

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

CRIMINAL APPEAL Nos.829, 953, 974, 1082, 1189, 1616 and
1639 of 2010 & 452 of 2013

DATED:- 20-01-2017

Between:

Nallapuneni Venkataiah and others

..... APPELLANTS

AND

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

.....RESPONDENT

COUNSEL FOR THE APPELLANTS : Sri T.NAGARJUNA REDDY
Sri T.PRADYUMNA KUMAR REDDY
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Sri A.HARI PRASAD REDDY
Sri PENJURI VENUGOPAL (LEGAL AID)
Sri C.NAGESWARA RAO

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (AP)

THE COURT MADE THE FOLLOWING:

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

CRIMINAL APPEAL Nos.829, 953, 974, 1082, 1189,
1616 and 1639 of 2010 & 452 of 2013

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

Criminal Appeal Nos. 829, 953, 974, 1082, 1189, 1616 and 1639 of 2010 are filed against judgment dated 15.06.2010 in Sessions Case No.40 of 2004 on the file of the VI Additional District & Sessions Judge, (Fast Track Court), Markapur, by and under which, the learned Sessions Judge recorded conviction against Accused Nos.1 to 3, 5 to 8, 10 to 21 as under:

2. A1, A2, A6 to A8, A10 to A21 were convicted for the offence under Section 143 IPC and sentenced to suffer simple imprisonment for three months and to pay a fine of Rs.300/- each and in default of payment of fine to suffer simple imprisonment for one month each.

3. A1, A2, A6 to A8, A10 to A21 were convicted for the offence under Section 148 IPC and sentenced to suffer simple imprisonment for six months and to pay a fine of Rs.500/- each and in default of payment of fine to suffer simple imprisonment for two months each.

4. A1, A2, A6 to A8, A10 to A21 were convicted for the offence under Section 120-B IPC and sentenced to suffer simple imprisonment for three months and to pay a fine of Rs.300/- each and in default of payment of fine to suffer simple imprisonment for one month each.

5. A1, A2, A5, A14 to A17 were convicted for the offence under Section 302 IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/- each and in default of payment of fine to suffer simple imprisonment for three months each. A1, A2, A6 to A8, A10 to A21 were convicted for the offence under Section 302 r/w.149 IPC and sentenced to

suffer imprisonment for life and to pay a fine of Rs.500/- each and in default of payment of fine to suffer simple imprisonment for one month each.

6. A-3 was also convicted along with the other accused in S.C.No.40 of 2010 for the offences under Sections 143, 148, 120-B, 302 and 302 r/w. Section 149 IPC. Criminal Appeal No.452 of 2013 is filed by A-3 against the judgment dated 15-04-2013 in split-up sessions case numbered as S.C.No.554 of 2010, whereunder he was sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs.300/- for the offence under Section 143 IPC; simple imprisonment for six months and fine of Rs.500/- for the offence under Section 148 IPC; simple imprisonment for three months and fine of Rs.300/- for the offence under Section 120-B IPC; imprisonment for life for the offence under Section 302 IPC and Section 302 r/w. Section 149 IPC and to pay fine of Rs.500/- on each count. It was further directed that in default of paying the fine amounts imposed, A-3 was directed to undergo simple imprisonment for one month on each count.

7. For convenience, the appellants are referred to as "the accused".

8. Crl.A.No.829/2010 is filed by A1, A2 and A18. Crl.A.No.953/2010 is filed by A19. Crl.A.No.974/2010 is filed by A6, A7, A8, A10, A11, A12 & A13. Crl.A.No.1082/2010 is filed by A16. Crl.A.No.1189/2010 is filed by A17. Crl.A.No.1616/2010 is filed by A20 & A21. Crl.A.No.1639/2010 is filed by A14 & A15. Crl.A.No.452/2013 is filed by A3.

9. During pendency of the trial, A9 died and the case against him stood abated. Non-bailable warrants were issued and were pending against A3 & A5. The case against A4 was split up in SC No.160/2007, since he was absconding. A5, who was a juvenile, did not face the trial

along with other accused and now he is facing trial before the Juvenile Court.

10. During pendency of the appeals, it was reported that A15 died on 11.10.2013 and A21 died on 13.03.2014 and hence the case against them too stood abated.

11. It is also noticed that during pendency of the present appeals, A1 & A11 were released in view of remission scheme of the Government, vide G.O.Ms.No.9 (Paroles) Department, dated 25.01.2016.

12. Vide judgment dated 20.09.2016, in Crl.A.MP.No.864/2015 in Crl.A.No.829/2010, this Court, set aside the conviction recorded by the Court below against Accused No.18-Ravella Subbarao, and directed the State to take appropriate steps for production of A18 before the Board constituted for Prakasam District under the Juvenile Justice (Care and Protection for Children) Act, 2015, for proceeding against him, in accordance with law.

13. In view of the above, out of 21 accused, the appeals survive to be adjudicated against 13 accused, viz., A2, A3, A6, A7, A8, A10, A12, A13, A14, A16, A17, A19 & A20 only.

14. The factual matrix of the case is as under:-

A1 is the father of A2 to A5, and A18 is his grandson. A1 to A13 are residents of Peddavaram village, Kurichedu Mandal, Prakasam District. A14 and A15 are residents of Perumallapalli village. A16, A17 and A19 are residents of Nethivaripalem village. A20 and A21 are residents of Gollapalli and Kothapalem villages respectively.

15. In the ghastly incident, 6 persons were killed, they are (1) Kilaru Venkateswarlu, (2) Kilaru Peda Venkateswarlu, (3) Kilaru Anjali, (4) Kilaru Chinna Venkateswarlu, (5) Kilaru Anjaneyulu @ Kunti Anjaneyulu

and (6) Kilaru Anjaneyulu, and they are hereinafter referred to as “D1 to D6”.

16. One Nallapuneni Hanumaiah and Nallapuneni Subbaiah are real brothers. Out of them, Hanumaiah had no issues and hence he had executed a will in favour of his wife Seshamma bequeathing land of an extent of Ac.16.00. Later, Seshamma adopted her sister's son Venkateswarlu and gave the land of an extent of Ac.16.00 to him. A1 is son of Nallepuneni Subbaiah, and he raised a dispute with the wife of Hanumaiah for adoption and bequeathing the land in favour of Venkateswarlu. Subsequently, the adopted son Venkateswarlu died, leaving behind his wife Seetharatnamma (LW 20) and daughter Ratnamala (PW 15). PW 15 is a Teacher working at Kopparru village of Guntur District and residing there along with her mother. Taking advantage of their absence in the village, A1 trespassed into their land of Ac.16.00, for which, the mother of PW 15 filed a civil suit which was decreed in her favour in the year 2002 and the civil court ordered to put the mother of PW 15 in possession of the subject land, but no villager came forward supporting PW 15 and her mother for taking physical possession of the subject land from A1. In the circumstances, PW 15 and her mother sold the subject land in favour of D6-Kilaru Anjaneyulu, who was the Sarpanch of Peddavaram, for which, A1 and his sons bore grudge against D6.

17. In the Panchayat elections conducted in the year 2001, D6 contested against A9 and won the elections with the support of D5-Kilaru Anjaneyulu @ Kunti Anjaneyulu. In August 2001, A1 and others lodged a complaint against D5 and others for rioting, which was registered as Cr.No.61/2001 and thereafter, A1 along with his family members went to Darsi, Nethivaripalem village, where he got acquaintance with A16, A17

and A19, and that thereafter, A1 shifted to Gollapalli village of Nuzendla Mandal and there he developed friendship with A20 and A21. A1 also got relationship with A14 and A15 and conspired with his associates to kill D6.

18. Pursuant to the conspiracy, it is alleged that A1 engaged a Jeep bearing registration No.AP-7-U-8784 of PW 4, that all the accused came to Peddavaram village from Vinukonda on the intervening night of 20/21.06.2003 in the said Jeep driven by PW 3, that they reached NSP Canal bund at about 1.30 a.m and left A21 at the Jeep to keep a watch, and that the remaining accused entered into Peddavaram village. PW 1 noticed A1 and other accused armed with deadly weapons, that A1 found D1 was sleeping on a cot in front of the house of PW 1 and he stabbed D1 with a spear, while the remaining accused hacked him with knives and the same was witnessed by PW 1.

19. It is further alleged that PW 2 and his wife heard galata at about 2 a.m. and they found A1 to A20 in front of their house, that PW 2 witnessed the stabbing and hacking of D1, D4 and D5 by the accused and he also witnessed that while D2 went there to rescue D4 and D5, he was also hacked by the accused. PW 8 after having dinner slept in his house and heard galata and came out of the house and noticed the accused chasing D6 and killing him with weapons. That PW 8 also noticed A4 hacking D3 who was on the shoulders of PW 11.

20. While PW 9 along with D2 were sleeping in their cattle kottam, D5 slept in front of their house, and they heard the cries of D5 while A1 to A20 were killing him, that when D2 rushed to the spot he was killed by A1 and others. PW 9 noticed A1 stabbing D2 with a spear. PW 10 who was sleeping in the house of PW 11, heard the galata and noticed D3 on the shoulders of PW 11, A1 to A5 and others were running on the road, A4

hacking D3 with hunting sickle on her head and A18 beating PW -11 with a stick.

21. PW 14, who slept in front of the house of LW 17-Nallapaneni Jayaprada, noticed A1 to A20 hacking D5 near the well, that he also noticed the accused attacking D2, A2 and A4 hacking PW 12, and chasing D6 and killing him by stabbing with spears and also by hacking him with an axe, that he also noticed that when PW 11 questioned the acts of the accused, A4 hacked D3 who was on the shoulders of PW 11 with hunting sickle. PW 12 was taken to hospital in a tractor. PW 8 made a call over his mobile to Kurichedu police station at 5 a.m and informed about the incident.

22. PW 1, who is the wife of D6, went to NSP colony which was at a distance of 10 yards from her house at about 6.30 to 7 a.m and informed about the incident to PW 17-VRO of Peddavaram village. PW 17 recorded the statement of PW 1 under Ex.P29 and drafted another statement under Ex.P28 on the instructions of PW 1 and handed over to PW 23-Sub-Inspector of Police. PW 23, on receipt of information, reached Peddavaram village and informed PW 22-Inspector of Police, Darsi and other superior officers. On the instructions of PW 23, PW 16 –ASI of police registered Cr.No.15 of 2003 under Sections 147, 148, 307 and 302 r/w.149 IPC under Ex.P30 and sent the original FIR to the jurisdictional court and copies to all officers concerned.

23. On receipt of information from PW 16, PW 22-Inspector of Police, Darsi rushed to the village and recorded the statement of PW 1, visited the scene of offence and prepared scene observation report in the presence of PW 17. He collected blood stained earth and control earth, seized turkey towels and prepared observation report under Ex.P31. PW 22 prepared Ex.P53 rough sketch of the scene of offence, and PW 5

photographed the dead bodies, and scene of offence under Exs.P1 to P18. PW 22 conducted inquest over the dead bodies of D1 and D4, PW 21 conducted inquest over the dead bodies of D2 and D5, PW 23 conducted inquest over the dead bodies of D3 and D6 under cover of inquest reports, and the dead bodies were sent to Government Hospital, Darsi for post mortem examination. PW 18 conducted post mortem examination over the dead bodies of D1 to D6 and issued Exs.P39 to P44 post mortem certificates. PW 18 examined PW 12 on 21.06.2003 at 7 a.m and issued Ex.P45 wound certificate, and that he examined PW 1 on 22.06.2003 at 2 p.m. and issued Ex.P46 wound certificate. Officials of finger print unit visited the scene of offence and found no chance prints. Dog squad visited the scene of offence on 21.06.2003, PW 22 seized three sticks, two blood stained spears, four gunny bags under cover of Ex.P34 in the presence of PW 17, that he also recorded statements of PW 9, PW 14 and LW 12-Kilaru Mallikharjuna, that he also visited the Government General Hospital, Guntur and recorded the statement of PW 12, that later he recorded the statement of PWs 3 and 4 and seized the Jeep belonging to PW 4.

24. After arresting the accused, PW 20 conducted test identification parade on 07.08.2003 and 30.08.2003, that PW 19 conducted test identification parade on 27.09.2003, wherein the witnesses identified the accused. After receipt of Post mortem certificates, wound certificates and FSL reports and after completion of investigation, PW 22 filed the charge sheet.

25. The plea of the accused is one of denial.

26. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 23 and marked Exs.P1 to P66 and M.Os.1 to 19. On behalf of defence, Ex.D1 was marked. After taking into consideration the

oral and documentary evidence on record and having heard the submissions of both sides, the learned Sessions Judge convicted the appellants/accused and sentenced them, as stated supra.

27. Sri T.Niranjan Reddy, learned senior counsel, appearing for some of the appellants (A1, A2 & A3), submitted that the trial court erred in placing reliance on interested and discrepant testimony of the material prosecution witnesses, namely, PWs 1, 2, 3, 8, 9 and 10 though three other material witnesses, namely, PWs 4, 11 and 12 did not support the case of the prosecution and declared hostile, but without appreciating the evidence in proper perspective, the learned trial judge erred in convicting the accused. The learned counsel further submitted that there is abnormal delay in not only lodging the FIR, but also the FIR reaching the court, which was not looked into by the trial Judge. The learned counsel further submitted that the statements of the witnesses were not recorded promptly by the investigating officer, that A2 and A4 also sustained injuries and were treated by PW 13, which was not explained by the prosecution, that the alleged eyewitnesses never came forward to give the statements even after the visit of the police to the scene of offence, that no steps whatsoever were taken to examine the independent witnesses, who were available at the scene offence, that the conduct of PWs 1, 8 and 9 is quite unnatural, since they claimed to have quietly watched when their kin were attacked, that there are a number of circumstances which go to show that PW 1 was not present and she has been planted and that one of the strong circumstance is the absence of any bloodstains on the wearing apparel of PW 1, even though she claims that she fell on the dead body of her husband, who was by then dead and was profusely bleeding. The learned counsel further argued that the trial court has clearly observed that there are certain omissions regarding registering of

the case, non-production of hospital intimation, omission to record the statements of witnesses, but it erroneously convicted the accused.

28. The learned counsel appearing for the other appellants/accused have adopted the above submissions and further contended that the reasoning given by the learned trial judge is perverse and the entire case of the prosecution was liable to be thrown out in view of material circumstances which go to show that the prosecution has not placed the best possible evidence before the court and the evidence on record clearly points towards an inference that the incident did not take place in the manner in which it is alleged. It is also contended that admittedly there are serious disputes between the prosecution party and the accused who are all closely related and the prosecution witnesses who are kith and kin of the deceased had every reason to falsely implicate the accused, that the fact that when the incident is said to have taken place at about 2 a.m. on 21.06.2003, the complaint is lodged only at about 8.30 a.m and even that complaint along with FIR reached the jurisdictional magistrate only at 6.30 p.m on 21.06.2003, which clearly goes to show that there was every possibility of there being consultations and confabulations before finally naming the assailants. It is also contended that at best, the evidence on record raises suspicion, but there is no proof for holding that the case of the prosecution is proved beyond reasonable doubt, and therefore, the appellants/accused are entitled to an acquittal.

29. The learned public prosecutor in support of the case of the prosecution and the judgment of the trial court, submitted that the incident that took place was very horrendous and heinous wherein as many as 20 assailants have done to death 6 persons within a span of about half of an hour in the intervening night of 20/21.06.2003 and the only witnesses that could have seen the incident are the relatives of the

deceased, whose evidence needs to be accepted as truthful. It is submitted that the relatives of the deceased would not implicate innocent persons by naming others excluding the real perpetrators. The learned public prosecutor has further submitted that the omissions, contradictions and lapses, if any, on the part of the investigating agency are trivial in nature which do not in any way affect the main fabric of the case of the prosecution, that the learned trial judge has appreciated the evidence on record in proper perspective and gave its findings and that there are no grounds to interfere with the same and hence the judgment is liable to be confirmed.

30. The point for consideration is as to whether the prosecution proved its case against the appellants-accused beyond reasonable doubt so as to sustain the conviction and sentence or whether it needs to be set aside, modified or varied?

Point:

31. On the intervening night of 20/21.06.2003 at about 2 a.m, the ghastly incident took place and as many as 6 persons, including 3 year old girl were brutally butchered with deadly weapons, such as spears, axes, hunting sickles etc. The perpetrators of the mayhem are alleged to be appellants, including some of the non-appellants whose details are mentioned hereinabove.

32. The material prosecution witnesses who are said to have eyewitnessed the incident and the accused are related and many of the accused are residents of the same village, viz., Peddavaram. A2 to A5 are the sons of A1, who is the younger brother of Ravella Ramanamma (PW 11). Similarly, A18 is the grandson of PW 11, whereas A7 is the brother-in-law of PW 14 (admittedly, there is old standing enmity between PW 14 and A7, since A7 married the sister of PW 14 against their wishes).

33. As noticed above, there are as many as 6 deceased persons. PW 1 is the wife of D6. The other deceased are also related to PW 1. PW 2 is the son of D2. D4 is the junior paternal uncle and D5 is the elder brother of PW 2. Similarly, D1, D3 and D6 are also related to PW 2. PW 6 and PW 7 are also closely related to D2, D3, D5 and D6. PW 8 is the cousin brother of D6, whereas PW 9 is the elder brother of D6. D2 and D4 are the junior paternal uncles of PW 9. D3 is the daughter of PW 10. PW 11 is the great grandmother of D3 and PW 12 is the mother of D1.

34. The motive for this gruesome incident in the words of PW 15 is as follows:

Nallapaneni Hanumaiah and Subbaiah are brothers. A1 is the son of Subbaiah. Hanumaiah had no children. Therefore, Hanumaiah adopted one Venkateswarulu. The said Venkateswarulu was the son of the elder sister of Hanumaiah. Hanumaiah gave his Ac.16.00 of land to the adopted son Venkateswarulu by executing a registered sale deed. After the death of Venkateswarulu, his wife Nallapaneni Seetharatnamma (LW 20) was residing with PW 15. There was a civil suit in between Seetharatnamma and one Venkaiah in Darsi court in which Seetharatnamma succeeded. Kilaru Mastanamma (LW 4) is the cousin sister of Seetharatnamma. D5 is the son of Mastanamma (LW 4) and D2 is the husband of Mastanamma (LW 4). In the year 1998 when Venkaiah occupied the land, Seetharatnamma (LW 20) lodged the civil prosecution and looking after the case. After Seetharatnamma succeeded in her civil suit, she approached the Sarpanch of the village and offered to sell that land. Subsequently, the Sarpanch of the village, Kilaru Anjaneyulu (D5) and another person entered into an agreement of sale in respect of that land in favour of one Sessaiah. According to PW 15, the total

consideration of Ac.16.00 of land was Rs.1,20,000/-, out of which Rs.50,000/- was paid as advance at the time of agreement of sale.

35. Since Seetharatnamma (LW 20) sold the land to D6 and received the advance, it is alleged that A1 and his sons developed grudge against D6.

36. In addition to the above, it is further alleged that in the panchayat elections held in 2001, D6 and A9 contested against one another and D6 won the elections with the support of D5 and therefore, A9 bore grudge against D6. The son of A1 is also alleged to have filed a criminal case against D5 in Cr.No.61/2001.

37. In nutshell, it can be said that the motive for this ghastly incident is that D6 agreed to purchase the land from Seetharatnamma (LW 20) and this was not to the liking of A1, who was the son of Subbaiah, the other branch. There was also political rivalry in between D6 and A9. Except for the above, no other motive is attributed to the accused persons to cause the death of 6 persons.

38. The responsibility on the prosecution to prove strong motive will be much heavier when the crime is grave. It is no doubt true that when the case is based on direct evidence, motive plays an insignificant role, but since there was barbaric butchering of as many as 6 persons, it is incumbent on the prosecution to establish strong motive for the accused persons to eliminate 6 persons, when out of those 6 persons, the accused had no enmity with 4 deceased and the enmity, if any, was only in between D5 and D6 and A1 and A9. So far as the remaining 4 deceased persons are concerned, the accused had no reason for causing their death and it is not as though that those unconnected persons were killed because they came to the rescue of the targeted persons.

39. From the evidence on record we find it difficult to hold that the accused persons have strong motive for causing death of 6 persons, but as already stated, since there is eyewitness account of the incident, this deficiency cannot be taken advantage of by the accused for throwing out the entire case unless, of course, the prosecution places on record cogent, consistent and reliable evidence about the involvement of the accused.

40. Exs.P.31 and P.53 are the scene of offence panchanama and the sketch. As per the sketch-Ex.P.53, the incident commenced at a place which was close to a pathway leading to NSP Colony. From there on the straight road towards north to a distance of 370 ft., all the six murders took place. The last person to be killed was D-6 and that was at a place 270 feet away from the place where the first deceased was done to death. The road where the massacre took place was straight and it was a metal road.

41. The fact that the crime was perpetrated by the persons known to the villagers and the eyewitnesses is evident from several factors. According to the prosecution, there were about 20 assailants. Out of them, 13 persons viz., A.1 to A.13 have been specifically named not only with their full surnames etc., but also the names of their fathers even in the earliest complaint at 08.30 a.m., on 21.06.2003. Subsequently, during the course of the day, till evening, inquest over the six dead bodies was conducted by the Investigating Officers under the inquest panchanamas Exs.P.20, P.21, P.22, P.23, P.32 and P.33. It is a well-known fact that inquest panchanama is supposed to reveal the earliest version of the eyewitnesses and the opinion of the panchayatdars about the cause of deaths. Consistently in all these inquest panchanamas, A.1 to A.13 have been named with their names, surnames and their fathers' names including the *alias* names, if any. The names of the seven persons were

not given. Though it is stated that seven others in addition to the 13 persons named appeared to have committed the crime.

42. Ex.P.29 is the complaint lodged by P.W.1 which was scribed by P.W.17 – the Village official. In Ex.P.29 also after naming the accused numbering 1 to 13, the following is what is stated about the incident proper.

“.... Total 20 persons, armed with axes, spears, battle sickles, knives, sticks and came upon our house and asked Venkateswarlu who is sleeping on a cot by the side of our house on the road, about my husband Sarpanch Anjaneyulu; when he replied that he is not there, on that they hacked with battle sickles and axes. Then I ran away due to fear. Then one stick threw by them hit on my right side waist. From that blow I feared and ran towards trees which are on eastern side to my house. From there I heard big cries at our house. After they left the place, I came back to my house, where I found Kilaru Chinna Venkateswarlu who is sleeping by the side of our house, died due to injuries on his body. I went ahead upto the house of Kilaru Pedda Venkateswarlu, where I found one Kilaru Anjaneyulu @ Kunti Anjaneyulu, S/o.Pedda Venkateswarlu and Kilaru Pedda Venkateswarlu, S/o.Narasaiah also died due to injuries on their bodies. Kilaru Ramamurthy, S/o.Pedda Venkateswarlu and Killaru Masthanamma W/o.Pedda Venkateswarlu were weeping there and said that the above named persons caused the death of their persons. Thereafter when I went to some distance, Kilaru Koteswara Rao was in front of his house and told me that my husband Anjaneyulu also died due to injuries caused by the above stated persons with their weapons. And also stated that they also caused the death of Anjali, D/o.Mallikarjuna, aged 3 years. Then I went and saw the dead body of my husband Anjaneyulu lying in the place of Rajaka people. Kilaru Mangamma, W/o.Venkaiah also received injuries on her body. She was taken to Darsi hospital. There are disputes with regard to the 16 acres of land belongs to Nallapuneni Seetharatnam, in between my husband Anjaneyulu and the residents of our village Nallapuneni Venkaiah's family. Taking the said land dispute, the family members of Nallapuneni Venkaiah grew wild against my husband and his

relatives; and Nallapuneni Venkaiah with his four sons and the above stated persons came and caused the deaths of our relatives and my husband. So, I request to take action against the above stated persons.”

43. As already stated, the incident is said to have taken place in the midnight and the place of offence is surrounded by several houses and adjacent localities. The eyewitnesses to the incident are PWs 1, 2, 8, 9, 10, 11, 12 and 14. They are all closely related to the deceased. Not a single independent eyewitness has been examined. We are conscious of the fact that the evidence of interested witnesses cannot be thrown out of board merely on that score. However, when there is every reason to suspect that the kith and kin of the deceased had an axe to grind against the accused, their evidence need to be scrutinized with utmost care and caution and the same cannot be made basis to convict the accused, unless it inspires confidence of the court. In a case of this magnitude, no doubt, minor omissions, contradictions, discrepancies or lapses on the part of the investigating agency cannot be allowed to be taken as letting loose the noose around the neck of the perpetrators of the crime. However, if these aspects affected the main core of the case of the prosecution and raises a doubt in the mind of the court about the reliability or the trustworthiness and truthfulness of the version of the prosecution witnesses, the benefit thereof should go to the accused.

44. Adverting to the oral evidence on record, as stated supra, the evidence of the material witnesses, who are said to be the eyewitnesses needs to be scrutinized with utmost care and caution in view of the fact that there are long standing disputes in between the prosecution witnesses and the accused apart from political differences.

45. According to the prosecution, the eyewitnesses to the incident are P.Ws.1, 2, 8, 9, 10, 11, 12 and 14. It may be recalled that the specific contention of the appellants is that the so called eyewitnesses have not actually witnessed the incident and they are planted. Not even a single independent witness has been examined even though the incident took place at a place surrounded by several houses and the NSP Colony is said to be just about 10 yards from the house of P.W.1 where the first person was done to death. It is also admitted that the Madigapalli locality is at a distance of 10 to 15 yards and there also about 50 families reside. When the NSP Colony is said to be towards south of the house of P.W.1, Madigapalli is said to be towards east. It is also on record that within a span of less than half-an-hour, six persons were hacked to death and the assailants were raising huge shouts and cries. Some of the eyewitnesses are also said to have raised cries. In spite of that, not even a single witness has been examined by the prosecution to support the version of the eyewitnesses who are admittedly interested witnesses inasmuch as they are not only the kith and kin of the deceased but they have also some hostilities towards the accused.

46. Learned Counsel appearing for the appellants also submits that the behaviour and conduct of the eyewitnesses is such that it makes difficult to believe that they actually witnessed the incident. As per their own version, the eyewitnesses did not conduct in the manner in which any ordinary and prudent man will react in such a situation. Strong reliance is placed upon the admitted conduct of all the eyewitnesses which is to the effect that the incident was over by about 02.00 a.m., and thereafter till the next day morning till about 07.00 or 08.00 a.m., all the eyewitnesses were hiding themselves and they did not come out even though they have all seen the assailants fleeing from the place

immediately after the assault. It is in the evidence of the witnesses that they came out of their hide outs only after the police and other villagers arrived. This conduct of the so-called eyewitnesses is quite unnatural for the reason that many of them were young persons, aged less than 40 years and they would not hide themselves for more than five hours when the dead bodies of the six of their kith and kin were lying scattered within a distance of about 270 ft.

47. It may also be mentioned here that P.W.12 is the person who sustained a grievous injury and her fingers were cut off. She was taken in a Tractor to Darsi Government Hospital which is at a distance of about 30 KMs., from Peddavaram village by her husband (LW.14 who has not been examined). The Medical Officer-P.W.18 treated P.W.12 at about 07.00 a.m., on 21.06.2003. Therefore it is difficult to believe that till about 08.30 a.m., the crime was not registered by Kurichedu Police.

48. None of the witnesses have given specific overt acts showing the involvement of as many as 20 assailants. Coupled with that, one of the material eyewitness viz., P.W.11 on whose shoulders the three years old baby (3rd deceased) was when she was brutally hacked, did not support the case of the prosecution and turned hostile. PW 11 is the great grandmother of the third deceased, A.1 is her own younger brother and A.2 to A.5 are the sons of A.1. She also admitted that A.18 is her grandson. Another eyewitness-P.W.12 also turned hostile and denied having witnessed the incident and also resiled from her previous statement, which is marked as Ex.P.25. P.W.12 is the lady who sustained grievous injury resulting in loss of a part of her forehead and three fingers. However, she denied having seen the assailants.

49. P.W.1 is the second wife of D-6 and D-6 is her second husband. If at all, the prey of the accused was D-6 only. The alleged conspiracy

was to eliminate him for more than one reason. Firstly, that D-6 purchased certain lands, which A.1 was claiming. Secondly, that D-6 and A.9 belong to different political parties and they contested elections against one another for the post of Sarpanch in which D-6 won the elections by a slender margin. D-6 is also said to be a fugitive, who was escaping from the clutches of law and was hiding himself and for whose apprehension the police were making all out efforts. In view of that, it is the claim of P.W.1, that in the night of the incident, D-6, after dinner went to the house of one Killari Venkaiah (LW.14 not examined) and slept there. In her evidence, P.W.1 further deposed that in the night of the incident, when she was sleeping inside her house, D-1 slept on a cot in front of her house. Similarly, the fourth deceased slept on a pial by the side of her house. She admitted that about two months prior to the incident, her husband – D.6 was involved in a case and was shown as an accused and therefore he was hiding himself apprehending arrest. Therefore, in order to hoodwink the police, D-6 slept in the house of Killari Venkaiah (LW.14). With regard to the incident, it is in the evidence of P.W.1 that at about 02.00 a.m., A.1 to A.20 came to her house armed with knives, hunting sickles, axes and spears, that the accused first woke up D-1 and A.1 stabbed D.1 with spears and the remaining accused hacked him indiscriminately with knives, that thereafter she started running towards east to escape from their hands, that somebody hurled a stick on her which hit on her right side ribs, that she skulked to nearby bushes and stood under a tree from where she was able to see what was happening there but the persons on the road could not see her, that she hid there for about ten minutes, and thereafter she came out and found D-1 lying dead with bleeding injuries. She further deposed that she also noticed D-2, D-4 and D-5 lying on the ground with bleeding injuries. She

further noticed Ramamurthy (P.W.2), Vijayalaxmi (LW.3 not examined) and Mastanamma (LW.4 not examined) were weeping. When P.W.1 further proceeded, she has seen P.W.12 lying with injuries on a dung heap of one Jayaprada (LW 7 not examined). When P.W.1 further moved towards bazaar, the mother and maternal grandmother of D.3 were weeping stating that D.3 was also dead. She further deposed that she found her husband – D.6 lying dead with bleeding injuries in a dilapidated house of one Chakali Veeraiah. She remained weeping at the dead body.

50. When P.W.1 claims to have hidden at a place from where she was able to see the entire road ahead of her conspicuously, she has not specifically stated as to who are the accused persons that have killed D.2, D.4 and D.5, whose bodies were found lying very close to the dead body of D.1. She has attributed specific overt acts to A.1 insofar as D.1 is concerned but did not say anything about the persons who caused injuries on D.2, D.4 and D.5. Vijayalaxmi, Mastanamma and Jayaprada have not been examined by the prosecution even though they were listed as witnesses. According to PW 1, these are the persons who have seen the incident.

51. It is further in the evidence of P.W.1 that at about 06.30 or 07.00 a.m., she went to the Village Revenue Officer (PW.17) and informed him about the incident and that thereafter the police visited the village. What is manifest from the above is that even though she has seen the dead bodies of as many as six people by about 02.30 a.m., itself, till about 06.30 a.m., i.e., for well over four hours, she did not go and inform anybody even though several houses were nearby. Only at 06.30 a.m., she claims to have gone to the house of the Village Revenue Officer – PW.17 and narrated the incident. Further more, P.W.1 claims that on seeing the dead body of her husband – D.6 who was profusely bleeding,

she fell on him and was wailing, but still she claims that her clothes were not smeared with blood, which is quite unnatural. In the cross-examination, P.W.1 gave a different version insofar as the place where she concealed herself. In the chief-examination she stated that immediately on seeing the assailants, she ran towards east of her house and hid herself, but in the cross-examination she stated that first she ran towards east and thereafter she ran towards west and hid herself behind the bushes. The sketch – Ex.P.53 shows that immediately after her house towards east, there is a pathway leading to NSP Colony, which as stated, is a colony inhabited by about twenty families. P.W.17 to whom she went and narrated the incident and who reduced her statement into writing and lodged the complaint, also lives in NSP Colony. For reasons best known to her, P.W.1 did not choose to further proceed towards NSP Colony which was at a distance of just about 10 yards from her house and alert the residents there. P.W.1 was aged about 30 years at the time of the incident. According to her, she has seen one person being hacked in her presence and two other persons being done to death close by, but still she did not feel it proper to cover a distance of 10 yards to go to NSP Colony and inform as to what happened. It is further in her evidence that Madigapalli is a locality towards east of her house in which direction she claims to have first ran after seeing the deceased being killed. Madigapalli is at a distance of about 10 to 15 yards from her house and there are about 100 families residing in that locality. She neither went towards NSP Colony nor went further east to Madigapalli locality even though she has seen the barbaric act of the accused hacking as many as three persons in her presence.

52. With regard to the injury on P.W.1, according to her, one of the assailants hurled a stick which hit on her right side of ribs. Ex.P.46 is the

medical certificate in respect of P.W.1. The Medical Officer found the following three injuries :-

- 1) A contusion of 1" x 1" skin bluish in right renal angle on back of chest.
- 2) Multiple linear and transverse fine scratch line marks present on both the right and left lower legs below knee joint up to ankle joint area anterior and posterior.
- 3) A contusion of right thigh of size 2" x 1" skin bluish anterior aspect above right knee joint.

53. The Doctor – P.W.18 admitted that the injuries on the person of P.W.1 would have been caused due to a fall on rough surface.

54. It is evident that when P.W.1 claims that stick was hurled at her from distance, which hit on her ribs, the Medical Officer found three injuries on different parts of the body, which according to P.W.18 are possible due to a fall. It is therefore suggested to P.W.1 that taking advantage of the injuries, she has been planted as an injured eyewitness though as a matter of fact she was not at all present in the village on the night of the incident. Admittedly, P.W.1 has not attributed any specific overt acts to any of the accused except A.1. As already stated, the conduct of P.W.1 immediately after the incident, for well over four hours, is unnatural and therefore we see sufficient substance in the submission of the learned Counsel appearing for the appellants that P.W.1 is not an eyewitness to the incident.

55. In view of the above, though PW 1 denied, there appears to be some substance in the suggestion made to her that she was not in Peddavaram village in that night, that she was in Chimakurthy village and was planted as a witness in the case, and this suggestion garners strength from the fact that even though she claims to have fallen and wailing on

the dead body of D-6 which was heavily bleeding, there were no bloodstains on her clothes.

56. P.W.2 is the son of D.2 and brother of D.5. D.4 is the junior paternal uncle of P.W.2. He claims acquaintance with all the accused and also P.W.1, Vijaya Laxmi (LW.3) is the wife and Mastanamma (LW.4) is the mother of PW 2. He deposed that on the night of the incident, himself and his wife slept on a cot in between the house and compound wall, that D.2 was sleeping outside the compound wall, D.4 was sleeping on a pial in front of his house which is abutting the house of P.W.1 and only wall separates his house and the house of P.W.1. Therefore, he was very close to the place where D.1, D.2, D.4 and D.5 are alleged to have been killed. He deposed that at about 02.00 a.m., there was a galaba, hearing which he woke up and saw twenty accused persons going in front of his house on the road, that some of the accused were stabbing with spears and some were hacking with axes and hunting sickles, that D.1 was stabbed and D.4 and D.5 were hacked, that on hearing the cries of D.4 and D.5, D.2 went there, but the accused hacked D.2 also, that then the accused went towards north of the road and that he came out of the house and saw the dead bodies of D.1, D.2, D.4 and D.5. He further deposed that they also came to know that D.5 was found lying dead in a dilapidated house of one Chakali Veeraiah (it is nobody's case that it is D.5 who was found lying dead in the dilapidated house of Chakali Veeraiah but instead it is D.6), that P.W.12 was lying with injuries on the dung heap of Jayaprada (LW.17). He further deposed that due to fear, he could not go and inform any villagers and that police people came to the village at 07.30 or 08.00 a.m.

57. P.W.2 was a person aged about 37 years when the incident took place. He claims to be an agriculturist. In the attack, he lost his

father, brother, junior paternal uncle and other relatives. Still he wants it to be believed that for about four hours till the police came, he did not venture to come out and inform about the incident to anybody even though the assailants left the village within half-an-hour after the attack. In the cross-examination, P.W.2 admitted about the existence of Madigapalli locality with 100 families and NSP Colony with about 20 houses, just few yards away from their houses. He also admitted that he owns a TVS Moped and claims that Kurichedu P.S., is at a distance of 8 KM., from his house. Further there was a Post Office with a phone facility in the village. Still he did not move his little finger for more than four hours till the police came to the village. P.W.2 admitted that prior to this incident, the fingers of D.5 were cut by the villagers of Boyyaram and D.5 filed case against those villagers for attempt to murder. He further admitted that there was a quarrel between the family of Killari Venkateshwarlu (A.7) and their family for the reason that his brother – D.5 caught hold and molested the wife of A.7. P.W.2 further admitted that the incident lasted for just about 15 to 20 minutes and that he was near the dead bodies till the police arrived. He also admitted that when A.1 to A.5 were in the village, there were incidents in between A.1 to A.5 on the one hand and A.10 on the other and criminal cases and civil cases were filed in between them, which could be borne out from the record. On the basis of this admission, it is submitted that when A.1 to A.5 and A.10 themselves were indulging in criminal activities and cases were pending against one another, the alleged criminal conspiracy between them to do away with the lives of the deceased, cannot be believed. P.W.2 further admitted that himself along with D.2 and D.5 all live as a joint family and they had dinner at about 09.00 p.m., and slept within half-an-hour thereafter. On the basis of this admission, learned Counsel

submits that the Medical Officer who conducted autopsy over the dead bodies of D.2 and D.5 opined that there was partly digested food which shows that the food might have been taken about three hours prior to the death. If that is taken into consideration, the death of D.2 and D.5 might have taken place at about 12.00 in the mid-night but not at 02.00 a.m., as alleged by the prosecution.

58. It is further in the evidence of P.W.2 that the accused persons, numbering about 20, went away towards northern side by raising shouts and cries as 'cut' and 'stab' etc. These shouts were said to have been made by the accused persons for about 10 to 15 minutes and P.W.2 admitted that the said shouts by the accused could have easily been heard to a distance of more than 150 yards. In spite of that, the prosecution wants it to be believed that even though two thickly populated localities were on either side at a distance of less than 10 to 15 yards, none of the villagers heard the shouts and cries of the accused numbering 20 when they were shouting loudly. This is quite unnatural for the reason that when the inhabitants of the locality heard such huge commotion, in the dead end of night, they will certainly come out, but surprisingly the prosecution would have it that none except the five or six eyewitnesses cited by it have come out of the houses and witnessed the incident, or at least immediately after the incident.

59. P.W.2 further stated that since his father, brother and paternal uncle and others were killed and they were profusely bleeding, he was constantly falling on the dead bodies but still interestingly no bloodstains were noticed on his clothes. He claimed that only his hands were smeared with blood but not clothes. For all these reasons, the presence of P.W.2 at the time of incident becomes highly doubtful.

60. P.W.3 is the driver of the jeep which is said to have been taken by the accused in the night of the incident for going to the village. The jeep belongs to P.W.4. P.W.3 claims that his jeep was hired at about 11 persons for going from Vinukonda to Peddavaram for Rs.750/- on the ground that they have to attend a marriage. P.W.3 deposed that 11 persons boarded the jeep and they started at about 11.00 p.m., from Vinukonda, that some objects were wrapped in two gunny bags and placed in the jeep, that the jeep was stopped at bund of canal which was at a distance of one kilometer from the village, that one person was kept at the jeep and he was also asked to stay at the jeep, that the remaining ten persons went into the village and that after about one or two hours, those persons returned and at that time one of the persons was having a bleeding injury. He further deposed that all of them boarded the jeep and they returned to the village and out of them, six persons got down at the outskirts of Nujendla and the remaining people came to Vinukonda in his jeep and since no Doctor was available there, they went to Narasaraopeta and he left those persons at Santhamagulur cross-roads and returned to Vinukonda and parked his jeep. P.W.3 further deposed that since news item appeared in the newspapers that seven persons were killed in Peddavaram village, he along with his owner-P.W.4 went to Police Station and informed them as to what happened on that night.

61. One more aspect with regard to the untrustworthiness of the veracity of the driver of the Jeep-PW 3 is that the accused persons returned to his Jeep after the killing spree in the village, but still PW 3 feigns ignorance about any offence having been committed by the persons who boarded his Jeep. When the accused returned to his Jeep, according to the prosecution, they were carrying lethal weapons. They have killed as many as 6 persons brutally by hacking from close range

with knives, axes and sickles. There would have been blood both on their hands as well as their clothes. Even then PW 3 wants it to be believed that he had no suspicion whatsoever that any untoward incident had happened and he claims that only in the next day morning, he read the newspaper and came to know that 6 murders took place in the village to which he went the previous night.

62. A bare perusal of the evidence of P.W.3 makes it highly artificial and highly unbelievable. There is more than one reason for that. For instance P.W.3 wants it to be believed that in all 11 persons boarded his jeep on the ground that they wanted to go to a marriage. The time was about 11.00 p.m., in the night. Having done so, those 11 persons took P.W.3 and his jeep towards Peddavaram village and stopped at a distance of one kilometer from Peddavaram village and 10 out of those 11 persons went towards the village and himself and one person were asked to wait near the jeep. It may be stated here that the persons who committed the crime are numbering 21 but not 11 as claimed by P.W.3. That apart, when the jeep of P.W.3 was hired for going to a marriage, he did not smell anything suspicious even though those persons took the jeep to a bund of canal, and stopped it at a distance of one kilometer from the village. Even though he stayed there for about two hours, P.W.3 did not suspect any foul play. Further more, after about two hours, those persons returned and one of them viz., A.2, was profusely bleeding. PW 3 claims to have taken the injured person firstly to Vinukonda and then to Narasaraopeta for treatment. Thereafter he left all those persons and returned and parked his jeep at Vinukonda. The claim of P.W.3 sounds very unnatural and unbelievable. It may also be stated here that only through newspapers P.W.3 claims to have come to know about seven persons having been killed in Peddavaram village in that night and

therefore he along with his owner went to Police Station. This is also unnatural for the reason that the persons whom he carried went there with a conspiracy to cause murder and P.W.3 could himself have been a prime suspect in facilitating the commission of crime. Therefore, merely by seeing in the newspapers that the persons whom he transported in the night of the incident might have committed the crime he would not have gone to the Police Station by himself and surrendered the jeep. Yet another aspect is that according to the Investigating Officer, the statement of P.W.3 was recorded on 22.06.2003. According to P.Ws.3 and 4, they went to the Police Station only after P.W.4 returned from a pilgrimage. Significantly, P.W.4 would say that when he came to Vinukonda from Tirupati, he was informed that P.W.3 was taken by the police to Darsi Police Station. That apart neither P.W.3 nor P.W.4 produced any evidence to show that they have a jeep and that it was being driven by P.W.3 or that it was hired by the accused persons at a charge of Rs.750/-, as claimed. Therefore, we have no hesitation in holding that the version of P.Ws.3 and 4 that their jeep was used by the accused in commission of the crime cannot be believed.

63. According to the prosecution, P.W.8 is the person who has actually witnessed the attack on D.3 and D.6. PW 8 is the first cousin of D6. He deposed that on the night of the incident he went to bed after having dinner at 9 p.m, and in the midnight when there was a galata in their street, he came out of the house and saw D6-the Sarpanch, running towards north from the southern side. In Ex.P53 sketch, house of Venkateswarulu, Jayaprada, Pedda Venkateswarulu, Venkataratnam, Ramamma, Veeraiah and Balai are shown, but absolutely there is no reference about the existence of the house of PW 8 or for that matter, the house of his father. Even though PW 8 claims that he has a house in the

main bazaar, facing towards east, Ex.P53 does not show the existence of the house of PW 8. He further deposed that all the accused were chasing D6 armed with hunting knives, spears and sticks and that the accused surrounded D6 at the dilapidated house of a washer man (whose name was not spoken to by the witness) and killed him with weapons. He further deposed that PW 11 scolded the accused by staying at her house, where upon A4 hacked D3 with an axe and at that time D3, who was a three-year-old girl, was in the hands and shoulder of PW 11. He further deposed that immediately thereafter all the accused withdrew from the bazaar towards north, that he has witnessed the incident in the street lights, that he came on to the road and saw the dead body of D6 and further moved towards south and saw PW 12-Mangamma lying with injuries on the dung heap of one Jayapradha (LW 17), who is not examined, and PW 12 was groaning, that he further moved towards south and saw dead bodies of D3 and D5 at the well of the village, and he further moved towards south and saw the dead bodies of D1 and D4. In the cross-examination, it is admitted by him that his house is towards west of the bazaar, facing towards east, and there are no houses nearby, and that no villagers gathered at the scene of offence at that time when he came out of the house. It is also in his evidence that his house is at a distance of 150 meters from the house of D6, that the accused had no enmity with him, that he cannot say which accused was wielding which weapon, that since all the accused were running on the road at that time, he remained within the premises of his house behind the compound wall which was of the height of 3 feet, that by that time he came out of the house hearing galata, the accused were running from a distance of 15 feet from the house, that the accused did not come back after they retreated, that the incident lasted for half an hour, that at that time he

was in his house along with his mother, younger brother and sister-in-law who were sleeping, who, however, did not come out when the witness came out, that while the group of the accused were chasing D6, only A4 hacked D3 by entering inside the compound wall of PW 11 and that he alone noticed PW 12 lying on the dung heap of Jayapradha. He further admitted in his cross-examination that till early in the morning, he did not go to the village and informed the villagers about the incident. Similarly, no villager came to the scene of offence till early in the morning, that at about 5.00 a.m he made a telephonic call from his cell phone to Kurichedu police station and informed about the incident, that the other family members of the dead persons also spoke to the police, and that the injured PW 12-Mangamma was shifted to hospital by her husband in a tractor within half an hour.

64. A careful perusal of the testimony of PW 8 does not inspire the confidence of the court for several reasons. Firstly, if what he deposed is accepted, none except him witnessed the incident and the dead bodies lying there, and so also the injured lying on the heap of Jayapradha. His further claim that at about 5 a.m. itself he informed Kurichedu police station over cell phone was not spoken to by any other witness. He claimed that within half an hour all the accused persons went away from the village and they never came back. According to him, the incident lasted for half an hour and the same would have been over by 2.30 or 3 a.m. PW 8 had no courage to come out and alert the villagers. This is not believable. When the assailants are armed with deadly weapons, one can understand the threat perception and fear in the mind of the witness to come out of the house immediately, but when the assailants left the scene and the witness had seen them going away, it cannot be believed that still he would not have gathered courage to come out from the house

for two hours. He claims that he had cell phone from which he contacted the police at about 5.00 a.m. If that is true, what prevented PW 8 from contacting police immediately after the assailants left the village is not explained by him. The further claim of PW 8 that himself and the relations of the other deceased also spoke to the police at 5 a.m from the cell phone also stands falsified, in view of the evidence of PW 16 that only by 6 a.m, through a police constable (who was not examined), he received information that murders took place in Peddavaram village. PW 8 does not appear to be a person having regard to the oath which he has taken. On simple issue as to whether his statement was recorded by the police, he gave wavering statements. In the chief-examination, he stated that he was examined by the police, but in the cross examination, he asserted that his statement was not recorded. Again he stated that he cannot give the designation of the police officer who examined him. In the further cross-examination, he stated that the police did not come to him and did not examine him in respect of the incident. Similarly, PW 8 denied the suggestion that he is one of the accused in a criminal case, wherein the allegation is that A2 herein was beaten. While denying the suggestion made to him that he is involved, immediately, the witness stated that however he attended the court in that case, but the allegation is false. The conduct of PW 8 who was aged less than 50 years by the time of incident cannot be said to be natural conduct of human being, who has seen 6 dead bodies lying within a close range and he himself having witnessed the alleged assault on the deceased persons. As already stated, the rough sketch Ex.P53 does not show the existence of the house of PW 8 on the road on which the accused are alleged to have killed 5 persons and chased D6 to some distance and brutally killed him.

65. PW 9 is the younger brother of D6. He claims to be a lorry driver by profession and he used to stay either with his parents at Peddavaram village or with another brother at Cheemakurthi while attending the duty on lorry. He was a person aged less than 30 years at the time when the incident took place. He deposed that on the night of the incident he was at Peddavaram village, that himself and his paternal uncle-D2 slept in their cattle shed, that his cousin brother slept in front of their house, that D5 raised cries while A1 to A21 were killing him, that on hearing his cries, the father of D5, namely D2, rushed towards that place and that D2 was killed by A1 and others. He further deposed that A1 stabbed D2 with a spear while the other accused were holding axes and hunting sickles in their hands. He further deposed that even though he intended to interfere, he came back due to fear and withdrew towards the fields and came to the village only after the police arrived at the scene of offence. In the cross examination, he denied having stated before the police as in Ex.D1 that he used to reside at Cheemakurthi. He denied the suggestion that he was actually in Cheemakurthi, that he was planted as eyewitness and that he was deposing falsehood. In the further cross-examination, it is elicited from him that both his parents and brother Ramanaiah are residents of Cheemakurthi, that he had no residential house at Peddavaram when the incident took place. He admitted that his brother D6 was accused in a murder case at Gurazala, that he does not know when his brother D6 absconded from jail in the murder case at Gurazala, that A1 passed on the information to the police for his arrest, that for about 4 days prior to the occurrence, he was taking meals in the house of his brother D6, but sleeping in the house of his cousin Kilaru Pedda Venkateswarulu (D2), that during all the 4 days when he was in the village, his brother D6 stayed in the village itself and did not go out, and

that D6 was living in the house along with his wife PW 1 and his son aged about 9 years. He further admitted that at the time of incident he himself and D2 were sleeping on a single cot in the cattle shed at the house of D4. He further deposed that he has witnessed the attack on D2-Venkateswarulu for about 10 minutes and when D2 woke up from the cot, he also woke up hearing the cries of D5. When D2 and PW 9 slept on the same cot, D2 was killed, and absolutely no harm whatsoever was caused to PW 9 nor is it his case that any blood fell upon him. He further claimed that even though he came out of the house to a distance of 10 feet, none of the accused noticed him. This also cannot be believed. He further deposed that after seeing the incident, he went towards the fields at a distance of one kilometer and hidden himself in the fields until he received information about the arrival of police in the village. He further claimed that since the incident occurred during night time and he is not having any details of the deceased persons, he could not give any police report or statement until he returned to the village by 10 a.m. The evidence of PW 9 is also difficult to be believed for the reasons which are similar to that of other eyewitnesses and in addition to that when it is nobody's case that it is A1 to A21 who participated in the incident, it is only PW 9 who claims that all the 21 accused have participated in the crime. It may be recalled that according to the other prosecution, A21 never entered into the village and was made to stand near the Jeep along with PW 3, the driver. PW 9 was a person, aged about 29 years at the time when the incident took place. He claims to be a lorry driver. His young brother, paternal uncles and other kith and kin were brutally murdered in the very presence of his eyes. It is very difficult to believe that such a person will run to a distance of one kilometer towards fields and hide himself and come out at about 10 a.m, that too when the police arrived. According to other witnesses, the

police reached the scene of offence at about 7 a.m and all the villagers assembled, but PW 9 would have that still he was having fear due to which he did not come out from hideout till 10 a.m. If the evidence of PW 9 is carefully perused, there appears some force in the suggestion, though denied by PW 9, that he was residing at Cheemakurthi and not residing at Peddavaram village.

70. PW 10 is the mother of D3. She claims acquaintance with A1 to A5 and A18 and also other accused who belong to her village. She is the wife of Mallikharjuna (LW 12), who is not examined. She also stated the relationship in between the accused and other prosecution witnesses. She claims that in the night of the incident, she was in the house of Shivamma (LW 6), who is not examined, and PW 11, as she underwent tubectomy operation, and that she was sleeping in the house along with her husband, PW 11, Shivamma (LW 6) and her children. That in the midnight, she heard commotion and they all woke up, that her daughter D3 was on the shoulders of PW 11, that at that time, she saw A1 to A5 and others running on the road in front of their house and that at that time PW 11 accosted those persons questioning as to why galata is being created in the midnight. That then A4 hacked D3 with hunting sickle on head due to which she died. PW 10 further deposed that A18 beat PW 11 with a stick and caused injury on her right hand near thumb. She further deposed that her husband Mallikharjuna (LW 12) ran away from there due to fear, that they went inside the house and bolted the doors due to fear and that they opened the doors only in the morning when the villagers came to their house. She also spoke about the other persons being killed, but did not attribute specific overt acts. The artificial nature of the evidence of the witness is evident from the fact that when her three year old daughter was killed on the spot by the accused, still she wants it to be

believed that they all went inside the house and bolted the doors, whereas her husband, namely, the father of D3 ran away from there due to fear, and that they opened the doors only on the next day morning when the villagers came there. As noticed above, the assailants left the village within half an hour, i.e., around 2.30 a.m. The claim that for more than four hours, PW 10 and others were hiding themselves in the house, cannot be accepted from a mother, whose daughter was killed and lying dead in the house. PW 10 admitted that A4 who according to her is the person who killed her daughter-D3 is a person with whom they are having disputes in the matter of cattle trespass in the fields. A similar comment is made about this witness that even though her daughter was done to death with an axe with a blow on her head and she was only a 3-year old girl, there were no bloodstains on the clothes of PW 10 which makes it difficult to believe that she was present at the place where the incident took place. Her further claim that her husband Mallikharjuna (LW 12) ran away from the village and did not return is also unbelievable. These circumstances give credibility to the suggestion made to her, though denied, that as a matter of fact, herself and her husband were not in Peddavaram village in that night and that they were in their own house which was located in NSP colony.

71. PW 11, as per prosecution, is a very important witness, since according to it, it is she who came out of the house and chastised the assailants who were chasing D6 and questioned them as to why they are doing that, and thereafter, one of the assailants came inside the house and hacked D3, a 3-year old girl who was on the shoulders of PW 11. Unfortunately, she turned hostile and categorically stated that she did not know how D3 died and she also denied that she received any injuries. Her turning hostile is obviously for the reason that she is closely related to

both the deceased and also the accused. A1 is her brother whereas A2 to A5 are her nephews. A18 is the grandson of this witness. Be that as it may, the fact remains that she completely resiled from Ex.P24, her previous statement and stated that neither she received any injuries nor does she know as to how D3 died, leave alone the other aspects of the case of the prosecution.

72. Similarly, PW 12 is mother of D1. She deposed that on the night of the incident, D6 slept at their house and her own son D1 was sent to the house of D6 for sleeping since the police were searching for D6 in connection with a criminal case. She further deposed that at about 1 a.m in the midnight there was galata at the house of D6, that she woke up and placed fodder to her cattle and again came back and slept on bed, that after 10 minutes many persons at once came upon her, but she cannot identify them, that seeing them D6 and her husband Kilaru Venkaiah (LW 14 not examined) ran away from the house, that those persons hacked her left hand and she lost part of her forehand including 3 fingers, that her right hand was fractured when she was beaten by some blunt object, that her entire right knee cap was removed since it was damaged, that those persons also hacked on her left leg due to which all her nerves were damaged, that she fell unconscious nearby and was taken to Darsi hospital by her husband and from there to Guntur General hospital, and that thereafter she was shifted to a private hospital. The presence of PW 12 cannot be ruled out for the reason that she sustained grievous injuries in the assault, which was simultaneously perpetrated on her and also on the deceased persons. Unfortunately, she turned hostile to the prosecution and denied the involvement of any of the accused. She did not even name a single person as the persons who either killed D6 or caused multiple injuries on her person. She could not even name a

single assailant even though she has close acquaintance with the accused persons. Her turning hostile to the prosecution, is fatal to its case.

73. PWs 11 and 12 are the injured witnesses and they were the best persons to speak about the participation of the persons who committed the crime. Both of them did not whisper even a single word about the persons, leave alone the participation of any of the accused persons, even though their close relations were killed at that time.

74. The other star witness of the prosecution is PW 14. He deposed that he has acquaintance with both D1 to D6 and the accused persons, who are residents of his village. He stated that he is a resident of NSP colony which is adjacent to Peddavaram village. However, in the night of the incident, after dinner, he claims to have slept in front of the house of Jayapradha (LW 17), but no reasons are given as to why he came to Peddavaram village and similarly as to why he slept in front of the house of Jayapradha (LW 17). He further deposed that in the midnight, A1 to A20 came to the village and they hacked D5 near a well and when D2 came to the rescue, the accused killed D2. Thereafter, A2 and A4 hacked PW 12 who fell on a mound nearby. PW 12 herself did not say that it is A2 and A4 who hacked her. PW 14 further deposed that D6 was sleeping at the house of PW 12, that the accused chased D6 and D6 was killed by the accused by stabbing with spears and also hacking him with axe at the house of a washer man. He further deposed that when PW 11 questioned the accused about their highhandedness at the dead end of night, A4 hacked D3 with hunting sickle who was on the shoulders of PW 11. It can be said here that according to other prosecution witnesses, D3 was hacked by A4 while other accused persons were still chasing D6 on the road. But this witness stated that D3 was killed after D6 was killed by the accused persons. The so called questioning the

accused by PW 11, according to PW 10, is prior to hacking of D6, but whereas according to PW 14 after the accused persons killed D6, PW 11 questioned the accused persons and only thereafter A4 killed D3 who was on the shoulders of PW 11. PW 14 further deposed that after committing the crime, the accused went towards Bayyaram side and due to fear, she went to NSP colony and from NSP colony, he ran away into the fields and returned to the village only after the police came there. Firstly, PW 14 did not give any reasons for his going to the house of Jayapradha (LW 17) and sleeping in the open place in front of the house, even though he has a house in NSP colony, which is near Peddavaram village, and having done that after witnessing the ghastly incident, PW 14 claimed that he did not return back to NSP colony and did not go to the house but ran towards the fields and hidden himself till the police arrived in the next day morning. As already noticed, the police arrived at the village only after 4 or 5 hours after the incident, which means PW 14 was hiding himself in the fields till that time, even though he has own house in NSP colony and though he claimed to have seen the accused going away towards Bayyaram after killing the deceased in Peddavaram village.

75. In the cross examination, it is elicited from PW 14 that the incident occurred at 2 a.m. and that neither villagers nor neighbours gathered at the scene of offence while the incident was taking place, that he did not raise cries, and that no neighbour raised any cries. If this part of the admission of PW 14 is believed, none except him witnessed the incident. PW 14 was aged less than 30 years and he claimed to be unmarried when the incident took place. He said that he is living in NSP colony along with his senior paternal uncle. He further deposed that when the accused persons were killing the deceased persons, he hid himself just at a distance of 2 feet. According to the contention of the

accused, PW 14 is a planted witness, inasmuch as he had enmity with A1 and also with A7. It is admitted by PW 14 that he is one of the accused in the case in which it is alleged that this witness along with others hurled bombs against A1 and others. It is also admitted by PW 14 that he is also one of the accused in a case wherein it is alleged that he beat A2. He further admitted that his sister Ademma was married by A7, that it is a love marriage against the wishes of the family and that after the marriage, they filed cases against each other. In view of the criminal track record of PW 14, his conduct at the time of and immediately after the incident for well over four hours cannot be such as claimed by him, if really he has witnessed the incident. He further admitted that the cases which he filed against A7 are still pending trial. He further claimed that the police having recorded his statement, obtained his signature on the said statement, as discussed in the preceding paragraphs. The said statement which PW 14 claimed to have signed is not part of the record.

76. If the evidence of PW 14 is scrutinized with care and caution, which is required, when there is enmity between the accused and this witness, it appears that there is sufficient force in the suggestion that in the night of the incident PW 14 was in NSP colony and did not go and slept in front of the house of Jayapradha (LW 17) and that he is giving evidence against the accused only in view of the previous criminal cases.

77. The Inspector of police PW 22 is having his office at Darsi. He claimed that he was informed about the incident over telephone at about 7 a.m. on 21.06.2003 and that he immediately proceeded to Peddavaram village and reached there by about 8 a.m. As noticed above, PW 12 who sustained grievous injuries in the attack was taken to the Government hospital at Darsi by about 5.30 a.m. in the tractor. She was examined by the medical officer of the Community Health Centre, Darsi at 7.30 a.m.

Ex.P45 is the wound certificate and in the said certificate, it is mentioned that intimation about a medico legal case was communicated to a police constable at Darsi. PW 22 in his evidence asserts that he has no information about the admission of PW 12 at Darsi hospital. This cannot be believed for the reason that even while PW 22 was available at Darsi, the medical officer sent the intimation to the police station about the admission of PW 12 with multiple injuries.

78. Yet another circumstance which makes us to believe that the so called eyewitness to the incident have not actually witnessed the incident, but they are planted, is the testimony of PW 22, the investigating officer. According to PW 22, he reached Peddvaram village at 8 a.m. For about 2 hours he claimed to have moved in the village and provided a guard to safeguard the scene of offence, maintain law and order and made a search for the accused. At 10.30 a.m, he received the FIR Ex.P30 and immediately he commenced the proceedings. From 10.30 a.m. to 12 noon, PW 22 prepared Ex.P31 scene observation panchanama. Thereafter, he conducted inquest over the dead bodies. Even though he was in the village for 2 hours prior to commencement of the preparation of scene of offence panchanama, PW 22 in his evidence categorically asserted that till he commenced and completed the scene of offence proceedings under Ex.P31 at 12 noon, he did not record statements of any of the witnesses. He further admitted that nobody came forward till he completed Ex.P31 proceedings to give statement as an eyewitness. Similarly, he did not also make any effort to secure eyewitnesses prior to commencement of the scene of offence proceedings under Ex.P31. If what PW 22 stated is true, the version of the eyewitnesses, namely, PWs 1, 2, 8, 9, 10 and 14 will be incorrect. It may be recalled that according to PW 1, she went to the village revenue officer PW 17 at 7 a.m; PW 2

came out of his hiding at about 7 a.m. when the police arrived; PW 18 also claimed that the police came in the early morning at 7 a.m. and he came out of the hiding; PW 9 further admitted that on being informed about the arrival of the police in the village, he came out and his statement was recorded by the S.I. of Police at about 10 or 11 a.m. PW 9 further stated that his statement was recorded as one of the eyewitnesses to the incident. PW 10 also deposed that after the incident, they closed themselves within their houses till morning and opened the doors in the morning when the villagers came to their house. PW 14 categorically asserted that the police have recorded his statement at about 6 or 7 a.m. in the morning of the incident and that he also affixed his signature on such statement.

79. It may also be stated that PW 21 is another police officer who admitted in his evidence that K.Vijayalakshmi (LW 3) and K.Mastanamma (LW 4), who according to the prosecution are the eyewitnesses to the incident, did not state that they are the eyewitnesses for the murder of two of the deceased persons.

Delay in registering and sending FIR to the Magistrate:

80. In a criminal case, the law will be set in motion with the FIR which is required to be lodged with promptitude and without wasting much time. Promptitude in lodging the FIR eliminates the suspicion that it is the outcome of confabulations, consultations or spite against the persons who are inimically disposed towards the prosecution party. We have to carefully examine this aspect for the reason that the complainant party in all probability may initiate criminal proceedings just to harass the opponents with *mala fide* intentions or with ulterior motive of wrecking vengeance for their previous enmities. It is for the prosecution to explain satisfactorily the delay, if any, in lodging the complaint. Not only the

complaint is expected to be lodged with utmost promptitude, the reaching of the FIR to the jurisdictional magistrate is another important aspect which needs to be taken into consideration for determining credibility or otherwise of the First Information Report. Even if the complaint is lodged promptly setting out the details about the occurrence, if the said complaint does not reach the judicial magistrate having jurisdiction at the earliest possible time, or if no reasons are forthcoming, it gives credence to the defence of the accused that the first information report was not lodged at the time when it is purported to be, but it is ante-timed.

81. The incident is said to have taken place at about 02.00 a.m on 21.06.2003. The place of incident is Peddavaram village, which is at a distance of about 12 kilometers from Kurichedu Police Station. Ex.P29 is the complaint lodged by PW 1 at about 8.30 a.m. Even before that, police were informed about the incident and it is the case of the prosecution that PW 1 has gone to NSP colony and informed PW 17, the village revenue officer, who recorded the statement of PW 1, handed over the same to police party which has already come to the spot by then. The police officer who received the complaint Ex.P29, sent it to the police station through a police constable and thereafter, FIR was registered at 8.30 a.m.

82. PW 16 is the police officer who claims to have registered the FIR and sent it to the court. The court is at Darsi which is at a distance of about 35 to 40 kilometers from Peddavaram village. According to PW 16, having registered the case in Cr.No.15/2003, he dispatched the FIR to the judicial magistrate without any loss of time. The FIR was an express FIR involving a grave crime. It took nearly 10 hours to reach the magistrate. During course of the day between 8.30 a.m to 6 p.m substantial part of investigation was done such as recording the statements of witnesses, inquest over the dead bodies, preparation of scene of offence

panchanama, drawing of sketch etc. All the senior police officers, such as Superintendent of Police, Deputy Superintendent of Police have camped in the village during the day. According to the learned counsel for the accused only after the senior police officers came to the village, the complaint was prepared and by putting the time as 8.30 a.m FIR was issued in the late hours of the day due to which it reached the magistrate only after 6 p.m on 21.06.2003. The police officer-PW 16 could not give any satisfactory reasons for this abnormal delay of nearly 10 hours in the FIR reaching the magistrate. Be that as it may, even on the face of the record, Ex.P29, the complaint, itself was lodged more than 6 hours after the incident.

83. It is also noticed from the record that PW 12 is one of the injured witnesses and she sustained grievous injuries in the incident. According to PW 12, she heard some commotion in the village at about 1 a.m. in the midnight at the house of D6. She woke up and put fodder to her cattle and came back and slept on bed. She further deposed that within 10 minutes thereafter, many persons whom she cannot identify came upon her and hacked her left hand, due to which, she lost some of her fingers. She further claims that she was taken to the Government Hospital, Darsi by her husband Kilaru Venkaiah (LW 14), who has not been examined by the prosecution, though listed as a witness. According to PW 12, the Doctor at Darsi hospital has referred her to the Government hospital at Guntur, and thereafter, she shifted herself to a private hospital.

84. PW 18 is the medical officer, who treated PW 12. Ex.P45 is the wound certificate pertaining to PW 12 issued by PW 18. As per Ex.P45 the Doctor attended on PW 12 at 7.10 a.m on 21.06.2003 and it was recorded therein that a medico legal case intimation was sent to Darsi

police and this was prior to the complaint Ex.P29 which was lodged at 8.30 a.m.

85. It is submitted by the learned counsel for the accused that PW 12 was taken by her husband to the hospital even before 7 a.m. It is her husband Kilaru Venkaiah (LW 14) who has informed the Doctor as to how his wife PW 12 sustained the injuries. The prosecution for the reasons best known to it though listed the husband of PW 12 as a witness, has not examined him in the court and his evidence was given up. He being an important witness to unfold as to how PW 12 sustained injuries, his non-examination affects the credibility of the case of the prosecution.

86. It is also in the evidence of PW 12 that she was first taken to Darsi hospital and was attended by PW 18 at about 7 a.m and thereafter she was referred to the Government hospital at Guntur. According to PW 12, her statement was recorded by the police while she was in Darsi hospital. She having turned hostile, her entire statement under Section 161 Cr.p.c was marked as Ex.P25. However, the investigating officer-PW 22, asserted that he visited the Government General Hospital, Guntur and recorded the statements of PW 12 and also of her husband Venkateswarulu (LW 14) and this was on 22.06.2003. It clearly shows that while PW 12 and her husband were at Darsi hospital on 21.06.2003 and PW 12 was being treated by PW 18, her statement was recorded by the police, but for the reasons best known to the prosecution, that statement was suppressed and instead the statement which is said to have been recorded from PW 12 on the next day i.e., on 22.06.2003 when she was undergoing treatment at the Government hospital, Guntur has been pressed into service, which was marked as Ex.P25. This gives strength to the contention of the learned counsel for the appellants that the earliest statement given by the material witness PW 12 who was

grievously injured and also of her husband have been suppressed. This aspect gains more importance, since PW 12 was treated by the Government hospital at Darsi even before PW 1 lodged the complaint Ex.P29.

87. PW 14 is one of the eyewitnesses, who claims to have witnessed the entire incident. He is having enmity with A7 since his sister married A7 against their wish. PW 14 also admitted that he filed a case against A7 and others which is pending trial. What is relevant to mention here is that he claims that his statement was recorded by the police and he affixed his signature on the said statement. This was at about 6 or 7 a.m on 21.06.2003. On the statement recorded under Section 161 Cr.p.c, signatures of the witnesses will not be obtained. When PW 14 claims that his statement was recorded and his signature was obtained on the statement and the same is not placed before the court, it amounts to suppressing a vital document.

88. The cumulative effect of the above discussion is that not only the delay of about 6 hours in lodging the complaint is not properly explained, but the further delay of 10 hours in the said complaint along with the FIR reaching the jurisdictional magistrate, is not at all explained satisfactorily. In normal circumstance, this delay would not lead to an inference adverse to the prosecution, but in the case of this nature where there are serious disputes and cases pending between the prosecution party and the accused, this delay becomes relevant and leads to an inference that the complaint Ex.P29 is not the one which was lodged immediately after the incident, but it was ante-timed and as already stated all the witnesses gave different versions to the police, but only in the afternoon when the senior police officers visited the village, the entire story was changed and the accused persons were implicated and hence

the FIR could not reach the magistrate before 6 p.m. As already observed, the distance between Peddavaram village where the incident took place where all the police officers were camping and the court at Darsi is less than 40 kilometers. Therefore, it would not have taken more than two to three hours for the police to send the FIR to the magistrate.

89. PW 16 is the police officer who was the SHO of Kurichedu police station at the relevant point of time. It is he who registered the FIR Ex.P30 and dispatched to all concerned. According to him, he dispatched the FIR without any loss of time. The same FIR Ex.P30 was received by the Inspector of Police who was camping at Peddavaram village at 10.30 a.m on 21.06.2003. However, the same FIR reached the Judicial Magistrate, Darsi at 6.30 p.m on 21.06.2003. PW 16 claimed that he has sent it through a police constable. Therefore, if really, the FIR was registered and dispatched, according to PW 16, at 8.30 a.m. itself, there is no question of the FIR being received by the judicial magistrate more than 9 hours thereafter.

90. The fact that the crime was by all means sensational was even recognized by the investigation agency and this is evident from Ex.P.63. The crime weapons were seized by the Investigating Officer and he filed a requisition before the Judicial Magistrate of First Class, Darsi, to send the same to RFSL Examination and in the said requisition, the Investigating Officer himself referred to the incident as a case of sensational murders. When that be the case, why the alertness was not exhibited by the Investigating Officers in dispatching the F.I.R. promptly and seeing to it that the same is received by the jurisdictional Magistrate at the earliest point of time, has not been explained by the prosecution. As already stated, when the crime took place at 02.00 a.m., the F.I.R. was lodged at

08.30 a.m., and the same was received by the jurisdictional Magistrate at 06.10 p.m., on 21.06.2003.

91. In *STATE OF KERALA v. ANILACHANDRAN*¹, a three Judge Bench of the Supreme Court observed that delay in sending the F.I.R. to the Magistrate sometimes affords opportunity to introduce improvement and embellishment thereby resulting in a distorted version of the occurrence. Section 157 of the Code of Criminal Procedure, 1973 mandates that the report should be sent to the Magistrate forthwith. That itself indicates the urgency. It needs to be noted here that where an explanation is offered by the prosecution for the delay, that has to be tested. The unexplained delay by itself may not be fatal, but is certainly a relevant aspect which can be taken note of while considering the role of the accused persons for the offence.

92. In *BHAJAN SINGH v. STATE OF HARYANA*² after referring to various authorities on the subject, the Supreme Court made the following observations in paras 28, 29 and 30 as under:-

“Thus, from the above it is evident that the Cr.P.C provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 Code of Criminal Procedure, if so required. Section 159 Code of Criminal Procedure empowers the Magistrate to hold the investigation or preliminary enquiry of the offence either himself or through the Magistrate subordinate to him. This is designed to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction.

It is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. Every such delay is not fatal unless prejudice to the accused is shown. The expression 'forthwith' mentioned therein does not mean that the prosecution is required to explain delay of every hour in sending the FIR to the Magistrate. In a given case, if number of dead and injured persons is very high, delay in dispatching the report is natural. Of course, the same is to be sent within reasonable time in the prevalent circumstances.

¹ (2009) 13 SCC 565

² (2011) 7 SCC 421

However, un-explained inordinate delay in sending the copy of FIR to the Magistrate may affect the prosecution case adversely. An adverse inference may be drawn against the prosecution when there are circumstances from which an inference can be drawn that there were chances of manipulation in the FIR by falsely roping in the accused persons after due deliberations. Delay provides legitimate basis for suspicion of the FIR, as it affords sufficient time to the prosecution to introduce improvements and embellishments. Thus, a delay in dispatch of the FIR by itself is not a circumstance which can throw out the prosecution's case in its entirety, particularly when the prosecution furnishes a cogent explanation for the delay in dispatch of the report or prosecution case itself is proved by leading unimpeachable evidence.”

93. In **NARASAPURAM BALAIAH v. STATE OF ANDHRA PRADESH**³ this Court observed in para 10 as under:-

“In the present case, the express FIR was received by the Magistrate more than 12 hours after it was purportedly registered by the police and this gives rise to a serious suspicion that it may have been ante-timed. The prosecution has not explained this delay. The absence of any explanation offered by the prosecution for the delay gives rise to reasonable suspicion that the F.I.R. was ante-timed, leaving the scope of embellishment and false implications in preparing the report.”

94. In **STATE OF RAJASTHAN v. DAUD KHAN**⁴ the Supreme Court in para 28 held as under:-

“It is no doubt true that one of the external checks against ante-dating or ante-timing an FIR is the time of its dispatch to the Magistrate or its receipt by the Magistrate. The dispatch of a copy of the FIR "forthwith" ensures that there is no manipulation or interpolation in the FIR. If the prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so. However, if the court is convinced of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to the prosecution case. It would depend on the facts and circumstances of the case.”

95. The other aspect on which the prosecution relies upon is the confession alleged to have made by the accused regarding recovery of the

³ 2016 (2) ALD (Crl.) 331

⁴ (2016) 2 SCC 607

weapons which are said to have been used in the commission of the crime. According to the investigating officer, PW 22, in pursuance to the confession made by A1, A4, A14 and A15, the weapons, MOs 2, 3, 4 and 8 were recovered. PW 17 is said to be the independent panch witness for the recovery of the said material objects. He is a village revenue officer who previously worked as panchayat secretary of Peddavaram village. He categorically deposed that none of the accused were arrested in his presence, no confession was made by them and that no material objects were recovered at the instance of the accused in his presence. The village revenue officer further stated that his signatures were obtained on some panchnamas in the office of the Circle Inspector and the said Circle Inspector informed him about the arrest of the accused.

96. The prosecution relied upon the alleged confession said to have been made by A1, A4, A14 and A15 inculcating themselves in the commission of the crime which lead to the recovery of MOs.2, 3, 4 and 8, which are the weapons said to have been used in the commission of the crime. It is also the case of the prosecution that the other crime weapons, such as MOs.1, 4, 5 and 6 were found near the scene of offence, which means, the assailants who were carrying deadly weapons have neither thrown away all the weapons at the scene of offence nor carried away all the weapons with them. Some weapons were thrown at the scene of offence and some are said to have been taken away by the accused which are alleged to have been recovered long after the incident. That apart, none of the independent witnesses have supported the investigating officer about the confession leading to the recovery of MOs.2, 3, 4 and 8. The weapons which are said to have been recovered long after the incident are said to have contained bloodstains. That means the accused have not made any attempt to either wash off themselves or

the weapons before carrying the weapons with them and dumping at different places.

97. In view of the above contradictory claims made by the eyewitnesses and the investigating officer, what is apparent is that till about 12 noon, the police who were in the village right from 7 a.m onwards were not aware as to who are the eyewitnesses. Therefore, the claim made by PWs 1, 2, 8, 9, 10 and 14 that they witnessed the incident and in fact informed the same to the police, is palpably false. The irresistible inference that can be drawn is that only in the afternoon, the investigating officers identified the persons to be the eyewitnesses to the actual assault.

98. When a crime is committed by unknown persons and the eyewitnesses have seen the said crime being perpetrated, the dock identification made by such eyewitnesses will be fortified if they have been subjected to test identification proceedings which are required to be conducted by a judicial officer. This is intended to test the claim likely to be made before the court that the persons being prosecuted are the persons who have actually participated in the crime. However, if the identity of the accused persons is not in doubt, such proceedings pales into insignificance. In the instant case, according to the prosecution, all the 21 accused persons were paraded in test identification proceedings by two judicial officers on different dates and all the eyewitnesses have participated therein. PWs 19 and 20 are the judicial officers who conducted test identification proceedings on 27.09.2003, 07.08.2003 and 30.08.2003. Out of the 21 accused, A1 to A13 were known to the material witnesses and as a matter of fact, they are also closely related to some of the witnesses. That apart, the eyewitnesses in their evidence did not attribute specific overt acts to any of the accused other than those 13

named in the FIR and also inquest proceedings. Be that as it may, the identification made by the prosecution witnesses in the test identification proceedings did not lead to any satisfactory conclusion for the reason that all the witnesses have identified the persons who were known to them even prior to the incident. As already stated in the complaint Ex.P29 itself and subsequently during the course of inquest proceedings held during course of the day on 21.06.2003, the names of A1 to A13 are fully given by the witnesses, including their surnames, their fathers' and their alias names, if any. That apart, it is nobody's case that A21 has entered the village on the night of the incident. It is the specific case of the prosecution as spoken to by all its witnesses that A21 was made to stand at the Jeep along with PW 3 which was parked more than one kilometer away of the village. K.Vijayalakshmi (LW 3), who according to PW 21, did not claim to have witnessed the incident, identified A.1, A.2, A.3, A5 and A18 in the test identification proceedings. Similarly, LW-4 who according to PW-21 did not claim to have witnessed the incident, identified A.1 to A.5 and A18.

99. In BOLLAVARAM PEDDA NARSI REDDY AND OTHERS⁵ the Supreme Court in para 11 observed that when persons who have already known the accused persons to be identified are mixed up with the witnesses, the test identification is clearly vitiated and is futile. Value of identification parade depends on the effectiveness and the precautions taken against the identifying witness having an opportunity of seeing the persons to be identified before they are paraded with others and also against the identifying witness being provided by the investigating authority with other unfair aid or assistance so as to facilitate the identification of the accused concerned.

⁵ AIR 1991 SC 1468

100. In HASI B v. THE STATE OF BIHAR⁶ the Supreme Court in para 7 observed as under:-

“.... Such tests or parades belong to the investigation stage and they serve to provide the investigating authority with material to assure themselves if the investigation is proceeding on right lines. It is accordingly desirable that such test parades are held at the earliest possible opportunity. Early opportunity to identify also tends to minimize the chances of the memory of the identifying witnesses fading away by reason of long lapse of time. But much more vital factor in determining the value of such identification parades is the effectiveness of the precautions taken by those responsible for holding them against the identifying witnesses having an opportunity of seeing the persons to be identified by them before they are paraded with other persons and also against the identifying witnesses being provided by the investigating authority with other unfair aid or assistance so as to facilitate the identification of the accused concerned.....”

101. It may be stated here that test identification proceedings are required to be conducted at the earliest point of time so as to see that the power of the witness to identify the assailants does not get faded. In the instant case, out of 21 accused, 18 of them were arrested by 05.07.2003 and remanded to judicial custody. The test identification proceedings were conducted on 27.09.2003, 07.08.2003 and 30.08.2003. Therefore, it is clear that the test identification proceedings were held long after the accused persons were apprehended and remanded to judicial custody. This inordinate delay affects the credibility of the proceedings. In addition to the above, as stated supra, out of 18 persons, 13 persons were very much familiar, if not related, to almost all the material witnesses of the prosecution. Therefore, their identification in the test identification proceedings cannot be taken as having much relevance to the facts of the peculiar case in hand.

⁶ AIR 1972 SC 283

102. The cumulative effect of the foregoing discussion is that in the unfortunate horrendous incident that took place on the intervening night of 20/21.06.2003 at about 2 a.m in which as many as 6 persons, including a 3 year old girl were brutally killed in the midst of a residential area, on the main road surrounded by several houses and also thickly populated colonies/villages on either side, the prosecution could not secure the presence of even a single independent eyewitness. The so called persons who were said to have witnessed the incident were all the close relations of the deceased and they did not appear to have actually witnessed the incident and that only during course of the day, after due consultations and confabulations, they have been planted as eyewitnesses. Out of the 21 accused, 13 were specially named with their full description even in the complaint which is lodged at about 7 a.m. on 21.06.2003. The document which contained the descriptive particulars of all the assailants was not sent to the judicial magistrate with expeditious dispatch, which was expected in a case of this nature. Even though the incident is said to have been witnessed by 13 persons, as per the charge sheet, 5 of them have not been examined before the court and not even a single person out of 13 witnesses mentioned in the charge sheet, figured as eyewitness to the incident in Ex.P29 complaint.

103. In view of the above, we have no hesitation in holding that the prosecution could not prove the guilt of the accused for the charges leveled against them beyond all reasonable doubt and therefore, the appellants/accused are entitled to an acquittal.

104. In the result, all these Criminal Appeals are allowed. The conviction and sentences recorded against the appellants/accused by the judgment, dated 15.06.2010 in Sessions Case No.40 of 2004 and judgment dated 15-04-2013 in Sessions Case No.554 of 2010, on the file

of the learned VI Additional District & Sessions Judge, (Fast Track Court), Markapur, for the charges leveled against them, are set aside. Consequently, the appellants/accused Nos.2, 3, 6, 7, 8, 10, 12, 13, 14, 16, 17, 19 and 20 shall be released forthwith, if they are not required in any other case or crime. The fine amount, if any, paid by the appellants/accused shall be refunded to them.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 20.01.2017
Dsr/smr

