.Ws.1 to 4 could not have missed seeing A9 and A10 had they been on the road holding the passengers of the other auto at bay. However, neither in Ex.P1 statement nor in their statements before the Police or before the Court did any of these eye witnesses refer to the presence of A9 and A10.

Their failure to mention these two accused assumes significance in the light of the delay on the part of the Police in dispatching Ex.P8 FIR to the Court. Admittedly, there was a delay of about five hours in doing so. The Sessions Court seems to have accepted it as the gospel truth that the said FIR was registered at 12.00 noon and that there was only some delay in its dispatch.

Sri P.Veera Reddy, learned senior counsel, placed reliance on **MEHARAJ SINGH V/s. STATE OF U.P.**⁸, wherein the Supreme Court observed that the FIR in a criminal case, and particularly in a murder case, is a vital and valuable piece of evidence and the object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses. The Supreme Court pointed out that one of the checks

⁸ (1994) 5 SCC 188

in this regard is receipt of the copy of the FIR by the local Magistrate and if such a report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it was alleged to have been recorded, unless, of course, the prosecution offers a satisfactory explanation for the delay in dispatching the FIR to the local Magistrate.

In **MARUDANAL AUGUSTI V/s. STATE OF KERALA**⁹, involving delayed dispatch of an FIR to the Magistrate, the Supreme Court cautioned that such delay would throw serious doubt on the prosecution's case. Again, in **ARJUN MARIK V/s. STATE OF BIHAR**¹⁰, the Supreme Court observed that forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest dispatch, which intention is implicit in the use of the word 'forthwith' in Section 157 CrPC; the purpose and object is obvious - it serves dual purposes, firstly, to avoid the possibility of improvement in the prosecution's story and introduction of any distorted version by deliberations and consultations and secondly, to enable the Magistrate concerned to have a watch on the progress of the investigation. This principle was again affirmed by the Supreme Court in **RAJEEVAN V/s. STATE OF KERALA**¹¹.

In **ISHWAR SINGH V/s. THE STATE OF U.P.**¹², the Supreme Court adverted to Section 157 CrPC which requires the FIR to be sent 'forthwith to the Magistrate' and observed that if no explanation is offered for delay in doing so, that would be a circumstance which provides a legitimate basis for suspecting that the FIR was recorded much later than the stated date and hour, affording sufficient time

⁹ (1980) 4 SCC 425

¹⁰ 1994 Supp (2) SCC 372

¹¹ (2003) 3 SCC 355

¹² AIR 1976 SC 2423

to the prosecution to introduce improvements and embellishments to set up a distorted version of the occurrence. The Supreme Court found that in that case such suspicion hardened into definite possibility, as it was found that the case made out in Court differed from that narrated in the FIR on two important particulars. Applying the same standard to the case on hand, it is clear that having built up a particular case involving only A1 to A7, the prosecution decided thereafter to implicate A9 and A10 also, and framed the charge sheet accordingly, but unfortunately this was not informed to the so-called eye witnesses, P.Ws.1 to 4, who completely failed to mention the presence of A9 and A10 at the scene of the offence.

In the case on hand, the Inspector of Police admitted that the Court was at a distance of a few yards from the Police Station. That being so, it was for him to explain as to why there was a delay of about five hours in the dispatch of the FIR to the Court. No explanation was however offered. The Sessions Court accepted the FIR only on the ground that there were no embellishments or improvements therein. This analysis on the part of the Sessions Court does not warrant acceptance as it is equally possible that the FIR was not even registered at 12.00 noon as claimed, but was registered much later and was ante-timed as having been registered at 12.00 noon. If that be so, it is possible that the police, acting at the behest of political leaders, tailored the facts therein so as to suit the case which was thereafter put forth by the prosecution and therefore, the question of any improvements upon the FIR did not arise. In such a situation, the ante-timed FIR itself would be a product of improvements and embellishments made to the prosecution's case with forethought and consultation so as to

implicate the accused. It appears that only after registration of Ex.P8 FIR, the thought of implicating A9 and A10 occurred to the prosecution and by improving upon the said FIR and Ex.P1 report of P.W.1, a charge sheet was laid involving them and painting a picture of their participation in the offence. However, as P.Ws.1 to 4 were not informed of such an added twist to the prosecution's case, they failed to mention them altogether in their testimony before the Sessions Court. This clearly manifests the element of manipulation in the case by the prosecution.

Recovery of the so-called weapons, M.Os.9 to 12 sickles, is of little use as the Forensic Science Laboratory recorded in Ex.P15 report that blood was not even detected on them. That apart, the medical evidence confirmed that various injuries were found on the body of the deceased which could not have been inflicted by use of these sickles. This aspect of the matter was sought to be glossed over by recalling P.W.9, the Civil Assistant Surgeon who conducted the post-mortem examination of the body of the deceased, and eliciting from him that the wounds were mixed up to the extent of being inconspicuous, whereby differentiating shapes and characteristics thereof was rendered difficult. However, P.W.9 also stated in no uncertain terms that there was a stab injury caused by a double-edged sharp weapon and there were also injuries associated with blunt weapons. When P.Ws.1 to 4, the so-called eye witnesses, stated in categorical terms that A1 to A7 were armed only with hunting sickles, there is no explanation forthcoming for these injuries caused by a double-edged weapon and blunt weapons. According to the prosecution, the dagger recovered from A9 (M.O.14) was not used in

the attack upon the deceased but was only pressed into service to threaten the passengers of the other auto.

Sri P.Veera Reddy, learned senior counsel, placed reliance on **RAGHUNATH V/s. STATE OF HARYANA**¹³, wherein the Supreme Court observed that where the prosecution's evidence consisted of interested/inimical witnesses, non-explanation of the injuries may assume greater importance rendering the prosecution story not wholly true. Reliance in this regard was placed upon the observations made by the Supreme Court earlier in **VIJAYEE SINGH V/s. STATE OF U.P.**¹⁴ to the effect that non-explanation of the injuries may assume greater importance where the evidence consists of interested or inimical witnesses but where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood, the mere fact that the injuries are not explained by the prosecution cannot by itself be the sole basis to reject such evidence, and consequently the whole case. The Supreme Court further pointed out that where the prosecution failed to establish its case beyond reasonable doubt and if two views were possible - one in favour of the accused and the other adversely against it, the view favouring the accused must be accepted.

It may also be noted that recovery of M.O.13 auto is also not free from doubt. No recovery panchanama with regard to seizure of this auto was made part of the record. As rightly pointed out by Sri P.Veera Reddy, learned senior counsel, mere mention of the engine and chassis numbers of the said auto does not lend support to the prosecution's case that it was seized at the scene of the offence, as such details may be easily available to the Police from the office of the

¹³ (2003) 1 SCC 398

¹⁴ (1990) 3 SCC 190

Regional Transport Authority, and more so when there is political intervention to build up the case.

Further, P.W.1 stated that he along with P.Ws.2 to 4 went to the Police Station at Dhone, where he gave Ex.P1 report to the Sub-Inspector of Police, whereupon the Inspector of Police and he went to the spot where the incident occurred. According to him, P.Ws.2 to 4 also came there separately. The same version was put forth by P.Ws.2 to 4. However, the Inspector of Police, P.W.12, said that he along with P.Ws.1 to 4 went to the scene of the offence after receipt of Ex.P1 report. Lack of consistency in this small detail is sufficient to show that the evidence of these witnesses, P.Ws.1 to 4, is highly doubtful and not worthy of credence. Given the fact that P.Ws.1 to 4 had scores to settle with the accused and their group in the light of various criminal cases registered by both sides, it cannot be ruled out that given this opportunity, they and their political bosses would have wanted to make out the death of the deceased to be a faction killing so as to implicate the accused. Given the totality of the aforestated facts and circumstances, such a possibility is clearly made out and the claim of P.Ws.1 to 4 that they were actual eye witnesses cannot be accepted. The discrepancies are not only far too many but are also of such crucial nature as to completely destabilize their version.

Once the presence of P.Ws.1 to 4 is discounted, the prosecution had to establish a chain of events unerringly pointing towards the guilt of the accused for the homicidal death of the deceased. As already pointed out, the very claim that the deceased and P.Ws.1 to 4 would get into an auto driven by a member belonging to the rival group defies comprehension and acceptance. The

prosecution's case that another auto came to the spot carrying passengers, whereupon the accused fled, is also without any acceptable evidence. T.Yanganti Reddy (L.W.6), the brother of P.W.4, and Rachapogu Sreenivasulu (L.W.7), who were stated to have been traveling in the said auto, were not even examined by the prosecution before the Sessions Court. It is rather difficult to believe that the brother of P.W.4 would be allied with the rival group to the extent of supporting the accused against his own brother. Further, as already stated *supra*, the role attributed to A9 and A10 in dealing with T.Yanganti Reddy (L.W.6) and Rachapogu Sreenivasulu (L.W.7) is completely unworthy of credence and was already rejected by the Sessions Court.

It is also to be noted that even if the version put forth by the prosecution is accepted, A1 to A7, who had scores to settle would choose to do so with P.Ws.1, 2 and 3 with whom they had criminal cases, rather than pouncing upon the aged deceased who admittedly did not play any role in those criminal cases and was not even a contestant in the elections. It is therefore evident that the entire case put forth by the prosecution, starting from the delay in the dispatch of the FIR, suffered from one too many defects and could not be accepted. Overlooking the numerous discrepancies and weaknesses in the prosecution's case, the Sessions Court blindly recorded convictions. Though this Court would not have been swayed by minor discrepancies and contradictions in the prosecution's case, the lacunae and defects in the case on hand are so many in number and of such a crucial and fundamental nature, that the whole edifice of the prosecution's case itself falls to the ground.

On the above analysis, this Court holds that the prosecution utterly failed to prove beyond reasonable doubt that A1 to A8 were guilty of the various offences with which they were charged. In consequence, the criminal appeal is allowed and the judgment dated 25.01.2011 of the learned IV Additional Sessions Judge, Kurnool, in Sessions Case No.274 of 2008, holding them guilty of the said offences is set aside and they are acquitted of all charges. As the appellants were enlarged on conditional bail pending disposal of the appeal, they shall forthwith report before the Superintendents of the prisons in which they were confined at the time bail was granted, for completion of formalities, in accordance with the due procedure, for their discharge in the light of their acquittal. The bail bonds furnished at the time of their securing bail shall stand discharged.



SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

6th SEPTEMBER, 2017

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