

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

CRIMINAL APPEAL NO.246 OF 2011

Between:

Konakala Ramakrishna @ Ramu and others .. Appellants

and

State of A.P. rep. by its Public Prosecutor .. Respondent

DATE OF JUDGMENT PRONOUNCED: _____.09.2017

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

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

+ CRIMINAL APPEAL NO.246 OF 2011

% DATED _____ SEPTEMBER, 2017

Konakala Ramakrishna @ Ramu and others .. Appellants

Vs.

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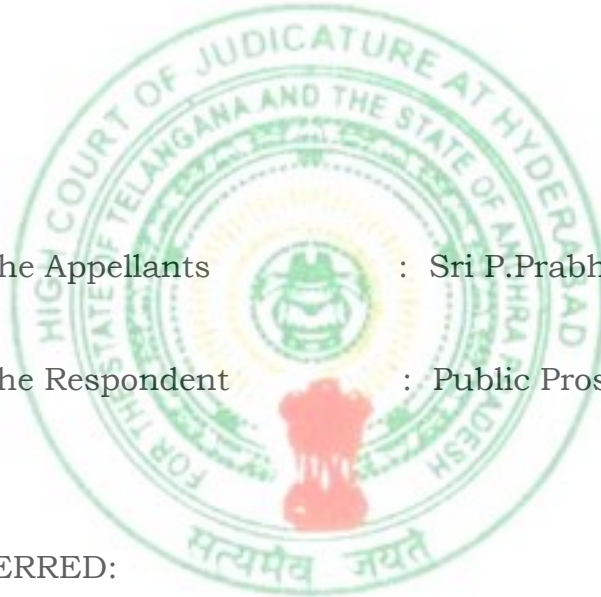
>Head Note:

! Counsel for the Appellants : Sri P.Prabhakar Reddy

^Counsel for the Respondent : Public Prosecutor

? CASES REFERRED:

1. 2016(3) ALT 505 (DB) (AP)
2. AIR 1976 SC 2263
3. AIR 1968 SC 1281
4. (2013) 2 SCC 541
5. 2017 SCC OnLine SC 152



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

CRIMINAL APPEAL NO.246 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 21.02.2011 passed by the learned Family Judge-cum-Additional Sessions Judge at Khammam in Sessions Case No.560 of 2008. By the said judgment, the Sessions Court held A1 to A5 guilty under Section 148 IPC; A1 and A5 were held guilty under Section 302 IPC for the murder of M.Sheshulu (D1); A2 to A4 were also held guilty under Section 302 IPC read with Section 149 IPC for the murder of D1; A1 to A4 were found guilty under Section 302 IPC for the murder of M.Venkata Satyanarayana (D2), the son of D1; A3 and A5 were held guilty under Section 326 IPC for causing grievous hurt with a dangerous weapon to Mareedu Srinivasa Rao (P.W.8); A1, A2 and A4 were held guilty under Section 324 IPC read with Section 149 IPC for having caused hurt with a dangerous weapon to Mareedu Srinivasa Rao (P.W.8); and A5 was acquitted of the charge under Section 427 IPC. Pursuant to the aforestated convictions, the following sentences were imposed by the Sessions Court:

A1 to A5 were sentenced to undergo rigorous imprisonment for a period of one year for their conviction under Section 148 IPC; A1 and A5 were sentenced to imprisonment for life apart from paying a fine of Rs.500/- each, in default of which they were to undergo simple imprisonment for two months each, for their conviction under Section 302 IPC in so far as the murder of D1 was concerned; A2 to A4 were sentenced to imprisonment for life and payment of fine of

Rs.500/- each, in default of which they were to undergo simple imprisonment for two months each, for their conviction under Section 302 IPC read with Section 149 IPC for the murder of D1; A1 to A4 were sentenced to imprisonment for life and payment of a fine of Rs.500/- each, in default of which they were to undergo simple imprisonment for two months each, for their conviction under Section 302 IPC for the murder of D2; A3 and A5 were sentenced to undergo rigorous imprisonment for two years each apart from payment of a fine of Rs.200/- each, in default of which they were to undergo imprisonment for two months each, for their conviction under Section 326 IPC; A1, A2 and A4 were sentenced to undergo imprisonment for one year each for their conviction under Section 324 IPC read with Section 149 IPC. All the sentences were to run concurrently.

Aggrieved by the convictions and sentences visited upon them, A1 to A5 are in appeal.

The case of the prosecution, in brief, was as under:

The Sub-Inspector of Police, Kalluru Police Station (P.W.14), received Ex.P1 report from P.W.1 on 28.02.2007 at about 12.00 noon. He thereupon registered a case in Crime No.24 of 2007 under Sections 302 and 307 IPC read with Section 149 IPC. Ex.P30 is the printed FIR. He sent the injured to the Government Hospital, Sathupalli. The Circle Inspector of Police, Sathupalli (P.W.15), thereupon took up investigation. He examined and recorded the statement of P.W.1. He visited the scene of the offence and having secured the presence of mediators, P.W.9 and Venukonda Koteswar Rao (L.W.14), he observed the scene of the offence and drew up a rough sketch, in their presence. Ex.P2 is the Crime Details Form along with the sketch of the scene. He seized blood-stained earth and

controlled earth from the scene of the offence and conducted an inquest over the body of D1 in the presence of P.W.9 and Venukonda Koteswar Rao (L.W.14) from 1.15 PM to 3.45 PM. During the inquest, he examined and recorded the statements of P.Ws.2 to 5, Mareedu Venkatakrishna (L.W.6), P.W.6 and P.W.7. He then conducted an inquest over the body of D2 in the presence of P.W.9 and Venukonda Koteswar Rao (L.W.14). He got the scene of the offence and the dead bodies photographed by P.W.10. He also recorded the statement of P.W.10 to this effect. He then forwarded the bodies of D1 and D2 to Penuballi Government Hospital for post-mortem examination. He examined P.W.8, Anabothu Seethamma (L.W.10) and Naidu Krishna (L.W.11) and recorded their statements. During the course of the investigation, he found that A1, A2, A3 and A5 had received injuries and sent them to Penuballi Government Hospital along with P.W.14. On 07.03.2007, P.W.15 received reliable information that A1, A2, A3 and A5 were discharged from the hospital and arrested them at V.M.Banjar bus stand. He interrogated them in the presence of mediators, P.W.11 and Adala Venkateshwar Rao (L.W.16). The accused then took them to the place where they had concealed the weapons and in the presence of the mediators aforesaid, A1 produced M.O.1 axe, A2 produced M.O.2 axe and M.O.4 knife, A3 produced M.O.3 stick and A5 (wrongly mentioned as A4) produced M.O.5 crowbar. The weapons were seized in the presence of the mediators. P.W.15 then produced A1, A2, A3 and A5 before the Judicial First Class Magistrate, Sathupalli. On 30.03.2007 at 1500 hours, P.W.15 apprehended A4 and A6 at Singarayapalem Village. They also confessed to commission of the offence. P.W.15 produced A4 before the Judicial First Class Magistrate, Sathupalli. As A6 was

a minor, she was produced before the Juvenile Court, Khammam. The seized material objects were forwarded to the Forensic Science Laboratory, Warangal, through the Judicial First Class Magistrate, Sathupalli. Apart from the recovered case properties, the towel and dhoti of D1 (M.O.10) and the lungi, shirt, banian and cut-drawer of D2 (M.O.11) were also forwarded to the Laboratory. Ex.P31 is the report furnished by the Laboratory after examination. Exs.P28 and P29 are the post-mortem examination reports of D1 and D2 respectively. Ex.P27 is the wound certificate of P.W.8. Upon completion of the investigation, P.W.15 laid a charge-sheet against A1 to A5 under Sections 147, 148, 302, & 307 IPC r/w Section 149 IPC.

Upon committal, the Sessions Court framed these charges:

'In the manner stated above, you A.1 to A.5 formed into an unlawful assembly, as such, I took the cognizance u/s 148 IPC.

As you A.5 sprinkled chilli powder on D.1 and D.2, I took the cognizance u/s.427 IPC.

As you A.1 and A.5 committed murder of D.1, I took the cognizance u/s. 302 IPC.

As you A.2 to A.5, with the common intention and common object, committed murder of D-1, I took the cognizance u/s 302 R/w. 149 IPC.

As you A.1 to A.4 caused grievous hurt and committed murder of D-2, I took the cognizance u/s. 302 IPC.

As you A.3 and A.5 caused grievous bleeding injuries to LW-9, I took the cognizance u/s. 326 IPC.

As you A.1, A.2 and A.4 with common intention and common object, caused grievous injuries to D.1 and D.2 and LW-9, I took the cognizance u/s. 324 r/w. 149 IPC.

And I hereby direct that you be tried on the above said charges.'

A1 to A5 denied the charges and claimed to be tried.

Thereupon, the prosecution examined 15 witnesses and marked in evidence 31 exhibits. The accused did not adduce any oral evidence but marked in evidence Exs.D1 to D4. Case properties were marked as M.Os.1 to 11.

At this stage, it may be noted that D1 is the father of D2 and A1 to A6 are all closely related. A2 is the father and A4 is the mother of A1, A3 (sons) and A5 (daughter). A6 is the daughter of A4's sister.

Salient points emerging from the evidence may now be noted.

P.W.1 is the nephew of D1. He stated that D1 was his father's brother and D2 and P.W.8 were the sons of D1. He said that after completion of his degree course, he attended to agricultural works. D1's daughter, Venkamma, worked as a coolie and her daughter was Nagamma. D2 was brought up by Venkamma and the family members decided to perform the marriage of Nagamma with D2. Venkamma met the expenditure relating to D2 with the view that his marriage should be performed with her daughter. The house of the accused was very near the house of D1 and D2 and D2 fell in love with A5. In the year 2002, a panchayat was held with reference to their love affair and the elders performed their marriage in a temple at Nemali Village but none of the family members of D1 attended the marriage of D2 with A5. After their marriage, D2 lived with A5 at his in-laws' house and he lived there happily for some time. As his education was not completed, D2 requested A2 to advance him some money. A2 refused and sent D2 away from his house. D2 then went to the house of his father, D1. A5 lodged a complaint against D1, D2 and four others under Section 498A IPC with the Station House Officer, Kalluru Police Station. Coming to the fateful day, 28.02.2007, P.W.1 stated that while he was going to the tailor, P.W.8, to bring his

new clothes at 10.00 AM, he witnessed a galata at a distance of ten yards in front of the house of D1 and D2 and he saw D1, D2 and A1 to A5 and a relative of the accused, Vijaya (A6). He said that the accused and D1 and D2 quarreled. A1 to A5 were stated to have entered into the house of D1 and D2, armed with chilly powder, axes, a crowbar (gaddapara), a toddy-tapper knife (geethakathi) and a stick. He said that Vijaya (A6) sprinkled chilly powder in the eyes of D1 and D2, that A1 hacked D1 on the head with an axe and A5 hit the forehead of D1 with a crowbar and as a result of the injuries, D1 fell down and when D2 tried to abscond from the scene of the offence, A2 hacked him on the head with an axe and A2 also hacked D2 on the right leg. He said that A4 hacked D2 with a toddy-tapper knife on the face and as a result of these injuries, D2 fell down. He said that A3 hit D2 on the head with a stick when he fell down and A1 to A5 murdered D1 and D2 in the said manner. He said that they raised their arms and proclaimed that they would kill if anyone interfered. P.W.1 said that the villagers also witnessed the murders of D1 and D2 and in the meanwhile, P.W.8, the other son of D1, came to the scene of the offence and A1 and A2 attacked him and he received two injuries and fled from the scene. He said that after attacking P.W.8 and after raising cries, armed with their respective weapons, the accused fled from the village towards Venkatapuram. P.W.1 said that as he witnessed the same, he presented a complaint to the police (Ex.P1). He said that he himself scribed Ex.P1 and signed on it. In his cross-examination, P.W.1 stated that P.W.2 was the daughter-in-law of D1, while P.W.3 was his own brother. He denied that P.W.4 was the brother of D2 by courtesy and that D1 was his father's brother. He said that D1's eldest son was Venkatakrishna (L.W.6), whose son

was P.W.5, and P.W.8 was the second son of D1. He denied that his house was at a distance of half a kilometer from the house of D1 and D2. He added that the distance was 300 metres. He said that dwelling houses, 300 in number, were located between his house and D1's house. He denied that his house was located in old Venkatapuram, while D1's house was in new Venkatapuram. He said that he did not know whether D1 and A1 to A5 belonged to CPI (M). He denied that he served as a worker of CPI (M). He denied that he and A1 to A5 worked for CPI (M) and relinquished their membership three years ago. He said that D2 served as a teacher in Chinakorukondi Village before his death. He denied that D2 discontinued his employment as a teacher. He denied that D2 had misbehaved with female students and was therefore removed from service. He said that A5 and D2 fell in love but he did not know whether A5 had conceived and was in the fourth month of pregnancy with D2's child. He said that he **did** not know whether A5, with four months pregnancy, got married to D2 in Nemali temple. He denied that D1 and D2 had harassed A5 to bring dowry and that she was necked out from the house, whereupon she gave a complaint to the Station House Officer, Kalluru, on 07.08.2003. He admitted that D2 figured as the accused in Crime No.46 of 2003 and Mareedu Venkatakrishna (L.W.6) and Mareedu Tulasamma, the wife of D1, also figured as accused therein. He denied that D1 and D2 and their relatives harassed A5 to give a divorce to D2. He denied that at 10.00 AM, when A5 was at the drinking well, D1 and D2 along with P.W.8 outraged her modesty, forcing her to accept for a divorce and they tore her blouse and tried to remove her saree. He denied that when A1 to A4 interfered so as to rescue A5, D1, D2 and P.W.8 attacked

them and that 50 or 60 persons intervened when D1 and D2 attacked A1 and A2. He denied that the villagers advised A1 to give a complaint to the police. He denied that the villagers attacked D1 and D2 and not the accused. He denied that P.Raja Ram and his followers and the aggrieved villagers, whose daughters' modesty was outraged by D1 and D2, attacked D1 and D2. He denied that taking advantage of A5's love affair, a false case was foisted against A1 to A5. He denied that when A5 was with four months pregnancy, D2 took her to Tiruvur on the pretext that she was suffering from fever and got her pregnancy aborted. He said that D2 and A5 were minors and may have approached Vanaja doctor at Tiruvur and Dr.Vanaja might have aborted the pregnancy of A5. He denied that under the influence of the MLA and his son, Ex.P1 was brought into existence and a case was registered though A5 had presented a complaint earlier but the same was registered later in Crime No.25 of 2007 under Section 354 IPC. He denied the suggestion that he had not witnessed the incident and that he did not go to the tailor at the time of the galata. He denied the suggestion that he purchased readymade garments and did not wear stitched garments. He denied that P.W.8 was a ladies' tailor. He denied the suggestion that the MLA's son got Ex.P1 executed and he himself presented it to the Station House Officer, Kalluru Police Station. He admitted that he had not mentioned the weapons used by the accused in Ex.P1. He added that due to fear, he failed to mention them. He also admitted that he had not stated their independent overt acts in Ex.P1. He stated that he gave evidence against Vijaya (A6) in C.C.No.249 of 2007. Upon being recalled for further examination, P.W.1 stated that he had deposed in C.C.No.249 of 2007 as P.W.1. He denied that he had stated in the said case that

all the accused were armed with chilly powder. He admitted that he had stated in the said case that A4 was armed with a toddy-tapper knife (geethakathi) and caused injuries to D1 and that A3 beat P.W.1 with a stick. He stated that he had deposed in C.C.No.249 of 2007 that A1 beat D2 on his left leg with the toddy-tapper knife and caused bleeding injuries. He admitted that he also stated that A5 beat D2 on his thigh and all over the body with sticks and many people witnessed the same and that A5 had caused injuries to P.W.8 with a crowbar. He said that he did not depose that he came to the scene of the offence and telephone the neighbouring doctor to verify whether the injured were alive or dead. He said that he stated in C.C.No.249 of 2007 that he drafted ExP1 in the Police Station. He said that the accused's family owns 6 acres of land but added that he did not know how much land was owned by them. He said that he did not know whether the accused owned 6½ acres and leased out an extent of Ac.1.50 cents. He said that his brother's name was Venkateswarlu and that his brother's land abutted the lands of the accused. He again stated that his brother's land was not abutting the lands of the accused. He denied that he was deposing falsely though his brother's lands were abutting the lands of the accused. He denied the suggestion that they had set fire to the house of the accused at Thalluru. He denied the suggestion that in the absence of the accused, they sold away three cows worth Rs.60,000/- and a she-buffalo worth Rs.30,000/-. He denied the suggestion that D1 and D2 beat all the accused and as a result of the bleeding injuries, they were admitted in Penuballi Hospital and A4 was admitted in the Government Hospital as she sustained a head injury. He denied that he was deposing falsely to grab the property of the accused.

P.W.2 is the daughter-in-law of D1 and sister-in-law of D2. She is the wife of Mareedu Venkatakrishna (L.W.6). She said that D1 had four sons and one daughter and D2 was the fourth son. She said that D2 lived at the house of D1 and did his degree course. D1's daughter, Venkamma, helped D2 in his studies. Nagamma was the daughter of Venkamma. The family members of D1 decided to perform the marriage of D2 with Nagamma and as such, Venkamma helped D2 in his studies. She said that A1 to A5 lived in the house abutting the house of D1, and D2 fell in love with A5. A panchayat was held and at the intervention of elders, D2 got married with A5 but his family members did not attend the marriage. She said that thereafter, D2 lived in the house of A5. D2 and A5 lived happily for two days. She said that D2 demanded money from A1 and A4 but they failed to advance money and sent D2 back to his parents' house and as such, D2 started living with his parents. She said that A5 lodged a complaint under Section 498A IPC against D1 and D2 and their family members. She said that two or three houses intervened between her house and D2's house. On the date of the incident, she said that she was going along with she-buffalos to graze them. A1 to A5 were stated to have attacked D1 in front of D1's house on the road. A1 hacked D1 on the back with an axe and he fell down and when D2 tried to abscond from the scene, Vijaya (A6) sprinkled chilly powder on him and A1 to A4 caused injuries with an axe and a crowbar. She said that A1 to A4 were armed with weapons and hacked D1 and D2 indiscriminately and they died instantaneously due to the injuries. She said that D2 died at a short distance from D1. When P.W.8 interfered, the accused also caused injuries to him and he sustained injuries on his head and his left palm. She said

that A1 to A5 raised cries, armed with their weapons, and fled towards Venkatapuram. She said that she also hid due to fear as A1 to A5 proclaimed that they would kill anyone who interfered. She said that the accused influenced D1 and D2 to admit that they had committed an offence under Section 498A IPC and the accused also demanded for a divorce and if D2 failed to give a divorce, A1 to A5 proclaimed that they would kill D1 and D2. In her cross-examination, P.W.2 stated that P.W.1 and P.W.8 were her brothers-in-law. She said that her husband, Mareedu Venkatakrishna (L.W.6), figured as an accused in C.C.No.1924 of 2003 on the file of the Judicial First Class Magistrate, Sathupalli, under Section 498A IPC, registered by Kalluru Police on the complaint of A5. She admitted that she deposed in C.C.No.249 of 2007 that D1 asked her to take she-buffalos and she was taking them for grazing. She admitted that she deposed in C.C.No.249 of 2007 that the crowbar was meant to tie the buffalos and belonged to D1. She admitted that she did not state their independent overt acts as she was not asked by the prosecutor. She admitted that Vishnu, son of the deceased, was the Vice President of CPM party. She denied that she and her family members belonged to CPIM party. She denied the suggestion that D1, D2 and Srinivasa Raju tried to outrage the modesty of A5 in front of her house and that the villagers intervened and beat up D1 and D2 and they had foisted a false case against her. She denied knowledge of A5 being in the fourth month of pregnancy when her marriage was performed with D2 in a temple at Nemali. She denied knowledge of D2 taking A5 to Vanaja Hospital, Tiruvur, and getting her pregnancy aborted. She denied that she and other family members demanded A5 to bring additional dowry and necked her out from the house. She denied

that D1, D2 and Srinivasa Rao went to the house of A5 and demanded that she should give a divorce to D2 and that they beat her. She said that the accused were threatening her. She said that she did not know whether the house of the accused was set on fire along with their agricultural crops. She denied the suggestion that she was not an eye-witness to the murders of D1 and D2.

P.W.3 stated that on 28.02.2007, he started from his house to go to his agricultural lands at about 10.00 AM. He stated that the house of A1 was en route and he witnessed a galata at that time in front of the said house. He said that he saw A1 and A2 armed with axes. A4 was armed with a toddy-tapper knife, while A5 was armed with a crowbar and their relative, Vijaya (A6), was also present along with them. He said that he saw A2 hitting D1 with an axe on the back of his head and A1 also hit D1 on the back of his head with an axe and they also beat D2 and as a result of the injuries, they fell down. After witnessing the incident, he said that he fled. He said that the accused, armed with respective weapons, threatened the villagers and fled towards Venkatapuram. He said that he saw the bodies of D1 and D2. In his cross-examination, P.W.3 denied that his house was situated at a distance of one kilometre from the scene of the offence. He said that P.W.1 was his cousin brother. He said that P.W.4 was his babai (uncle) by courtesy. He said that the house of the accused and his house were situated in the same street. He admitted that fifteen houses were situated on the rear side of the street between his house and the house of the accused. He said that he gave evidence in C.C.No.249 of 2007 but did not state in that case that his house was at a distance of one kilometre from the scene of the offence. He admitted that he had stated in C.C.No.249 of 2007

that he heard the galata while he was eating and came out. He also admitted that he stated that A3 beat D2 with a stick but he did not state that he ran away from the place. He denied the suggestion that he had not witnessed the incident and that the accused did not beat D1 and D2. He denied the suggestion that he was deposing falsely under the influence of CPIM party to grab the property of the accused. He denied the suggestion that D1 and D2 tried to rape A5 and the villagers beat them up and not the accused.

P.W.4 stated that he was an agriculturist residing at Thalluru. He said that D1 and D2 were murdered about three years back and that he knew A1 to A5. He said that during morning time on the fateful day, while he was at his house, he heard cries from outside and came out immediately. He said that he saw that the villagers were hacking and rushed there. He said that he saw the incident from a distance of 100 yards. He said that A2 was armed with an axe and hacked on the back side of D1 and A1 was armed with an axe and hit on the left cheek of D1 and as a result of these injuries, D1 fell down. He said that A1 was armed with an axe and hacked D2 on the forehead and A2 also hacked on the back side of the head of D2. He said that A4 hit D1 on the left side of the forehead with a toddy-tapper knife and when P.W.8 interfered, A3 hit him on the hand with a stick and after receiving the said injury, P.W.8 ran away from that place and the accused also fled from the place with their arms. He said that they proclaimed that they would hack if anybody interfered. He said that when he cried aloud, P.W.1, P.W.2 and P.W.3 also came there and witnessed the offence. He said that there was a love affair between A5 and D2 and that was the motive for the offence. In his cross-examination, P.W.4 stated that his younger brother had

contested on behalf of CPIM for the post of Ward Councilor but was defeated. He denied the suggestion that he had not witnessed the attack, causing injuries to D1 and D2. He denied the suggestion that he had not stated to the police the independent overt acts of the accused with reference to D1. He denied the suggestion that he had not stated to the police that A1 and A2 attacked D1 with axes. He said that he also deposed in C.C.No.249 of 2007 but denied the suggestion that he had not stated that the accused had caused injuries to D1. He said that P.W.1 was his brother by courtesy as D1 was his paternal uncle by courtesy and D2 was his younger brother by courtesy and P.W.2 was his sister-in-law by courtesy and P.W.3 was also his brother by courtesy. He admitted that he had not stated in C.C.No.249 of 2007 that P.W.3 was his brother and that P.W.1's family and his family were related. He said that he saw ten persons at the scene of the offence and denied the suggestion that fifty persons witnessed the incident. He admitted that he had stated in C.C.No.249 of 2007 that A1 hit on the back side head of D1 with a pestle. He denied the suggestion that D1, D2 and Srinivas went to the house of A5 and tried to undress her and outrage her modesty, whereupon villagers attacked them. He denied the suggestion that the attackers of D1 and D2 were CPM party workers and that a false case was foisted against A1 to A5 taking advantage of the enmity owing to the love affair between D2 and A5. He denied the suggestion that A1 to A5 earlier belonged to CPM but left the party later and therefore CPM leaders bore a grudge and foisted a case upon them.

P.W.5 was aged 14 years at the time of his examination. He was administered oath by the Sessions Court. The Sessions Court recorded that he was capable of giving evidence before allowing him

to do so. He stated that he was a resident of Thalluru and that P.W.2 is his mother. He said that about three years back at 10.00 AM, he was returning from school to his house to get his notes as he had forgotten to take them along with him. He said that he witnessed D1 and the accused quarreling and A1, A2, A3, A4, A5 and their relative, Vijaya, were present. Vijaya sprinkled chilly powder on D1 and the remaining accused killed him. He said that the accused were armed with axes, a crowbar and sticks and the accused also chased D2 with arms and A2 to A5 and Vijaya murdered him. He said that A3 and A5 beat P.W.8 when he tried to interfere and he ran away from the place with injuries and the offence was also witnessed by P.Ws.1 to 3. He said that the accused threatened that they would kill anyone who interfered and A1 to A5 then absconded from the place. In his cross-examination, P.W.5 stated that P.Ws.1 and 3 were his paternal uncles. He said that his father's name was Venkatakrishna (L.W.6). He said that there was another road from his school to his house but he used to go in front of the house of D1. He denied the suggestion that on the date of the incident, he did not go to school nor did he forget his book. He denied the suggestion that he did not witness how D1 and D2 were murdered. He denied the suggestion that he was deposing falsely upon the request of his relations. He denied the suggestion that D1, D2 and P.W.8 attacked A1 to A5 and they filed a complaint with the police but the same was suppressed and a false case was registered against A1 to A5.

P.W.6 said that he was a coolie residing at Thalluru and his house was at a distance of 100 metres. He said that on 28.02.2007 while he was going to his agricultural land at about 10.00 AM, A1 to A5, armed with deadly weapons, were quarreling with D1 and D2 in

front of the houses of the accused and D1 and D2. He said that when they were quarreling with each other, he thought that it was their habit to quarrel and therefore went to his agricultural field and thereafter, he came to know from the villagers that A1 and others had murdered D1 and D2. He said that he immediately rushed to the house of D1 and saw the bodies of D1 and D2. He said that he also saw an injury on the back side of the head of D2 caused with an axe and an injury on the back side of the head of D1. In his cross-examination, P.W.6 said that he did not state before the police that the accused and D1 and D2 were habituated to quarreling to one another. He said that P.W.1 was not related to him but belonged to his caste. He denied the suggestion that D1, D2 and P.W.1 belonged to CPM. He denied the suggestion that A1 to A5 belonged to CPM but came out of the party and therefore a false case was foisted against them. He denied the suggestion that D1, D2 and P.W.8 beat A5 and they filed a case against D1, D2 and others.

P.W.7 runs a kirana shop in Thalluru. He said that on 28.02.2007, when he was returning from Venkatapuram village to his village at about 10.30 AM, he witnessed A1, A2, A3, A4 and A5, armed with deadly weapons, coming from the opposite direction proclaiming that they would kill if anyone stopped them and saying so, they proceeded. Soon after his return to his house, he enquired with villagers and came to know about the galata and he saw the bodies of D1 and D2. He said that he saw A1 armed with an axe at Anjaneyaswamy temple, A3 armed with a stick, A2 armed with an axe, A5 armed with a crowbar and A4 armed with a toddy-tapper knife while they were proceeding. In his cross-examination, P.W.7 said that he was the Vice-Sarpanch between the years 1996 and

2000. He said that he was elected as a Ward Member from CPM party. He disclaimed knowledge of A5 and A1 to A4 having filed a case against D1, D2 and P.W.8, as they had tried to commit rape upon A5 and caused injuries to A1 to A4. He denied the suggestion that he had not witnessed A1 to A5 at Anjaneyaswamy temple and he was deposing falsely as A1 to A5 had come out from CPIM party.

P.W.8 stated that D1 was his father and D2 was his brother. He said that on 28.02.2007 while he was stitching clothes in his house and D1 and D2 were releasing cattle for grazing, A1 to A5 and Vijaya (A6), armed with weapons and chilly powder, came there and they sprinkled chilly powder upon his father and A1 hacked his father on the head, A5 hit on D1's forehead with a crowbar and as a result of the injuries, his father fell down and when his brother D2 tried to abscond from the scene, A1 hacked on his right cheek and A2 hacked him on the back side of the head and on the right leg, A3 hit D2 with his stick on his right thigh. P.W.8 stated that he cried out aloud and A5 hit him on the right hand with a crowbar and A3 hit him on the right hand fingers and also on his head and due to fear, he ran away from the place. He said that P.W.1, P.W.2, P.W.3, P.W.4, P.W.5 and Anabothu Seethamma (L.W.10) also came to the scene raising cries. He said that the accused proclaimed that if anybody interfered, they would kill them and, raising their weapons, they went towards Venkatapuram. The weapons with which they were armed at the time of the offence were identified as M.Os.1 to 5. M.Os.1 and 2 are axes, M.O.3 is a stick, M.O.4 is a geethakathi and M.O.5 is a crowbar. In his cross-examination, P.W.8 denied the suggestion that A3 sustained injuries in a road accident and that his body was paralyzed from the waist down. He admitted that D2 had fallen in

love with A5 and she conceived and thereafter, their marriage was performed in a temple at Nemali. He denied the suggestion that he, D1 and D2 forcibly got aborted A5's pregnancy with a doctor at Vanaja Hospital, Thiruvur. He denied the suggestion that he, along with D1 and D2, tarnished the image of A5 and also harassed her for dowry. He denied the suggestion that he, along with D1 and D2, harassed A5 for additional dowry and she filed C.C.No.1924 of 2003 on the file of the Judicial First Class Magistrate, Sathupalli, under Section 498A IPC along with Sections 3 & 4 of the Dowry Prohibition Act, 1986. He denied the suggestion that he, along with D.1 and D2, went to the house of A5 and they outraged her modesty by tearing her blouse and tried to commit rape upon her and that when she raised cries, he along with D1 and D2 beat her and that she filed a complaint with the Police. He denied that the FIR disclosed that he along with D1 and D2 tried to outrage the modesty of A5 and that D2 beat her with a crowbar on her right hand, while he and D1 tried to hack her with an axe and in the mean time, A5's father, mother and brother interfered and he along with D1 and D2 caused injuries to the parents of A5 and villagers attacked them and as a result of the injuries inflicted by the villagers, D1 and D2 died and he also suffered injuries. He admitted that he belonged to CPM and the accused also belonged to CPM. He denied the suggestion that they did not belong to CPM. He denied the suggestion that CPM party workers beat him along with D1 and D2. He denied the suggestion that he and his family members set fire to the house of the accused. He denied the suggestion that to grab the property of the accused, they foisted a false case. He admitted that the accused were agriculturists and not toddy tappers. He denied the suggestion that

he had not witnessed the offence and was deposing falsely. He denied the suggestion that upon the influence of elders, they foisted a false case against the accused.

P.W.9, a resident of Venkatapuram, stated that he knew D1 and D2 and their family members and also A1 to A5. He said that he went to see the bodies of D1 and D2 at Thalluru and also found the police at the scene. He was requested by the police to act as a panchwitness to the Crime Details Form and the police observed the scene of the offence and drew up a rough sketch. Ex.P2 was the Crime Details Form with the rough sketch. He said that he also signed on Ex.P2 and the police seized controlled earth and blood-stained earth from near the bodies of D1 and D2. He admitted that he also acted as an inquestdar along with Venukonda Koteswar Rao (L.W.14) and that Exs.P3 and P4 were the inquest reports. He said that he was of the opinion that the deceased had died due to the injuries. In his cross-examination, P.W.9 stated that Thalluru was at a distance of one kilometre from Venkatapuram. He denied that he was a follower of CPM and stated that he had no membership in CPM. He admitted that he contested for the post of Sarpanch at Venkatapuram but was defeated. He denied the suggestion that he was a follower of the then MLA and his son. He said that the contents of Exs.P2 to P4 were read over and explained to him but he however did not remember the recitals in Ex.P3 inquest report.

P.W.10, a photographer, stated that on 28.02.2007 he was requested by Kalluru Police to photograph the bodies of the deceased at the scene of the offence at Thalluru. He identified Exs.P5 to P21 as the photographs and Ex.P.22 as negatives.

P.W.11 was a panchwitness for the recoveries. He said that he was an agriculturist residing at Lingala in Kalluru Mandal. He said that he knew A1 to A5. He said that on 07.03.2007, when he was at the bus stand of VM Banjara, police called him to act as a panchwitness along with Venukonda Koteswar Rao (L.W.14). A1 to A3 and A5 were in the custody of the Police and in the presence of the Police, A1 to A3 and A5 led them to trace out the weapons at Venkatapuram tank. The accused produced from the bushes axes (M.Os.1 and 2), a stick (M.O.3), a toddy-tapper knife (M.O.4) and a crowbar (M.O.5). He said that M.O.1 axe was seized upon the confessional statement of A1 under Ex.P23, M.O.2 axe and M.O.4 knife were seized upon the statement of A2 under Ex.P24, M.O.3 stick was seized upon the statement of A3 under Ex.P25 and M.O.5 crowbar was seized under Ex.P26 upon the confessional statement of A5. He said that he signed on Exs.P23 to P26. In his cross-examination, P.W.11 said that Chennur was at a distance of five kilometres from Lingala. He denied the suggestion that he was a member of CPM. He denied that he was a follower of the MLA. He stated that he gave evidence in C.C.No.249 of 2007 that M.O.3 was seized from A2. He denied the suggestion that A1 to A3 and A5 never confessed to the crime nor did they lead them to trace out the weapons and the same were never seized under Exs.P23 to P26. He denied the suggestion that he had signed on Exs.P23 to P26 in the Police Station.

P.W.12, a Civil Assistant Surgeon at Penuballi Civil Hospital, stated that she examined P.W.8 on 28.02.2007 and found the following injuries:

‘1. Lacerated wound 2 x 1 cm on right little finger simple in nature caused by sharp edged weapon.

2. Contusion 4 x 1 cm on left fore arm simple in nature caused with a blunt object.

3. Contusion 4 x 1 cm on left fore arm simple in nature caused by blunt object.

4. Contusion 4 x 5 cm on left arm region simple in nature caused by blunt object.

5. Lacerated wound 1 x 1 cm on right side scalp region simple in nature.

6. Swelling of 2 x 3 cm on left wrist region simple in nature caused by blunt object.’

She confirmed that Ex.P27 was the wound certificate issued by her. In her cross-examination, P.W.12 stated that she and one Kiran acted as Duty Medical Officers in Penuballi Civil Hospital and on 28.02.2007, they were on duty and no other doctors were working in the hospital. She said that she examined P.W.8 at 12.30 PM but did not mention the time of her examination in Ex.P27 and no identification marks were mentioned therein. She denied the suggestion that she intentionally failed to mention the time on Ex.P27. She admitted that on 28.02.2007, A1, A2, A3 and A5 also came to the hospital with injuries and were examined by her. She said that they were referred through Police Constable 207. She said that she did not mention the time in the wound certificate given to them also. She denied the suggestion that under the influence of the police, she failed to mention the time not only in Ex.P27 but also in the wound certificate given to A1, A2, A3 and A5, in relation to Sessions Case No.470 of 2008 on the file of the learned Assistant Sessions Judge, Sathupalli. She denied the suggestion that under the influence of the police, she failed to mention the time of examination of the accused. She denied the suggestion that on 28.02.2007, she

did not examine P.W.8 in Penuballi Civil Hospital. She admitted that she did not bring the Medico-Legal Case Register relating to P.W.8. She said that she remembered that she examined him at 12.30 PM, after completion of O.P. She said that the MLC Register disclosed the presence of patients. She admitted that she deposed in C.C.No.249 of 2007 as P.W.10 and she remembered deposing that her examination was at 12.30 PM. She denied the suggestion that she was deposing falsely under the influence of the police to suit the prosecution's case.

P.W.13, a Medical Officer at Government Hospital, Penuballi, stated that he conducted the post-mortem examination over the body of D2 and found the following external injuries:

- '1. A chap wound of 3 x 1.5 x 1.5 cm over the right eye.
2. Chap wound of 15 x 7 x 3 cm over left mandible.
3. Chap wound of 15 x 4 x 2 cm over occipital region.
4. chop wound of 12 x 3.5 x 5 cm over the left foot.
5. contusion of 3 x 2 cm over left thigh.'

He said that injuries 1, 2 and 4 were likely with a sharp-edged weapon like M.O.1 and injury 5 was possible with a blunt object like M.O.3. He said that upon internal examination, he found fracture of the right frontal and occipital bones and there was massive intra-cranial hemorrhage. He opined that the deceased died due to cardio-respiratory failure caused by massive intra-cranial hemorrhage due to chap wounds on frontal and occipital regions of the head. He said that the deceased might have died about 24 to 36 hours prior to the examination. He identified Ex.P28 as the post-mortem examination report of D2. He then spoke of the post-mortem examination of D1 and stated that he found the following external injuries upon him:

- '1. Chap wound of 15 x 5 x 5 cm over occipital region of head.
2. Chap wound of 2 x 2 x 2 cm over right frontal region.'

Upon internal examination, he said that he noticed the right occipital and right frontal bones fractured. He opined that the deceased died due to cardio-respiratory failure caused due to massive intra-cranial hemorrhage due to chap wounds on the frontal and occipital regions of the head. He said that the injuries might have been caused with M.Os.1, 2 and 4 and that the deceased died about 24 to 36 hours prior to his examination. He identified Ex.P29 as the post-mortem examination report of D1. In his cross-examination, P.W.13 stated that he went through the inquest reports of both deceased but did not notice any chilly powder on any of part of the dead bodies of both the deceased. He said that he could not say whether the injuries were possible with M.Os.1, 2 and 4.

P.W.14, the Sub-Inspector of Police, Kalluru Police Station, spoke of registration of Crime No.24 of 2007 in his examination-in-chief. In his cross-examination, he stated that he registered the said case at 12.00 hours on that day. He said that Sathupalli Magistrate's Court was at a distance of 30 kilometres from Kalluru Police Station. He said that he sent the injured to the hospital on the same day but he did not remember the time at which he sent him. He denied the suggestion that he deliberately suppressed the time of his sending the injured to the Hospital. He said that on the same day evening, one amongst A1 to A5 lodged a complaint, basing upon which he registered Crime No.25 of 2007, to his remembrance, for offences under Sections 324 and 506 IPC. He said that on that day itself, he sent the injured in that case also to the Government Hospital. He said that he did not remember with whom he sent the injured in that case to the hospital on the complaint in Crime No.25 of 2007 lodged by one amongst A1 to A5. He said that he did not remember who

figured as the accused in the complaint lodged by one amongst A1 to A5. In his further cross-examination, P.W.14 stated that he did not mention specifically about the weapons of offence in the hands of particular accused. He admitted that there was no mention as to a particular accused beating a particular person with a particular weapon. He admitted that there was no mention of motive for committing the offence in Ex.P1 report. He admitted that the names of P.Ws.3, 4, 5 and 8 were not shown as eye-witnesses in Ex.P1 complaint. He admitted that in the complaint, A1 to A5 and some others were stated to have been involved in the offence. He admitted that there was no mention in Ex.P1 about P.W.8 witnessing the incident. He admitted that he had not mentioned as to who beat up P.W.8. P.W.14 perused the case diary relating to Crime No.46 of 2003 under Section 498A IPC and stated that the date of the offence in the said crime was 07.08.2003 at 2000 hours. He admitted that A5 in this case was the complainant in Crime No.46 of 2003, D2 was A1 in Crime No.46 of 2003 and the relations of D1 and D2 were the other accused therein. He said that Ex.D1 was the certified copy of the FIR in Crime No.46 of 2003 on the complaint given by A5, Ex.D2 was the certified copy of the charge-sheet along with Memo of Evidence in Crime No.46 of 2003 and Ex.D3 was the certified copies of the FIR, complaint along with charge-sheet with Memo of Evidence in Crime No.25 of 2007 *vide* Sessions Case No.470 of 2008 on the file of the learned Assistant Sessions Judge, Sathupalli. He admitted that D1, D2 and P.W.8 were the accused in the said case. He admitted that he investigated the said case and filed the charge-sheet. He admitted that in the Crime Details Form at Col.9, he mentioned that he had visited the scene of the offence at 11.30 AM. He volunteered that by

oversight the time was wrongly mentioned. He denied the suggestion that he mentioned the wrong time intentionally and deliberately and not by oversight. He admitted that he referred A5, A2, A3, A1 and A4 to the Government Hospital, Penuballi. He admitted that he did not mention the time of his referring the injured to the hospital in his requisition. He denied the suggestion that he intentionally did not mention the time. He denied the suggestion that they managed the doctor so that she would also not mention the time of the examination. He said that Ex.D4 was the certified copy of the Crime Details Form and four wound certificates in Crime No.25 of 2007. He stated that in Crime No.25 of 2007, A5 had stated before him that D2 caused an injury to her left hand with a crowbar and her brother-in-law (P.W.8) and her father-in-law (D1) tried to hack her. He admitted that the incident took place in front of the house of A5. He said that as per Ex.D3 complaint of A5, the time of that offence was mentioned as 10.00 AM. He admitted that he did not mention the time as approximately 10.00 AM in Col.No.3(a) of the FIR No.25 of 2007. He said that he registered the case at 12.30 PM and in the present case, he registered the crime at 12.00 noon. He denied the suggestion that he recorded the time of registration of the murder case (Crime No.24 of 2007) at 12.00 noon and the case in Crime No.25 of 2007, which was given earlier, as 12.30 PM deliberately. He denied the suggestion that A1 to A5 were not concerned with the murder case and with a view to implicate them and to avoid registration of the case against the husband and father-in-law, he delayed the registration. He admitted that A2 in Crime No.24 of 2007 was cited as a witness. He admitted that none of the eye-witnesses in Crime No.24 of 2007 were cited as witnesses in Crime No.25 of 2007. He admitted that

Rajulapati Laxmaiah (P.W.7) was cited as a panchwitness in the Crime Details Form in Crime No.25 of 2007 and he was also shown as a circumstantial witness and was examined as P.W.7 in Crime No.24 of 2007. He said that he did not know the scribe of the complaint in Crime No.24 of 2007. He denied the suggestion that at the instance of the then MLA, he foisted a false case against the accused in this case. He denied the suggestion that the deceased were killed by the people belonging to the followers of the then MLA and in order to save them, this case was foisted falsely against the accused. In his re-examination by the prosecution, P.W.14 stated that the houses of the accused and the deceased were situated side by side. In his further cross-examination by the defence, P.W.14 denied the suggestion that he had not mentioned that the houses of the accused and the deceased were situated side by side. He volunteered that he had mentioned it in the Crime Details Form.

P.W.15, the Circle Inspector of Police, spoke of the steps taken by him during the investigation. In his cross-examination, P.W.15 stated that he did not enquire about the school in which D2 worked. He admitted that P.Ws.1 to 5 stated that they saw the dead bodies for the first time after their death. He admitted that the witnesses, including the inquest panchwitness, did not state that D2's right leg was on the left leg. He admitted that he did not examine the elders, T.Seshagiri Rao and K.Ajay Kumar, as they were politicians and it was not necessary. He said that the distance between Pocharam and Thalluru Venkatapuram was four kilometres. He admitted that the father of Ajay Kumar was the then MLA. He admitted that in Ex.P1 report, it was stated that some other persons attacked with deadly weapons like axe, crowbar, knife, stick and

chilly powder. He stated that he did not consider 'some other persons' for the investigation. He denied that the real culprits were some other persons and they committed the offence in the presence of the then MLA. He admitted that P.W.3, P.W.4, P.W.5 and Anabothu Seethamma (L.W.10) were not cited as witnesses. He admitted that there was no specific mention about the weapons used by A1 to A5. He admitted that the specific place where the offence took place in the village was not mentioned in Ex.P1 and no motive was mentioned therein. He stated that the name of the scribe of Ex.P1 was not mentioned therein. He denied the suggestion that he included the list of injuries after preparing the inquest report. He denied the suggestion that there was a difference in writing in the inquest panchanama and the injuries list included. He denied the suggestion that after receiving the post-mortem report, he included the list of injuries to implicate A1 to A5 at the instance of the MLA. He denied the suggestion that he obtained the signatures of panchas at the Police Station at the instance of the MLA. He admitted that in Ex.P3, it was stated that for the first time he saw the dead body of D1 after the death of the deceased. He denied the suggestion that he had not investigated regarding the two chappals and also that the chappals did not belong to the accused and as such, they were suppressed and not produced before the Court. He denied that M.O.3 was not recovered from A3 and that A3 met with an accident at Bombay and his spinal cord was damaged, whereby he was unable to move from the bed and as such, recovery of a stick from him did not arise. He however admitted that A3 could not move without the help of a stick. He admitted that in Ex.P1, there was no mention about the offence which was witnessed by P.W.2. He admitted that P.W.1 did not state

before him about the intended marriage between Nagamma and D2 and D2's request to A2 to advance money and A2's refusal to do so whereupon D2 was sent to D1's house. He admitted that P.W.8 was not mentioned as tailor Srinivas. He added that his name was mentioned as Anna Srinivas and not tailor Srinivas as he was the brother of P.W.1. He admitted that Section 161 CrPC statement did not record that the offence took place in front of the house of D1 and D2 and that P.W.1 in his Section 161 CrPC statement did not state that he was the scribe of Ex.P1. He added that as he himself was the scribe, he did not mention so. He admitted that he did not examine R.Krishnaiah, R.Padma, Raja Ram, and P.Laxmaiah as he felt that it was not necessary. He admitted that in Crime No.46 of 2003, A5 was the complainant, while D2 was A1 and his relations were the other accused and in Crime No.25 of 2007, A5 was the complainant and D2 was A1, while P.W.8 was A2 and D1 was A3. He denied the suggestion that suppressing the said case, he foisted a false case against the accused at the instance of the MLA. He denied the suggestion that the offence took place in front of the house of the accused. He denied the suggestion that by suppressing the case in Crime No.25 of 2007, they foisted a false case against the accused as the incident took place much earlier in Crime No.25 of 2007 to the present case. He admitted that P.W.2 stated in her Section 161 CrPC statement that the incident took place in front of the house of P.W.8. He admitted that P.W.3 did not state in Section 161 CrPC statement that the incident took place in front of the house of D1. He admitted that 15 houses were situated between the houses of P.W.1 and P.W.3 but none were examined and P.W.3 did not state in his Section 161 CrPC statement that while he was taking lunch, he heard a galata.

He admitted that P.W.4 did not state in his Section 161 CrPC statement that upon hearing his hue and cry, P.W.1 came. He admitted that he and P.W.14 went to the scene of the offence at 9.00 AM. He denied that he registered this case as the first case and the first case as the second case. He denied the suggestion that the MLA and his son came to the Police Station and lodged the complaint. He said that he did not know whether the MLA came to the Police Station as deposed by P.W.1 in some other case in Hyderabad. He denied the suggestion that at the instance of the MLA, they implicated the accused. He denied the suggestion that no offence took place in front of the house of D1 and D2 and the accused were not related to this case.

Upon considering the above evidence, the Sessions Court believed the eye-witness accounts of P.Ws.1 to 5 and the injured eye-witness, P.W.8. On the strength thereof, the Sessions Court recorded convictions and sentences, leading to filing of this appeal.

Heard Sri P.Prabhakar Reddy, learned counsel for the appellants/A1 to A5, and the Public Prosecutor, State of Telangana.

At this juncture, it may be noticed that A5 moved an application in CrI.A.M.P.No.1748 of 2015 in this appeal to declare her a juvenile as on the date of commission of the offence and to release her. By order dated 13.06.2016 passed therein, this Court took note of the report dated 01.06.2016 submitted by the learned Judge, Family Court-cum-VII Additional District and Sessions Judge, Khammam, to the effect that A5 was born on 08.05.1990 and was therefore aged 16 years 9 months 20 days as on 28.02.2007, the date of the alleged offence, and was therefore a juvenile in conflict with the law in terms of the Juvenile Justice (Care and Protection of Children)

Act, 2007 (for brevity, 'the Act of 2007'). This Court therefore confirmed the conviction of A5 and directed her to be released forthwith as she had served the maximum sentence of three years under the Act of 2007. The criminal appeal therefore stood disposed of in so far as appellant No.5/A5 was concerned.

It may however be noted that though the conviction of A5 was confirmed, it was only on the strength of the fact that she had already completed the maximum sentence that could have been imposed upon her under the Act of 2007. Confirmation of her conviction was therefore not based on merits and does not weigh against the other appellants/A1 to A4. It may also be noted that by order dated 28.11.2016 passed in this appeal, this Court granted conditional bail to A1 to A4 following the guidelines laid down in ***BATCHU RANGA RAO V/s. STATE OF ANDHRA PRADESH***¹.

At the outset, it may be noticed that there were two incidents, one culminating in the death of D1 and D2 and the other, whereby A1 to A5 sustained injuries. Crime No.24 of 2007 was registered in connection with the homicidal death of D1 and D2. Ex.P30 is the FIR. Crime No.25 of 2007 was registered upon the complaint of A5 under Sections 324, 354 and 506 IPC. Ex.D3 is the FIR. Perusal of Ex.P30 FIR and Ex.D3 FIR reflects that the occurrence of the offence in each of them was at 10.00 AM on 28.02.2007. There is some controversy as to which party submitted their complaint first leading to registration of these FIRs, but the same may not be of consequence as both record that the offences in question took place at 10.00 AM on that day. The distance between the Police Station and the Court was stated to be 30 kilometres. Significantly, Ex.P30 FIR was received

¹ 2016(3) ALT 505 (DB) (AP)

by the Magistrate at 8.50 PM on 28.02.2007, while Ex.D3 FIR was received by the same Magistrate on 01.03.2007 at 1.30 AM. When Ex.P30 FIR was registered at 12.00 noon on 28.02.2007 and was dispatched at 1.00 PM on that day and Ex.D3 FIR, which was registered at 12.30 PM was sent at 12.35 PM on that day, there is no explanation as to why it reached the Magistrate so much later than Ex.P30 FIR. Surprisingly, the Magistrate recorded that both the FIRs were received through the same police constable, being PC No.344 of Kalluru Police Station. Considering the distance, it is not possible that he made two trips. The only inference that can be drawn is that he delayed service of Ex.D3 FIR intentionally. The registration and dispatch of these FIRs to the Magistrate is therefore fraught with suspicious circumstances. Added to this, the fact that most of the eye-witnesses in relation to the offence in Ex.P30 FIR were not cited as witnesses in S.C.No.470 of 2008 in relation to the offence in Ex.D3 FIR also causes doubt. Given the quick succession in lodging of the complaints by both parties and registration of the two FIRs, it is most probable that it was one single and continuous transaction which resulted in injuries to A1 to A5 and culminated in the death of D1 and D2. The prosecution would however claim it not to be so. According to A5, who lodged the complaint which led to registration of Ex.D3 FIR, her marriage with D2 took place about four years back and after getting her pregnancy aborted, D2 necked her out and she was residing with her parents. D2 was pestering her for a divorce and on the fateful day at 10.00 AM, when she was washing clothes in her parents' house, D1, D2 and P.W.8 came there and pestered her for a divorce threatening to rape her and they tore her blouse and pulled her saree and D2 hit her with a crowbar while D1 and P.W.8

tried to attack her, whereupon she raised cries and her family members came out. In the altercation which occurred, her family members suffered injuries. Be it noted that A5 would have been all of 12 years of age when she got pregnant and married D2!

On the other hand, the version of the prosecution in the case on hand is that A1 to A5 themselves, of their own volition, caused an attack upon D1 and D2 when they were about to free their cattle for grazing at 10.00 AM on that day. No explanation is given as to why A1 to A5 would resort to such a murderous attack, when A5 and D2 had been living separately for so long after their marriage fell apart. All the witnesses for the prosecution spoke of only the alleged attack by A1 to A5 and Vijaya (A6) upon D1, D2 and P.W.8, but nothing was stated by them as to the other incident, whereby A1 to A5 suffered injuries. When the entire incident seems to have been one single transaction and was split into two cases, it was for the prosecution to build the bridge between the two so that a comprehensive and complete case could be presented before the Court. However, no such attempt was made by the prosecution which, for some strange reason, projected the cases separately.

In this regard, reliance is placed by Sri P.Prabhakar Reddy, learned counsel, on **LAKSHMI SINGH V/s. STATE OF BIHAR**². This was also a case where two persons had been murdered allegedly by a group of persons and one of the accused also suffered injuries in the course of the altercation. The Supreme Court observed that it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused in the course of the occurrence but found that, not only had the prosecution not given an

² AIR 1976 SC 2263

explanation, but some of the witnesses said that they did not even see any injuries on the person of the accused. The Supreme Court found that the so-called eye-witnesses, who gave graphic details of the assault on the deceased, deliberately suppressed the injuries on the accused, and held that this was an important circumstance to discredit the entire case of the prosecution. The Supreme Court observed that in a murder case, if one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect and shows that the origin and genesis of the occurrence had been suppressed, leading to the irresistible conclusion that the prosecution had not come out with a true version of the occurrence.

Reference was made by the Supreme Court to its earlier judgment in **MOHAR RAI V/s. STATE OF BIHAR**³, wherein both the accused had sustained many injuries and the said injuries were noticed by the police when they were produced. It was held that the version of the accused that they sustained injuries at the time of the occurrence was highly probablised and under the circumstances, the prosecution had a duty to explain those injuries. The Supreme Court held that the failure of the prosecution to offer any explanation in that regard showed that the evidence of the prosecution witnesses relating to the incident was not true, or at any rate, not wholly true. The Supreme Court therefore held that the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

³ AIR 1968 SC 1281

1. that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
2. that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable; and
3. that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution's case.

Dealing with the consistent testimony of the so-called eye-witnesses, the Supreme Court observed that where all the witnesses enter into a conspiracy to implicate innocent persons in a murder case, then the backbone of the prosecution is broken and it would be difficult for the Court to rely on such evidence to convict an accused, particularly when the prosecution does not give any explanation for the injuries on the person of the accused. The Supreme Court observed that it would not be possible in such a case to disengage the truth from falsehood, to sift the grain from the chaff, as the truth and falsehood are so inextricably mixed together, it is difficult to separate them, indeed, if one tries to do so, it would amount to reconstructing a new case for the prosecution which cannot be done in a criminal case.

Sri P.Prabhakar Reddy, learned counsel, also placed reliance on **MOHD.KHALIL CHISTI V/s. STATE OF RAJASTHAN**⁴, wherein the prosecution failed to explain the injuries on the accused and therefore, the Supreme Court held that the prosecution had failed to prove the genesis of the incident and had suppressed the same.

The principles adumbrated by the Supreme Court in the aforesaid decisions apply on all fours to the case on hand. There is no explanation forthcoming from the prosecution or its witnesses as

⁴ (2013) 2 SCC 541

to how A1 to A5 suffered injuries. Though the learned Public Prosecutor would attempt to pass off the said injuries by stating that they were simple injuries, the fact still remains that A5 suffered as many as four such injuries with a blunt object, A2 suffered a laceration on his head with a sharp-edged weapon, A3 suffered two abrasions with a blunt object, A1 suffered a laceration with a sharp-edged object and an abrasion with a blunt object while A4 suffered two lacerated wounds and an abrasion caused by a blunt object. Irrespective of whether these wounds suffered by A1 to A5 were simple or grievous in nature, the fact remains that the prosecution made no endeavour whatsoever to explain their origin. The version put forth by the accused under Ex.D3 FIR however offers a reasonable explanation for these injuries. It is therefore very much possible that D1, D2 and P.W.8 initiated the exchange by going to the house of A2 and having an altercation with A5. It is brought out in the evidence that the crowbar in question belonged to D1 himself and there is no reasonable explanation forthcoming from the prosecution as to how A1 to A5 came into possession thereof. It is more probable that D1 himself took the crowbar along with him when they went to the house of A2 and caused an attack upon A5 with the same. A5 specifically stated that D2 hit her on the left arm with a crowbar and the wound certificate bears out the said fact. It may be possible that consequent upon this attack upon A5, her family members came out and suffered injuries in the further altercation that took place between the two groups and thereupon, D1 and D2 along with P.W.8 fled as they were outnumbered, leaving the crowbar behind.

At this stage, two versions are possible. On the one hand, because of the attack upon A5, a young girl, by three men,

whereupon her blouse was torn and her saree was pulled off, as per the suggestions put to witnesses, villagers themselves attacked the perpetrators of this crime, i.e., D1, D2 and P.W.8. The other possible version could be that A5's family members themselves took hold of weapons and chased D1, D2 and P.W.8, resulting in a further altercation which culminated in the death of D1 and D2. Ex.P2 Crime Details Form along with the rough sketch demonstrates that the house of A2 is separated from the house of P.W.8 by a road and next to the house of P.W.8 is the house of D1. Therefore, in the context of both possible versions, if D1, D2 and P.W.8 were being chased and attacked by the villagers or by the accused, P.W.8 would naturally have escaped the said attack with the least amount of injuries by running into his own house and locking the door. D1 and D2, on the other, would have had to run further to reach safety and in that process, may have been caught by the attackers, whoever they may have been. However, it was for the prosecution to present the correct case before the Court. Once it failed to do so, the very origin and genesis of the occurrence stood suppressed and what was presented before the Court was an inchoate and inconclusive version of what had happened, which would not be sufficient in itself to convict anyone for this gruesome offence.

Significantly, suggestions were put to each and every witness that there was political intervention as A1's family earlier affirmed its allegiance to a particular political party but thereafter withdrew the same, leading to animosity on the part of that party's elders. There was also no explanation from the prosecution as to the two chappals at the scene of the offence, clearly visible in the photographs. These chappals were not even seized by the police and marked in evidence.

Even otherwise, the so-called testimony of the eye-witnesses in the case on hand does not inspire confidence. On the one hand, P.W.1 stated that he witnessed D1 and D2 freeing their cattle for grazing when the attack by the accused ensued upon them whereas, P.W.2, the daughter-in-law of D1, stated that she was taking the cattle for grazing herself when the attack took place. P.W.4, another eye-witness, claimed that when he cried out aloud after witnessing the attack upon D1 and D2 by the accused, P.W.1, P.W.2 and P.W.3 came there and witnessed the offence along with him. There is therefore no consistency in these three eye-witness accounts. If P.W.2 was already there at the scene and was herself taking the cattle for grazing, the question of P.W.1 and P.W.4 failing to mention the same did not arise. Further, P.W.4 claimed that P.W.2 came on to the scene only after he cried out aloud upon seeing the attack. Significantly, P.W.1, P.W.2, P.W.3, P.W.5 and P.W.8 all belong to the family of D1 and D2. They were therefore interested witnesses. With great precision they spoke of the individual overt acts of each of the accused in the course of their attack upon D1 and D2. Had they really witnessed the said attack, they would not have failed to mention the injuries upon the accused, had they already been caused, or in the event they were caused during the said altercation. However, they remained silent on this crucial aspect.

The evidence of P.W.7 to the effect that when he was returning from Venkatapuram Village to Thalluru, he saw A1 to A5 armed with deadly weapons coming from the opposite direction proclaiming that they would kill if anyone stopped them and that he saw them at Anjaneyaswamy temple, is also fraught with suspicion. The house of A1 to A5 was right next to the house of P.W.8. If they committed the

offence with such impunity, totally uncaring for the presence of the villagers, they would have returned to the safety of their own home rather than parade the weapons used by them by walking around the village. No explanation has been put forth by the prosecution as to why the accused would march to the temple with their weapons. It is not brought out that these weapons were recovered from the vicinity of the temple but from Venkatapuram tank. No evidence was let in as to how far this tank is from the temple. This account therefore smacks of improbability.

The other crucial weakness in the case of the prosecution is that all the so-called eye witnesses asserted that Vijaya (A6) and the others threw chilly powder upon D1 and D2. However, P.W.13, the doctor who conducted the post-mortem examination of the bodies of D1 and D2, categorically stated that he did not notice any chilly powder on any part of the bodies of the two dead persons. This was despite the fact that P.W.13 had read the inquest reports. This single fact is enough to completely discredit the eye-witness testimony of P.Ws.1 to 5 and 8 to this effect. There is no evidence that any chilly powder was found at the scene of the offence, as the controlled and blood-stained earth, which were examined by the Forensic Science Laboratory, were only tested for blood and there is no mention in Ex.P31 report of the Laboratory as to the presence of chilly powder.

The learned Public Prosecutor relied upon **JAGMAL V/s. STATE OF RAJASTHAN⁵**, wherein the Supreme Court found that the plea of the accused that they had acted in exercise of their right of private defence was acceptable and accordingly convicted the accused under Section 304 Part-I IPC, setting aside their conviction under

⁵ 2017 SCC OnLine SC 152

Section 302 IPC. We however find that it was never the case of A1 to A5 that they exercised their right of private defence and thereby caused the death of D1 and D2. On the other hand, their version was that villagers had killed D1 and D2 and injured P.W.8, consequent upon their attack on and molestation of A5.

Given the strong possibility of political intervention and the glaring inconsistencies in the prosecution's case, including registration and dispatch of the two FIRs, giving rise to a strong likelihood of manipulation of the case by the police, the version of the prosecution as put forth opens the door to doubt and suspicion. That apart, the prosecution failed to present the genesis and origin of the occurrence in its entirety, as not even an explanation has been offered for the injuries suffered by the accused, which must have been during or at the same time of the occurrence which led to the death of D2 and D2. The very foundation of the prosecution's case is therefore rendered shaky and wholly unworthy of acceptance.

On the above analysis, this Court finds that the prosecution's case was fraught with inconsistencies and weaknesses, the fundamental defect being its failure to present the origin and genesis of the occurrence in its full and true form. Further, the eye-witness accounts of P.Ws.1 to 5 and 8 are shown to be unworthy of credibility on counts more than one. Benefit of doubt would therefore have to be extended to the accused as the prosecution failed to establish beyond reasonable doubt that they were responsible for the homicidal deaths of D1 and D2. Brushing aside all these crucial aspects, the Sessions Court convicted and sentenced the accused on various charges.

The judgment dated 21.02.2011 passed by the learned Family Judge-cum-Additional Sessions Judge at Khammam in Sessions

Case No.560 of 2008 holding to this effect is therefore set aside. The criminal appeal is allowed. A1 to A4 shall report before the Superintendent, Central Prison, Warangal, for completion of necessary 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 conditional bail shall stand discharged. The fine amounts, if any, paid by them shall be refunded.

SANJAY KUMAR, J

DR. SHAMEEM AKTHER, J

22nd SEPTEMBER, 2017

Note: L.R.Copy to be marked.

(B/O) SVV

