

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CRIMINAL APPEAL NO.231 OF 2011

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal is directed against the judgment dated 03.02.2011 passed by the learned V Additional District and Sessions Judge (FTC), Khammam at Kothagudem, in Sessions Case No.339 of 2009. By the said judgment, the appellant/A1 was found guilty under Section 302 IPC for murdering Nimmagadda Rama Rao and was sentenced to undergo rigorous imprisonment for life apart from paying a fine of Rs.3,000/-, in default of which he was to suffer simple imprisonment for three months. A2 and A3 were acquitted of the charge under Section 302 IPC read with Section 34 IPC. A1 to A3 were all acquitted of the charge under Section 201 IPC. Aggrieved by his conviction and sentencing in relation to the charge under Section 302 IPC, A1 is in appeal under Section 374(2) CrPC.

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

The Sub-Inspector of Police, Kothagudem I Town, (P.W.19) received Ex.P1 report from P.W.1 on 03.04.2007 at 13.15 hours and registered a case in Crime No.53 of 2007 under Section 302 IPC. Ex.P25 is the FIR. Thereupon, the Inspector of Police, Kothagudem (P.W.21), took up investigation with the assistance of P.W.19. He visited the scene of the offence at Patha Kothagudem, in front of the house of P.W.3, and observed the scene in the presence of P.Ws.16 and 18. He got the same photographed and videographed through P.W.15, a photographer. He also drew up a rough sketch of the scene of the offence. Ex.P21 is the Crime Details Form with the rough

sketch. He then examined P.W.1, P.W.2, P.W.3, Jarripothula Krishna (L.W.4), P.W.4, P.W.7, P.W.6, P.W.5, Gummadi Biksham (L.W.9), P.W.8 and P.W.12. He conducted an inquest over the body of the deceased in the presence of P.Ws.16 and 18 at the scene of the offence. Ex.P22 is the inquest panchanama. He then referred the body of the deceased to the Government Area Hospital, Kothagudem, for autopsy. On 04.04.2017, he recorded the statements of P.W.9 and P.W.11. He also examined P.W.10, Damsalapudi Mallesh (L.W.16), P.W.13 and P.W.14 and recorded their statements. On 11.04.2007, he arrested A1 at his house, bearing Door No.1-2-301, Pathuru of Patha Kothagudem. He summoned P.W.17 and Challa Narsimha Rao (L.W.23) and in their presence, the confession of A1 was recorded upon his dictation. Pursuant thereto, the pant and shirt of the accused (M.Os.1 and 2), which were allegedly worn by him at the time of commission of the offence, and a scooter bearing No.AP 20U 5790 (M.O.4) allegedly used by A1 to go to the place of the incident, were seized. Ex.P23 is the admissible portion of the panchanama relating to the recoveries. A1 then led the police, along with panch witnesses, P.W.13 and Challa Narsimha Rao (L.W.23), to the house of A3 bearing House No.1-1-162, Marwadi Camp, Patha Kothagudem, and when P.W.21 questioned A3, she confessed that A1 had handed over an axe to her. She then brought an axe from her house and gave it to him. The same was seized in the presence of P.W.17 and Challa Narsimha Rao (L.W.23) under Ex.P24 recovery panchanama. M.O.3 is the axe seized under Ex.P24. P.W.21 then effected the arrest of A1 and A3 and sent them for remand. On 15.04.2017, P.W.21 arrested A2 at the house bearing House No.1-2-183, Patha Kothagudem, and produced him before the Court. On 24.04.2007, he forwarded the

Material Objects 1 to 4, along with controlled earth and blood-stained earth, to the Regional Forensic Laboratory at Warangal. Ex.P27 is the FSL report received upon such examination. After completion of the investigation, P.W.21 laid a charge sheet.

Upon committal, the Sessions Court framed the following charges:

Firstly:

That you of Accused No.1 to 3 on or about the 3rd day of April, 2007 at about 12.30 hours at Marwadi camp, patha Kothagudem, did commit murder by intentionally causing death of the deceased Nimmagadda Rama Rao that you accused went to the scene of offence and armed with an axe and murdered the deceased by beating with the said axe on his head and face indiscriminately and thereby you committed an offence punishable U/s.302 r/w 34 of Indian Penal Code and within my cognizance.

Secondly:

That you accused No. 1 on or about the same day, time and place as mentioned in charge No.1 supra, committed the offence of 302 IPC and you abetted A2 and A3 in the commission of the said offence of which were committed in consequence of your abetment and you thereby committed an offence punishable U/s.302 r/w 109 IPC and within my cognizance.

Thirdly:

That you accused A1 to A3 on or about the same day, time and place as mentioned in charge No.1 supra, knowing that certain offence, punishable with death or imprisonment for life has been committed, did cause certain evidence of the said offence that you accused threatened the witnesses with dire consequences to not disclose the incident to any body or police and you thereby committed an offence punishable U/s.201 of the Indian Penal Code and within the cognizance of Court of Sessions.'

The accused pleaded not guilty and claimed to be tried. Thereupon, the prosecution examined 21 witnesses and marked in evidence 27 exhibits. No evidence was let in by the accused. Case properties were marked as M.Os.1 to 4.

Salient points emerging from the evidence may now be noted.

P.W.1 was the first cousin of the deceased. He stated that the deceased was the son of his father's elder brother. He said that he knew A1 to A3 and stated that on the date of the incident when he was at his house, a boy came to him and told him that a quarrel took place at Kacheri of Marwadi Camp. By the time he went to the scene of the offence, the deceased was already dead. He enquired with the neighbours at the scene of the offence and they told him that A1 hacked the deceased with an axe to death. He said that he came to know that the accused was giving water from an agricultural motor and in that context, the deceased gave a complaint to the authorities. He said that he did not know whether A1's electricity connection was cut by the department on the said complaint but about the said issue, a quarrel took place between A1 and the deceased. He said that he came to know that there was a dispute between A1 and the deceased with regard to the land of Dholi Mallaiah. He said that there were previous grudges between the family of A1 and their family. P.W.3 was stated to have told him that the deceased and others were playing rummy under a tamarind tree and at that time, A1 and five others came there and killed the deceased. He said that P.W.3 also told him that P.W.4, Md.Ibrahim (L.W.8), P.W.8, P.W.6, P.W.7 and Gummadi Biksham (L.W.10) were playing cards. He said that P.W.3 also told him that A1 came from behind and killed the deceased with an axe. P.W.1 said that he informed these facts to the police and also

gave Ex.P1 report, which was scribed by P.W.12. He identified his signature in Ex.P1 report. In his cross-examination, P.W.1 admitted that he was the co-accused with the deceased in a murder case in Crime No.132 of 1990 on the file of Kothagudem I Town Police Station. He said that his house was situated at a distance of half a kilometre from the scene of the offence. He knew how to read and write Telugu and denied the suggestion that he did not know the contents of Ex.P1 report. He said that Nimmagadda Hanumantha Rao was the elder brother of the deceased but denied knowledge of whether he was underground and had joined the Naxalites. P.W.1 admitted that the police had registered a case against him as he was an underground Naxalite. He said that he did not know whether the house of Gandhi Somaiah was situated opposite the house of the deceased but admitted that in the open place of Gandhi Somaiah, a murder had taken place and he was one of the accused. He said that he used to go to his agricultural field and work there till the evening and then return to his house. He volunteered that he would come to his house for lunch in between. He admitted that the deceased was a top leader in Telugu Desam party but disclaimed knowledge of whether he was a rowdy sheeter on the file of I Town Police Station, Kothagudem. He said that in the murder case of his father, one Yelamanchali Venkateshwara Rao was convicted, along with three others, by the Andhra Pradesh High Court. He admitted that his deceased brother had quarrels with Uppalaswamy Naidu and Rajamallu and he also developed quarrels with people belonging to their community. He admitted that the deceased was unmarried and was residing alone. He said that the right hand and right leg of the deceased were not functioning. He said that he did not know as to

whether his father, the father of the deceased and their younger brother, Nimmagadda Raghavaiah, murdered Polarapu Purushotham of their own community. He said that he did not give the name of the boy who came and informed about the death of the deceased. He also did not give the particulars with regard to the electricity connection of A1 to the police. He admitted that Dholi Mallaiah was aged about 80 years. He said that A1 to A3 did not belong to the caste of Dholi Mallaiah. He said that Dholi Mallaiah did not reside in the locality where A1 to A3 reside. He said that P.W.3 belongs to Koya Caste and eked out her livelihood by doing coolie work. He denied that P.W.3 used to go to attend to coolie work in the morning and get back in the evening. He denied that P.W.3 did not work at residential houses as a maid servant. He said that he did not know that the neighbours of the deceased used to prepare non-vegetarian curries and send the same to him failing which he used to beat them highhandedly. He said that one Hariya, belonging to Lambada community, had his house very near to the house of the deceased. He denied knowledge as to whether the deceased asked the said Hariya to give his daughter in marriage to him but Hariya refused and the deceased used to pester Hariya, as a result of which Hariya and his family left the area. He admitted that Nimmagadda Hanumantha Rao had a daughter and she asked the deceased to give her father's share in the property but the deceased and P.W.2 did not give any share to her. He denied knowledge of whether the deceased had filed a case against the then Sub-Inspector of Police, I Town Police Station, Kothagudem, and harassed him. He denied knowledge as to whether the deceased kept illegal teakwood in the open place of his house and when the Forest officials came, he threatened them with dire

consequences. He said that there may be ten persons having the same name Kannaiah in their area. He admitted that P.W.18 first gave information to the police about the death of the deceased, even before he lodged Ex.P1 report. He admitted that some of his relations lodged a report with the police that the incident had taken place at 11.30 a.m. at Marwadi Camp. He added that others might have also given the same. He admitted that old Kothagudem area was divided into four parts on the lines of caste and community and in Paki area scavengers reside, in Harijanawada schedule castes people reside, in Kacheri area persons belonging to all communities reside and in Marwadi Camp, only Marwadi people reside, and in Pathuru, they resided. He said that A1 to A3 were in no way related to the land of the deceased. After lodging of Ex.P1 report by him, the police was stated to have come to the scene of the offence. To a suggestion that the police had arrived at the scene of the offence immediately after P.W.18 informed them about the death of the deceased, he asserted that they were not present at the scene of the offence by the time he went there. He denied that people were scared of the deceased in old Kothagudem area and that P.W.3 did not tell him about the death of the deceased. He denied that he had given false evidence as the deceased was his relative and that, due to previous grudges, he had given a false report in Ex.P1 against A1 to A3. He denied the suggestion that A1 to A3 were not responsible for the death of the deceased and that the deceased was killed in connection with property disputes and his own illegal acts.

P.W.2, the younger brother of the deceased, stated that he knew A1 to A3 and also P.W.1. He said that the deceased died on 03.04.2007 and at the time of the incident, he was in Manuguru and

received a phone call informing him that A1 had murdered the deceased. He then came to Kothagudem and went to the house of his deceased brother and from there to the scene of the offence where the body of his deceased brother was lying. He said that the brain matter had come out from the head. He said that he asked P.W.s.3, 11 and 1, who were present there, as to what had happened and they all told him that A1 had killed his brother. The police were also present there by the time he went there. He said that he came to know that A1 was supplying water to residential houses from his agricultural bore and was charging Rs.100/-. The local persons asked for reduction of the charges to Rs.50/- but A1 did not agree. Thereupon, his deceased brother gave a complaint to the municipal authorities and also the electricity department. A1 therefore bore a grudge against his deceased brother. He said that he also came to know that the electricity authorities had visited the agricultural bore of A1 and changed the meter from Category I to Category II, thereby collecting commercial charges for the units. He said that he also came to know that Dholi Mallaiah was cultivating the land of the deceased and the deceased asked him to hand over his agricultural land to him but A1 instigated Dholi Mallaiah not to do so and that he would see that a case was filed in the Court, which he would look after. He said that in the year 1979, A1 and his brother beat his deceased brother and on the same day, his junior paternal uncle, Nimmagadda Venkateswara Rao, the father of P.W.1 was also killed by A1 and his brother. He said that A1 and ten others were convicted by the Sessions Court, Khammam. However, an appeal was filed against the said conviction before the Andhra Pradesh High Court. He did not know what happened about the said case. He said that due to these disputes, A1

killed his deceased brother. In his cross-examination, he said that he was residing with his family at Manuguru Town but used to come to Kothagudem now and then for agriculture. He denied the suggestion that he did not have any agricultural operations. He denied that he was on duty on 03.04.2007 and that it was a Tuesday. He said that they had a holiday on Sunday in Singareni Company at Manuguru. He said that he was on night duty on 03.04.2007 and also on 02.04.2007. He admitted that he did not inform the police in his statement as to from whose phone call he received information about the death of the deceased. He also admitted that he did not state before the police the name of the person who telephoned and informed him. He admitted that he filed a case against Dholi Mallaiah in O.S.No.971 of 2005 on the file of the Principal Junior Civil Judge, Kothagudem. He admitted that Dholi Mallaiah was aged about 80 years and was not related to any of the accused. He volunteered that Dholi Mallaiah and A1 together cultivated the agricultural lands. He admitted that A1 did not have any piece of land in the schedule that was shown in the suit that was filed by him and that the house of A1 was located on one side of the river while their lands were situated on the other side of the river. He said that A1 did not have any agricultural land on the other side of the river and that Dholi Mallaiah had died. He denied the suggestion that the tombs of Dholi Mallaiah and his son were in their agricultural lands. He admitted that he did not know as to whether he had mentioned in the suit filed by him that his land was cultivated on lease by Dholi Mallaiah. He said that he filed the suit against Dholi Mallaiah only and that A1 to A3 were not defendants therein. He said that he did not remember whether he mentioned in the said suit that Dholi Mallaiah was

interfering in his possession and obstructing him. He denied the suggestion that Dholi Mallaiah had purchased the said land from his father three years back. He admitted that the land was situated in an agency area and that Dholi Mallaiah had raised eucalyptus trees in the said land. He said that his elder brother, Hanumantha Rao, joined underground extremists while he was in third class and that he had a daughter, who resided at Khammam. He denied that his junior paternal uncle, Venkateswara Rao, was an underground extremist. He admitted that a naxalite case was filed against P.W.1 at Bhadrachalam and that one Yelamanchali Venkateswara Rao, who was his cousin, being the son of his mother's brother, was convicted in the murder case of his junior paternal uncle, Nimmagadda Venkateswara Rao. He said that A1 was convicted by the Sessions Court but was acquitted by the High Court in the said case. He denied the suggestion that Dholi Mallaiah got him employment in Singareni Company. He said that he did not know the particulars of the electricity bore connection of A1. He admitted that he did not enter the agricultural land of A1. He denied that there were no talking terms and visits between him and the deceased at the time of the incident and prior to that. He admitted that his deceased brother was a top leader in Telugu Desam party in Kothagudem but disclaimed knowledge of whether he was a rowdy sheeter on the file of I Town Police Station, Kothagudem. He denied that the right hand and right leg of his deceased brother were not functioning. He said that his deceased brother was a bachelor but denied that he was residing alone. He admitted that his deceased brother and P.W.1 were co-accused in a murder case. He added that they were acquitted in the said murder case. He denied the suggestion that A1 supplying

water to the residential houses from his agricultural bore well was a fable engendered for the purpose of foisting a case against him. He admitted that he alone filed a suit against Dholi Mallaiah and his deceased brother was not a party thereto as a plaintiff. He said that he was residing at Manuguru for the last 22 years. He said that P.W.11 was a native of Yellandu. He denied that there were no disputes/grudges of any sort pertaining to the agricultural bore well connection and land between his deceased brother and A1. He admitted that the daughter of his elder brother, Hanumantha Rao, asked him and his deceased brother for her father's share in their property. He denied that they did not give the said share to her. He admitted that a murder had occurred in the open place of Gandhi Somaiah, in which his deceased brother was an accused. He denied that his deceased brother was a terror in the area and had disputes/quarrels/grudges with the people of their community and other communities, including backward classes and scheduled caste people. He denied that P.W.3 was not present at the scene of the offence and that she did not tell him that A1 had killed the deceased. He denied that his deceased brother had his own henchmen. He denied the suggestion that as his brother had died, he had foisted this false case against A1 to A3 out of anger and that he did not know anything about the case. In his further cross-examination, P.W.2 said that he stated before the police and the Court as informed to him by the direct witness, P.W.3. He said that he did not issue any press note about the murder of his brother. He said that he also did not know who informed the police first about the incident. He denied the suggestion that his brother was murdered at about 11.30 a.m. at Marwadi Camp.

P.W.3 said that she knew the deceased, P.W.1, P.W.2 and A1 to A3. She said that Jarripothula Krishna (L.W.4) was her son but he died one month after the death of the deceased. She said that the deceased died about two years back and on the date of the incident, the deceased and others were playing rummy under a tamarind tree near her house. She said that one boy came and saw the deceased and went back and later A1 came there and axed the deceased on his head. The police then came there and asked as to how the deceased died and she told them that A1 killed him with an axe. In her cross-examination, she said that she attends to agricultural coolie work in surrounding villages, viz., Juloorpadu, Regella, Mylaram, Sampathnagar etc. She said that she attends to works such as sowing paddy seeds and removing cotton. She admitted that she used to go to attend to coolie work at 8.00 a.m. and get back to her house at 6.00 p.m., after attending to such works. She said that P.W.6 was her son-in-law and that he was a naxalite and cases were pending against him in II Town Police Station, Kothagudem. She said that her deceased son, Jarripothula Krishna (L.W.14), used to attend to coolie work along with her. She said that she had been residing with one Bodugu Butchamma at her house. She admitted that P.Ws.2 and 1 were also with her at the house of Bodugu Butchamma for the last four days. She said that she resided in Kacheri area of old Kothagudem and opposite to her house, a tamarind tree was situated, which belonged to her. She admitted that on all sides of her hut, a fencing of six and half feet height was there. She admitted that movements of persons outside the fencing of her house were not visible to her from her hut. She said that police examined her two days after the death of the deceased. She said that after the death of

the deceased, on the night of that day, she saw the deceased. She said that there were ten persons bearing the name of Kannaiah in their area. She admitted that in front of her hut, a public water tap was located and Kinnerasani water was supplied through it to the public. She said that all the persons in their area had their own private/public water taps through which they get Kinnerasani water. She said that on the southern side of her hut, the house of the deceased was situated. She said that her hut was situated at a low line while the house of the deceased was on an elevated place. She admitted that on all sides of the house of the deceased, a compound wall of six and half feet height was there. She said that if the deceased wanted to come to her house, he had to come out of his house through the east, take a diversion to the south on the road and from there he had to come to the west to the main road and from there he had to come towards the north and then towards east to come to her house and the same was a furlong distance. She said that she did not allow any persons to play rummy at her hut/house. She said that she did not know how the deceased died. She denied the suggestion that the deceased was a terror to the local people in the area. She said that she came to the Court and gave evidence at the instance of the police. She admitted that P.W.2 had come to the Court that day but denied the suggestion that she had given false evidence against the accused at the instance of P.W.2.

P.W.4 said that he knew the deceased, P.Ws.1 to 3 and A1 to A3. He said that the deceased died about two and a half years back and on the date of the incident, he was playing rummy at the house of P.W.3 for time pass. He said that P.W.7, P.W.8, Gummadi Biksham (L.W.9), Md. Ibrahim (L.W.8), he and P.W.6 were playing rummy at

that time. A1 then came to the place where they were playing rummy and beat the deceased, upon which they ran away from that place. A1 beat the deceased with an axe. In his cross-examination, P.W.4 said that the deceased and he belonged to the same caste. He said that he did not know that the father of the deceased, along with two other brothers, killed his grand father, Polarapu Purushotham. He said that the said Polarapu Purushotham was a resident of old Kothagudem. He said that he does agriculture and that he used to go to his agricultural fields at 8.00 a.m. and work up to 3.00 p.m. and then get back to his house. He said that no cases were filed by the police against him for playing rummy cards. He said that it was true that he never played rummy cards in his life. He denied the suggestion that the deceased was his relative. He also denied that he never went to the house of P.W.3. He said that A1 used to attend to agricultural works along with him at Old Kothagudem, where A1 owned agricultural lands. He said that it was true that A1 also used to go to his agricultural fields at 8.00 a.m. and work there up to 6.00 p.m. and then get back to his house in the evening. He denied that P.W.2 had brought him to the Court that day. He admitted that the police never examined him but denied that he had given false evidence against A1 at the instance of P.W.2. He denied the suggestion that A1 never beat the deceased with an axe and that because the deceased belonged to his caste and was his relative, he was deposing falsely against A1 as he had a grudge against him. He denied that the deceased and he belonged to Telugu Desam party. In his further cross-examination, P.W.4 said that the deceased had a house in Pathuru, Old Kothagudem, and admitted that he had stated that the deceased was murdered in Marwadi Camp area under a tree.

P.W.5 said that he knew the deceased, P.Ws.1 to 4 and A1 to A3. He said that the deceased died about two years back and on the date of incident, P.W.4, P.W.7, P.W.6, Jarripothula Krishna (L.W.4), P.W.8 and P.W.9 were sitting under the tamarind tree near the house of P.W.3 and were playing rummy. He said that A1 came there and inflicted two blows with an axe on the head of the deceased. He said that he was scared and ran away from that place. In his cross-examination, he said that he did mutton business since his childhood and would attend to his mutton business from morning to evening every day. He said that he resided at Budidgadda Basthi and Old Kothagudem was at a distance of 1 kilometre from his residence. He said that houses were there throughout the said 1 kilometre from his residence to old Kothagudem. He said that he was not a gambler and no police cases were filed against him for playing rummy cards. He denied the suggestion that he never played cards and volunteered that now and then he played cards. He said that he played cards during day time. He admitted that A1 is not his customer and he did not live in his area and that he was not related to him. He said that A1 was an agriculturist and he did not have any acquaintance with him. He admitted that P.W.2 had brought him to the Court that day.

At this stage, the Sessions Court noted that P.W.2 was present at the door of the Court and was visible to the witness giving evidence in the witness box. The Sessions Court called him inside the Court and asked him not to be present at the door of the Court in a visible position to the witness. The Sessions Court recorded that it got the impression that the witnesses were deposing in such a way upon beholding P.W.2.

P.W.5 further stated that he did not know the house numbers at the scene of offence. He denied that A1 never inflicted two blows on the deceased. He denied the suggestion that the deceased was a terror to the local people in his area. He said that he had eyesight but denied the suggestion that he was giving false evidence as he was a friend of the deceased and both of them belonged to the same political party. In his further cross-examination, P.W.5 stated that he did not inform the police that he came to know that due to previous grudges, A1 murdered the deceased. He said that the police never showed him A1. He said that he had been using sight glasses for the past ten years. He said that he did not know Telugu properly but could understand and speak the language a little. He said that he deposed earlier before the Court at the instance of P.W.2 and that it was true that he had not seen who murdered the deceased. In his re-examination by the prosecution, P.W.5 stated that it was true that he gave evidence on 22.01.2010 before the Court. He denied that during the course of his evidence on the said day, he deposed that while he was playing cards along with the deceased, P.W.4, P.W.7, P.W.6, Jarripothula Krishna (L.W.4) and P.W.8 under the tamarind tree, A1 came there and inflicted two blows with an axe on the head of the deceased. He denied the suggestion that due to the influence of the accused, he was deposing falsely.

P.W.6 said that he knew the deceased, P.Ws.1 to 5 and A1 to A3. He said that P.W.3 was his mother-in-law. He did not know when the deceased died and how he died as he went to attend to coolie work on that day. He said that he did not know anything about the case and who killed the deceased or even the fact that the deceased was killed and said that the police did not examine him. He was

declared hostile and was cross-examined by the prosecution whereupon he denied that he stated before the police as in Ex.P2, his statement recorded under Section 161 Cr.P.C. He denied that he was deposing falsely to help A1 to A3.

P.W.7 said that he knew the deceased and A1 and A3 but he did not know A2. He said that the deceased died about two years back and on the date of the incident, the deceased called him to his house for playing cards. He said that the deceased, some others and he were playing cards and at that time, somebody came there and beat on the head of the deceased and frightened by the same, he ran away from that place. He said that he did not know what happened subsequently and that he ran to his house. He said that police did not examine him. He was declared hostile and was cross-examined by the prosecution. In his cross-examination, he said that he did not inform the police as in Ex.P3, his statement recorded under Section 161 Cr.P.C. He denied that he was deposing falsely to help the accused. In his cross-examination by the defence, he admitted that he had been taking treatment for insanity for the last 15 to 20 years.

P.W.8 said that he knew the deceased and A1 to A3. He said that the deceased died but he did not know about the case and how he died. He said that the police did not examine him. He was declared hostile and cross-examined by the police, whereupon he denied that he had stated to the police as in Ex.P4, his statement under Section 161 Cr.P.C., and that he was deposing falsely to help the accused.

P.W.9 said that he knew the deceased but did not have any familiarity with him. He said that he knew A1 but did not know A2 and A3. He said that the deceased died about more than two years back. He said that about two to three years back on one day, he went

to P.W.1, the nephew of the deceased, and asked him as to the whereabouts of the deceased and that P.W.11 then told him that the deceased was under a tamarind tree. He then started going to him and at that time, he heard some screams and after listening to the same, when he saw as to what was happening, he observed that A1 was hacking the deceased. He said that A1 axed on the head of the deceased and that A1 also hacked on the neck of the deceased with an axe, as a result of which the deceased died. He said that when he went near the deceased, he had already died. In the meanwhile, the police came to the scene of offence, examined and recorded his statement. In his cross-examination, he said that the deceased and he belonged to Choudary caste. He denied that the deceased was his relative and that both of them belonged to Telugu Desam party. He said that the distance between his village and the Mandal Revenue Office at Kothagudem was about 8 kilometres. He said that to come to the Mandal Revenue Office from his village, one has to come to Lakshmidhevipalli and then to the Post Office Centre, Kothagudem, and from there, to Head Office of Singareni Company and beside the Head Office of Singareni Company, the Mandal Revenue Office was situated. He said that he did not know that the house of the deceased was situated at a distance of 3 kilometres from the Mandal Revenue Office. He said that his place of residence was in a tribal area and that he did agriculture. He said that he used to attend to his agricultural work at 7.00 a.m. and get back to his house in the evening by 5.00 or 6.00 p.m. He admitted that it takes half an hour to come to the Mandal Revenue Office from his village. He said that he did not know that the deceased's right hand and right leg were affected with paralysis. He admitted that he had stated before the

police that he started from his house at 12.30 in the afternoon on 03.04.2007 to go to the Mandal Revenue Office with regard to assigned lands. He admitted that he did not inform to the police as to the communication and as to how he reached the Mandal Revenue Office from his village. He said that he saw the house of the deceased and denied that the deceased lived alone in his house. He denied the suggestion that he had not informed the police that he enquired with the nephew of the deceased about his whereabouts. He said that P.W.11 was the nephew of the deceased and according to his statement under Section 161 Cr.P.C., he was a resident of Yellandu Town. He denied the suggestion that P.W.2 had brought him to the Court that day. He said that the house of the deceased was situated at Kacheri in Patha Kothagudem area. He admitted that the house of the deceased was surrounded by a compound wall of six and a half feet height on all sides. He admitted that the entrance of the house of the deceased was situated on the eastern side. He said that he did not know that the house of one Gandhi Somaiah was situated in front of the house of the deceased. He admitted that he omitted to state to the police that he heard some screams. He said that he did not know how many distinct areas were situated in Patha Kothagudem area and the names and details thereof. He said that he informed the police that he knew A1 as he had acquaintance with him. He said that he did not know that one furlong distance had to be covered from the place where he heard the screams to reach the scene of offence but it took two to three minutes to go to the scene of offence from the place where he heard screams. He said that all the persons belonging to Telugu Desam party gave a paper statement about the death of the deceased. He admitted that in the said paper statement,

all the persons belonging to Telugu Desam party stated that the deceased was brutally murdered under a tree at 11.30 a.m. at Marwadi Camp of Patha Kothagudem. He admitted that he was not seen in the photograph that appeared in the newspaper. He admitted that P.W.18 first informed the police about the death of the deceased. He said that he did not know who were the friends and enemies of the deceased. He admitted that Patha Kothagudem was a very large area containing six different areas. He did not know how many persons bearing the name Padala Kannaiah resided in Old Kothagudem area. He admitted that he had stated before the police that he came to know that the deceased was murdered due to old grudges. He admitted that he did not state to police as to from whom he came to know that the deceased was murdered due to old grudges. He said that he was there at the scene of the offence on the date of the offence until the police came to the scene of the offence. He denied the suggestion that he did not go to the house of the deceased on the date of the offence and that he did not witness the incident. He denied the suggestion that at the instance of P.W.2, he was planted as an eye-witness with a false story. He said that he did not know that assigned lands were related to tribals in agency area. He said that the police examined him on the next day of the incident and obtained his signature on the said statement. He denied that as he was a sympathizer of Telugu Desam party, he deposed falsely against A1. He said that he did not know that A1 was a sympathizer of Congress party. He said that he did not know that the family members of the deceased were underground extremists. He said that he did not know that the deceased had refused to give a share in the property to the daughter of his elder brother and internal disputes

and grudges had developed amongst them. He admitted that he did not know that there were disputes between the deceased and P.W.2. He denied that the deceased was a terror in his area. He said that he did not know that a rowdy sheet was there against the deceased in I Town Police Station, Kothagudem. He denied that he was deposing falsely as the deceased was his relative and belonged to Telugu Desam party and he was a sympathizer of the said party and as he had enmity with the Congress party, of which A1 was a sympathizer.

P.W.10 said that he knew the deceased and A1 to A3 and also knew Damsalapudi Mallesh (L.W.16). He said that Damsalapudi Mallesh (L.W.16) died about one year back and they both worked as coolies. He said that the deceased died about one and a half year back and that he did not witness anything and knew nothing about the case. He said that he did not know how the deceased died. He said that the police took him to the police station and noted down something. He said that on the date of the incident, he went to the house of A3. He was treated as a hostile witness and cross-examined by the prosecution. He then stated that he did not inform to the police as in Ex.P5, the statement recorded under Section 161 Cr.P.C. He denied that he was deposing falsely to help the accused.

P.W.11 said that the deceased was his maternal uncle and that he knew A1 to A3 present in the Court. He said that the deceased died about three years back and at the time of the death of the deceased, he was studying Degree first year by staying at the house of the deceased. He said that as on the date of the incident, he was at his house and went outside the house to give hay to the buffalos. At that time, P.W.9 came there and asked him as to where the deceased was and he told him that the deceased was sitting at the house of

P.W.3. He said that he heard the sounds/hue and cry of the neighbours and climbed the compound wall to observe as to what had happened. A1 was beating his deceased uncle with an axe on his head and face. He said that out of fear, he could not rush to his deceased uncle and later, when he went there, he found his uncle had already died. In his cross-examination by the defence, he stated that he was the native of Yellandu Town and that the police examined him and recorded his statement on the next day of the murder of the deceased. He denied the suggestion that he came from Yellandu Town on the second day of the incident and gave his statement to the police. He said that he did not know how many distinct areas were located in Patha Kothagudem area. He admitted that he omitted to state to the police in his statement as to what and where he was studying at that time. He admitted that the deceased alone was residing in the house. He denied that the right leg of the deceased was not functioning as the same was affected with paralysis. He volunteered that the left leg of the deceased was affected with paralysis and that his right hand was not functioning as the same was also affected with paralysis. He said that he did not know the details of the neighbours of the deceased on all sides of the house. He said that he knew the friend of the deceased, P.W.7. He admitted that he did not give the names of the friends of the deceased. He said that he did not know how many persons bearing the name Padala Kannaiah were there in Patha Kothagudem area, but he knew A1 had that name. He said that he did not inform the police that he could identify A1. He said that he did not know how many persons in Kacheri area had buffalos. He said that his college timings were from 8.00 a.m. to 12.00 noon. He said that Degree colleges were situated

at Yellandu Town. He said that he did not know that P.W.9 was their relation and that the deceased was a leader in Telugu Desam party. He admitted that it was reported in the newspaper that the deceased was murdered at 11.30 a.m. on the date of the incident at Marwadi Camp under a tree. He admitted that P.W.18 first intimated the police about the death of the deceased. He said that he did not have prior acquaintance with A1. He admitted that he omitted to state to the police that he heard the sounds/hue and cry of the neighbours. He admitted that the house of the deceased was covered by a compound wall on all sides. He said that he did not know that the entrance of the house of the deceased was on the eastern side but there was an entrance to the house of the deceased. He said that from the house of the deceased, on the southern side there was a metal road. He admitted that there was only one entrance to the house of the deceased and that the house was on an elevated place. He said that he did not know the name of the owner of the house on the eastern side of the house of the deceased and whether it belonged to Gandhi Somaiah. He admitted that a tamarind tree was also there in the house of Gandhi Somaiah. He admitted that P.W.2 had brought him to Court that day. He denied the suggestion that P.W.9 did not come to the house of the deceased and that he was also not at the house of the deceased on the date of the incident. He denied that he was deposing falsely at the instance of P.W.2. He said that he did not know that all the family members of the deceased were under the influence of underground extremists. He said that he did not know the elder brother of the deceased, who was an active member in underground extremist activities. He said that he did not know that the deceased was a terror in his area. He also did not know that there

were property disputes amongst the brothers of the deceased and there were also quarrels with regard to extremist activities. He denied that he was a planted eye-witness to the alleged incident at the instance of P.W.2. He denied that what all he had deposed in his chief-examination was tutored by P.W.2.

P.W.12 said that he knew P.W.1, P.W.2, the deceased and A1 to A3 present in the Court. He said that the deceased died about three years back and he went and saw the body. He said that he scribed Ex.P1 report to the dictation of P.W.1. He identified Ex.P1 report and his signature therein. He said that the police did not examine him. In his cross-examination, he said that he was not a professional document writer and that he did not scribe reports like Ex.P1 prior thereto. He said that he scribed Ex.P1 report at Patha Kothagudem. He said that he knew the names of distinct areas in Patha Kothagudem area. He scribed Ex.P1 report at the house of the deceased between 12.00 Noon and 1.00 p.m. He said that he did not know the place, date and time at which Ex.P1 was scribed. He admitted that the deceased was a prominent leader in Telugu Desam party. He said that he was a resident of Navabharath and the distance between Navabharath factory area and Patha Kothagudem was about 8 kilometres. He admitted that the deceased and he belonged to same caste. He denied that he was also a prominent leader in Telugu Desam party at the time of the incident. He denied that he scribed Ex.P1 report at I Town Police Station, Kothagudem. He denied that the contents of Ex.P1 were not dictated by P.W.1 but by P.W.2. He admitted that the area where the deceased lived at the time of the incident was a thickly populated residential area. He said that fifty percent of the people in Patha Kothagudem area were

educated. He denied that P.W.2 had brought him to Court that day. He denied that out of affinity with the deceased and his family and a grudge against A1 to A3, he was deposing falsely. He denied that the contents of Ex.P1 report were false.

P.W.13 said that she knew the deceased and the accused. She said that A1's house was near their house. She said that she did not know that the deceased died. She said that A1 used to do cultivation and never supplied water to her house from his bore well on payment of charges. She said that she knew P.W.14, Battu Mekala Rani and Bogi Manikyam, who were also her neighbours. She said that she was not examined by the police. She was declared hostile and in her cross-examination by the prosecution, she said that she had not stated before the police that A1 used to supply water for domestic purposes and she informed the same to the deceased who, in turn, complained to the electricity authorities against A1. She denied that she had stated so in Ex.P6, her statement recorded under Section 161 Cr.P.C., and that she was deposing falsely to help the accused.

P.W.14 stated that she was a resident of Patha Kothagudem and that A1's house was near her house. She said that for some time A1 supplied water from his agricultural bore well to her house free of cost. She said that A1 was her cousin brother and she did not know whether A1 supplied water to P.W.13 and others. She said that the deceased never questioned her regarding supply of water and that she was never examined by the police. She was declared hostile and in her cross-examination by the prosecution, she denied that A1 supplied water to her house by charging Rs.100/- per month and that she had stated so before the police in Ex.P7, her statement recorded under Section 161 Cr.P.C. She denied that she was

deposing falsely to help the accused as he was her cousin brother. In her cross-examination by the defence, she admitted that there was a municipal tap in their area for supply of drinking water but denied the suggestion that A1 did not have any agricultural bore well. She also denied the suggestion that A1 never supplied water to her house.

P.W.15 said that he was a resident of Kothagudem and was a photographer by profession. He said that at the request of the police, he had taken photographs of the body of the deceased at Patha Kothagudem. He identified Exs.P8 to P20 as the said photographs, along with corresponding negatives. In his cross-examination, he said that he did not remember the name of the policeman who requested him to take photographs. He said that he did not know the number of the localities in Patha Kothagudem. He further stated that in some of the photographs, one pillow, bed sheets and cattle were visible.

P.W.16 stated that he was a resident of Patha Kothagudem and knew the deceased. He said that he knew the accused also. He said that P.W.18 was a Ward Counselor and was known to him. He said that upon knowing about the incident, he and several others went to Marwadi Camp near Patha Kothagudem and saw the body of the deceased. By the time they went there, police were also present. The police obtained his signature on a panchanama. P.W.18 also signed along with him. He identified his signature on the Crime Details Form dated 03.04.2007. The police conducted an inquest over the body of the deceased and he signed on the inquest report also. Ex.P21 is the Crime Details Form. Ex.P22 is the inquest report. He said that the inquest witnesses opined that the deceased died as he was beaten by A1. In his cross-examination, he admitted that the house of the deceased was in Pathuru. He said that he signed Exs.P21 and P22 in

the police station and that he did not know the contents thereof. He said that he did not know how the deceased died.

P.W.17 said that he was a resident of Kothagudem and he knew the deceased, accused and Challa Narasimha Rao (L.W.23). He said that on 11.04.2007, at the request of the police, he went to the house of A1 situated in Patha Kothagudem bearing Door No.1-2-301 and the Sub-Inspector of Police, Inspector of Police, A1 and some others were also present by then. He said that when the C.I. of Police questioned A1, he brought one shirt and one pant from his house and both of them were having blood-stains. The Circle Inspector of Police seized the blood-stained clothes along with one Bajaj Chetak scooter (M.O.4) in their presence from A1. He identified M.O.1 as the shirt and M.O.2 as the pant. He said that the police also affixed identification slips on M.Os.1, 2 and M.O.4. He said that he also signed on those slips. Ex.P23 is the portion of panchanama relating to recovery of M.Os.1, 2 and M.O.4. He said that A1 stated to the police that he had taken one axe from the house of A3, which was used in the commission of the offence, and again kept it in the house of A3. He told them that he would show it and then they all, along with A1, went to the house of A3 situated at Marwadi Camp at Patha Kothagudem, bearing H.No.1-1-162. A3 handed over the axe to the Circle Inspector of Police, who seized the same in their presence. P.W.17 identified the axe, M.O.3. He said that the identification slip was signed by him, the Circle Inspector of Police and Challa Narsimha Rao (L.W.23). He said that a panchanama was drafted about the seizure of M.O.3 at the house of A3 and Ex.P24 was the admissible portion thereof. He said that he signed on Exs.P23 and P24 panchanamas. In his cross-examination, P.W.17 admitted that

P.W.2 was present in the Court hall but stated that he attended the Court on summons. He said that he was staying at Marwadi Camp in Patha Kothagudem. He admitted that he and the deceased belonged to the same community. He said that on that day, while he was in Patha Kothagudem centre, a Police Constable came and asked him to come as the Circle Inspector of Police was calling. He said that it was 1.00 p.m. by then. He denied that he was doing business in cattle and stated that he did agriculture. He said that he had no acquaintance with the Circle Inspector of Police who had called him. He said that Ex.P23 panchanama was drafted at the house of A1 and denied that A1 had no house at Patha Kothagudem. He admitted that there was no mention in Ex.P23 panchanama as to the place where M.Os.1 and 2 were seized. He said that the Head Constable drafted Exs.P23 and P24. He said that about 6 to 7 police people, including the Circle Inspector of Police, were present at the time of drafting of Exs.P23 and P24. He denied that they were drafted in the police station and nothing was seized thereunder from A1 and A3 respectively. He denied that due to relationship with the deceased, he was deposing falsely. He denied that Challa Narasimha Rao (L.W.23) was not present along with him. He denied that M.Os.1 to 3 were not seized by the Inspector of Police in his presence. In his further chief-examination, P.W.17 stated that the scooter, M.O.4, was seized by the Circle Inspector of Police from the house of A1 in his presence. In his further cross-examination, he admitted that he did not verify the engine and chassis number of the said scooter. He denied that M.O.4 was not recovered in his presence and that he was deposing falsely.

P.W.18 stated that he was a resident of Patha Kothagudem and was the Ward Counselor of Ward No.5, Kothagudem Municipality,

from September, 2005 to September, 2010. He said that he was elected from CPM party. He said that he knew P.W.16, the deceased, who used to reside in Patha Kothagudem, and the accused also. He said that on 03.04.2007 at about 1.00 p.m., while he was in the Municipal Office, Kothagudem, he was told that the deceased was killed. He then rushed to the place of the incident i.e., Kacheri near Marwadi Camp of Patha Kothagudem, which was in Ward No.5. He informed about the incident to the police through phone. The police came and held an inquest over the body of the deceased, which was in a pool of blood. Several people, including P.W.16, were present by then. He said that Ex.P22 was the inquest report drafted at that time and the first signature therein was his. One hour or one and a half hour later, a rough sketch was drawn as to the scene of the offence and was brought to him and he signed the same. Ex.P21 is the rough sketch along with Crime Details Form. He said that he signed on it also. In his cross-examination, he said that he did not know the cause of death of the deceased. He said that he did not know the contents of Ex.P22 also. He said that the rough sketch of Ex.P21 did not bear his signature. He said that the boundary of Patha Kothagudem was at a distance of one and a half kilometres from the Municipal Office. He admitted that he was the first person to inform the police about the incident over phone. He said that he informed the police that the deceased was murdered in Marwadi Camp of Patha Kothagudem. He volunteered that as the Marwadi Camp was a popular place and Kacheri was a small place, he mentioned it as Marwadi Camp. He said that there were more than seven places in Patha Kothagudem and that he did not know how the deceased died. He denied the suggestion that he signed Exs.P21 and P22 at I Town

Police Station, Kothagudem. He denied the suggestion that P.W.16 was not along with him on that day. He denied the suggestion that the deceased was a supporter of CPM party and that he was deposing falsely at the instance of the family members of the deceased.

P.W.19, the Sub-Inspector of Police, Bhadrachalam Rural, spoke of receiving Ex.P1 complaint from P.W.1. In his cross-examination, he admitted that the residence particulars of the accused and caste were not mentioned in Ex.P1 report. He said that he mentioned both particulars in Ex.P25 FIR by conducting an initial enquiry at the police station. He said that he did not record the statement of P.W.1. He also admitted that in Column 5 of Ex.P25, the place of the incident was described as Marwadi Camp of Patha Kothagudem. He said that by the time somebody telephoned to him about the offence, he had already received Ex.P1 complaint. He denied the suggestion that the deceased was a rowdy sheeter as on the date of his death. He said that he did not know whether the deceased was a rowdy sheeter previously. He said that he did not know that P.Ws.1 and 2 had extremist orientation. He denied the suggestion that only to fix the accused, the FIR was generated.

P.W.20, a Civil Assistant Surgeon at Government Area Hospital, Kothagudem, stated that he received a requisition at about 4.20 p.m. on 03.04.2007 from the Circle Inspector of Police, Kothagudem, to conduct the post-mortem examination of the body of the deceased. The said examination commenced at 4.30 p.m. and he found 13 injuries, which he detailed. He said that all the injuries were caused by a hard object with sharp edge and were ante mortem in nature. He said that all the injuries were caused 4 to 8 hours prior to the autopsy. He stated that the cause of death was injuries to the

brain resulting in cardio-respiratory arrest and blood loss. He identified Ex.P26 as the report issued by him. In his cross-examination, he said that the Circle Inspector of Police sent a requisition to conduct autopsy and that the same contained description of the injuries on the body of the deceased. He admitted that viscera of the deceased was not preserved for chemical analysis. He stated that there was no necessity in every case to send the specimens from the dead body for chemical analysis and in the present case, there was no such need for chemical analysis. He denied that in all cases of death, invariably the opinion of the Chemical Analyst is required as per medical jurisprudence. He opined that when the cause of death was clearly found, there was no need to send specimens for chemical analysis. He denied that his opinion was not supported by medical jurisprudence.

P.W.21, the Inspector of Police, Kothagudem, spoke of the steps taken by him during investigation. In his cross-examination, he stated that as on the date of the incident, there was no rowdy sheet maintained against the deceased. He said that he did not know whether prior to the incident, any such rowdy sheet was maintained. He did not know as on the date of the offence, whether P.W.1 and the deceased were underground extremists. He admitted that through P.W.3, he got information about the commission of the offence. He said that she stated about the other witnesses who had witnessed the offence. He said that he did not know the parties to O.S.No.971 of 2005 on the file of the Principal Junior Civil Judge, Kothagudem. He admitted that the said suit pertained to land and was between P.W.2 and Dholi Mallaiah and Dholi Mallaiah won the suit. He volunteered that A1 obtained lease of the said land from Dholi Mallaiah and it

was only an oral lease. He denied the suggestion that there was no lease agreement between Dholi Mallaiah and A1 for the said land. He said that Dholi Mallaiah and A1 did not belong to the same caste and he did not know whether they were from the same area. He said that there was a mention in Ex.P1 report as to the land dispute between Dholi Mallaiah and the deceased pending before the Civil Court. He said that Patha Kothagudem was covered by different areas with different names just like street names. He admitted that it started from Singareni Main Hospital with Paki Basthi, Kacheri, Harijanwada, Sutari Basthi, Koyyagudem, Marwadi Camp and ended with Pathuru. He said that P.W.18 was a Ward Counselor of the 5th Ward of Patha Kothagudem. In Ex.P25 FIR, the place of the offence was mentioned as Marwadi Camp of Patha Kothagudem. He did not know whether ancestors of the deceased had history of extremism. He did not know that the elder brother of the deceased, by name Hanumantha Rao, joined extremists about 25 years ago and was still underground. He said that he did not enquire whether the properties of the family members were partitioned or not. He said that he did not know the daughter of Hanumantha Rao, brother of the deceased, was continuously demanding partition of the family property. He said that he did not know that the right hand and right leg of the deceased were completely paralyzed. He said that one mat, bed sheet and pillow were visible in Exs.P12 to P19. He said that he did not seize the bed sheet, mat and pillow found in the photograph. He said that they were soaked with blood. He said that as per Ex.P21 Crime Details Form, the house of the deceased was with a compound wall on the road side and on three sides, there was fence (kanche). He said that there was no compound wall between the house of the

deceased and P.W.3. He denied the suggestion that as on the date of the incident, the house of the deceased had a compound wall of six and half feet height on all four sides. He added that the compound wall was there only on the southern side of the house. He said that he did not remember that there was a public water tap at the junction point near the house of P.W.3. He said that he examined the neighbours of the deceased but they did not state anything about the offence. He denied the suggestion that the house of P.W.3 had a fence on all four sides. He denied the suggestion that to enter into the house of the deceased, there was only one way i.e., from northern side. He denied the suggestion that to enter into the house of P.W.3, there was only one way i.e., from southern side. He denied the suggestion that he had not visited the scene of offence and that Ex.P21 did not indicate the actual topography of the place where the houses of the deceased and P.W.3 were situated. He did not know whether A1 had a driving license to drive the scooter. He admitted that he did not mention in Ex.P23 as to where M.Os.1 and 2 were tailored. He said that M.Os.1 and 2 were blood-stained. He said that his investigation disclosed that M.Os.1 and 2 were washed by the time of the seizure. He denied the suggestion that M.Os.1 to 3 were not recovered at the instance of A1 and A3. He admitted that the conviction imposed upon A1 in the earlier case of 1979 was set aside by the High Court in appeal. The High Court confirmed the imprisonment of four persons and acquitted the remaining seven, including A1. He did not know whether the four persons convicted were related to the deceased. He said that he did not know that the deceased was involved in several cases of I Town Police Station, Kothagudem. He denied the suggestion that the accused was in no

way connected with the death of the deceased and that he foisted a false case against the accused without proper investigation.

Upon considering the aforestated oral and documentary evidence, the Sessions Court opined that the fact that there was enmity between A1 and the deceased was clearly established. That apart, the Sessions Court also believed that there was a dispute between them owing to Dholi Mallaiah cultivating the land of the deceased and refusing to hand over the same. The Sessions Court also believed that there was another dispute relating to supply of water by A1 from his agricultural bore well to residential houses by charging Rs.100/- per month. The Sessions Court further believed that the deceased and others were playing rummy under the tamarind tree situated near the house of P.W.3 on the fateful day and that the evidence of P.W.3, P.W.4 and P.W.5 was sufficient to corroborate this. The Sessions Court was inclined to believe the evidence of P.W.11, who witnessed A1 attacking the deceased, and convicted and sentenced A1. However, as none of the witnesses stated anything against A2 and A3 and merely because M.O.3 axe was seized from the house of A3, the Sessions Court opined that no evidence was there against them. They were accordingly acquitted.

An issue was raised by the defence before the Sessions Court as to the place of the commission of the offence, but there is no dispute that it occurred under the tamarind tree near P.W.3's house. Further, no argument in this regard was urged before us.

The case of the prosecution, on the one hand, was that the deceased, along with several others, was playing rummy under the tamarind tree near the house of P.W.3 at the time of commission of the offence. However, P.W.3 stated that she does not allow playing of

cards at her house. She also stated that the tamarind tree situated in front of her house belonged to her. As per the evidence brought on record, P.W.3's own son, Jarripothula Krishna (L.W.4), was also playing rummy with the deceased and others. Significantly, though P.W.3 spoke of the deceased and others playing rummy under the tamarind tree near her house, she did not mention her own son's name. Whether she would have kept quiet if her own son was playing cards, when she did not like it, is one issue. Further, as per her evidence, on all sides of the house of the deceased, there was a compound wall of six and a half feet height. She also stated that on all sides of her hut, there was a fencing of six and a half feet height. P.W.4, who was stated to be one of the rummy players, claimed that they were playing rummy when A1 came there and attacked the deceased but, on the other hand, he said in his cross-examination that he never played rummy in his life. Similarly, P.W.5, who mentioned the presence of Jarripothula Krishna (L.W.4) as one of the card players, stated that he would play cards occasionally during the day time but contradicted himself by saying that he would attend to his mutton business from morning to evening every day. The Sessions Court also formed an impression that this witness was speaking at the behest of P.W.2, the brother of the deceased, who was monitoring the Court proceedings closely. He practically turned coat in his further examination on 05.10.2010 but was not even declared hostile by the prosecution but was simply re-examined. No value therefore attaches to his deposition. P.Ws.6, 7 and 8 also turned hostile. They did not support the prosecution's case that they were playing rummy with the deceased and witnessed A1's attack on him. P.W.6 did not even speak of being there while P.W.7 admitted

his presence at the time and their playing cards but baldly stated that somebody came there and attacked the deceased. P.W.8 also did not speak of being present or about his participation in playing rummy. Though the Sessions Court was inclined to accept this version of rummy being played by the deceased and others under the tamarind tree near the house of P.W.3, this Court finds the same to be highly suspect. The most significant fact, which the Sessions Court completely lost sight of, is that no playing cards were found at the scene of the offence or were seized. It has not been brought out in the evidence of P.Ws.4 and 5 that any one collected the cards after the attack upon the deceased and took them away. On the other hand, their consistent story was that due to fear, they all ran away. In such a situation, whether one of them would have collected the cards calmly and pocketed them is questionable. That apart, it is not even the prosecution's case that anyone, in fact, did do so. On the other hand, it is brought out in the evidence that what were found at the scene of the offence were a mat, a pillow and a bed sheet. For some reason, these were not even seized. The presence of these items gives one to suspect that the deceased was resting under the tamarind tree or was sleeping. The version of the deceased and others playing rummy under the said tamarind tree is unworthy of acceptance as it lacks credibility. It is also difficult to believe that A1 would have chosen such a moment to launch a premeditated attack on the deceased, when he was surrounded by several people. Such an act militates against normal human behavioural tendencies.

Coming to the evidence of P.Ws.9 and 11, the other professed eye-witnesses, the evidence of P.W.9 was not believed by the Sessions Court also. This was rightly so, as his version was fraught with

unexplained discrepancies. On the one hand, he said that he left his house at 12.30 p.m. in the afternoon on 03.04.2007 to go to Mandal Revenue Office. The attack on the deceased was stated to have occurred at 12.30 p.m. at Marwadi Camp in Patha Kothagudem. If that be so, the question of P.W.9 reaching there by 12.30 p.m. did not arise, as the distance between his village and the Mandal Revenue Office at Kothagudem was admittedly about 8 kilometres and the house of the deceased was a further 3 kilometres. That apart, he claimed that he heard some screams and from where he heard the said screams to reach the scene of offence, it would take about two to three minutes. This claim completely diluted his creditworthiness as a witness, as the distance was only about 20 feet and would not have taken two to three minutes. This was the reason why the Sessions Court refused to take his evidence into account. Though the Sessions Court disbelieved his testimony, the evidence of P.W.11 was accepted as trustworthy and believable. This Court however finds it not to be so. The evidence of P.Ws.9 and 11 were interlinked. P.W.9 claimed that he went to P.W.11 and found out the whereabouts of the deceased and then witnessed the attack. However, the very presence of P.W.11 at the house of the deceased is rendered suspect. He claimed that he was studying First Year Degree Course at that time. He also stated that Degree colleges were situated at Yellandu Town and that he was a native of Yellandu Town. If that be so, there was no explanation put forth by him as to why he was residing with the deceased at Patha Kothagudem. P.W.1, the cousin of the deceased, who submitted Ex.P1 complaint, categorically stated that the deceased resided alone. Had P.W.11 been residing with the deceased, P.W.1 would not have been unaware of the same. P.W.11's evidence

is also unworthy of credence as he was not even aware that the deceased was afflicted with paralysis and that his right hand and right leg were not functioning. This aspect of the matter was brought out by P.W.1, who seems to have been more closely associated with the deceased. Surprisingly, P.W.11 claimed that the left leg of the deceased was affected by paralysis along with his right hand and denied the suggestion that the right leg was not functioning due to paralysis. This witness seems to be unaware of how paralysis affects limbs only on one side of the body but even otherwise, had he been really residing with the deceased, he would have known that the right hand and right leg of the deceased did not function properly due to paralysis. This fact is sufficient in itself to disbelieve the testimony of P.W.11 that he lived with the deceased and actually witnessed the attack upon him by A1, by climbing the compound wall. His further claim was that he heard sounds/hue and cry raised by the neighbours and climbed the compound wall and actually saw A1 hitting his uncle with the axe on his head and his face. If that was so, the question of anyone making sounds or raising a hue and cry even before the attack did not arise. He did not even explain as to who were the neighbours that he saw, who raised a hue and cry and made sounds, when he climbed on to the wall and looked. To compound it further, had he really been an eye-witness and he went to the scene of the offence, he would have been examined by the police, being a crucial witness, and his statement would have been immediately recorded. However, statement of this witness was not recorded on the date of the incident. As per his own version, P.W.11 said that his statement was recorded on the second day after the murder of the deceased and this is borne out by the record, as his

statement under Section 161 Cr.P.C. bears the date 04.04.2007. Thus, for reasons more than one, the very presence of P.W.11 at the house of the deceased on the fateful day is rendered extremely doubtful. Significantly, the version of P.W.11, supported by the testimony of P.W.9, completely demolishes the other version put forth by the prosecution as to the deceased playing rummy with several others. Neither P.W.11 nor P.W.9 spoke of any persons playing cards or any persons fleeing from the scene as claimed by the so-called card players themselves. It therefore appears that the prosecution put forth two versions which were not even supportive of each other and ultimately ended up contradicting both versions.

The motive for commission of the offence by A1 is also not established. On the one hand, some dispute between them with regard to A1 providing water to residential houses from his agricultural bore well by charging Rs.100/- per month was stated to be the reason for their alleged enmity. However, no acceptable evidence in this regard was adduced. On the one hand, witnesses spoke of the fact that there were public/private taps in the locality through which Kinnerasani water was supplied. Even P.W.14, who spoke of water being supplied by A1, her cousin, stated that he did so free of cost. She also admitted that there was a municipal tap in their area for supply of drinking water. No evidence was let in as to the electricity department or the municipal authorities taking action against A1 in this regard. This motive therefore falls to the ground.

The other motive attributed to A1 for committing the alleged offence was the land dispute involving Dholi Mallaiah. Going by the evidence of P.W.2, the dispute seems to have been between him alone and Dholi Mallaiah, and the deceased had no role to play therein.

P.W.2 went to the extent of stating that the deceased did not figure as a party in the suit proceedings instituted by him against Dholi Mallaiah. Though insinuations were made that A1 was cultivating the land in question along with Dholi Mallaiah, even if the same were accepted to be true, it would only mean that A1 had issues to settle with P.W.2. The question of bringing the deceased into picture therefore did not arise in the light of his own brother's testimony. Dholi Mallaiah is no more but it is relevant to note that the actual date of his death was not brought on record but, surprisingly, he was not even shown in the list of witnesses. .

Once the presence of the so-called eye-witnesses is rendered doubtful, the case of the prosecution rested solely on circumstantial evidence. Needless to state, in such a case, the prosecution must establish an unbroken chain of events unerringly pointing to the guilt of the accused. In this regard, it may be noted that the recoveries affected pursuant to the alleged **confessional** statement of A1 did not serve any purpose. *Per* the FSL report, Ex.P27, there was human blood on the shirt and lungi of the deceased, M.Os.1 and 2, but there was no correlation between the blood-stains found on the clothes of the deceased and the blood-stains found on the clothes of A1, as the blood group of the blood-stains found on M.Os.1 and 2 could not even be determined. Further, the origin of the blood found on M.O.1 and M.O.3 axe could not be determined. Without proper correlation in this regard, the recoveries are of no avail to the prosecution.

The Investigating Officer, P.W.21, sealed the fate of the case by practically admitting his ignorance of the scene of the offence. He denied existence of the fencing on the four sides of the hut of P.W.3, contrary to what she herself stated, and also that the house of the

deceased had a compound wall on all four sides. This aspect of the matter was brought out clearly in the evidence of the other witnesses. He did not even explain as to why he did not examine and record the statement of P.W.11 on the date of the incident, as he claimed that he examined all the other crucial witnesses on the said day. He had no explanation to offer as to why he did not seize the mat, bed sheet and pillow found at the scene of the offence. He had no explanation to offer as to how he linked up A2 with the offence, though he claimed that he arrested him on 15.04.2007. The charge sheet also did not mention any involvement of A2.

Given the aforestated discrepancies and inconsistencies in the prosecution's case, this Court has no hesitation in holding that the Sessions Court ought not to have acted upon the highly doubtful testimony of P.W.11 and convicted A1. The said judgment is therefore unsustainable on facts and in law and is accordingly set aside.

The appeal is allowed. As the appellant/A1 was enlarged on conditional bail during the pendency of this appeal, he shall report before the Superintendent of Central Jail, Warangal, for completion of necessary formalities in accordance with due procedure for his discharge in the light of his acquittal. Fine amounts paid by the appellant/A1, if any, shall be refunded to him. Bail bonds furnished at the time of his securing bail shall stand discharged.

SANJAY KUMAR, J

ANIS, J

15th SEPTEMBER, 2017

PGS/SVV