

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

CRIMINAL APPEAL NO.428 OF 2011

Between:

Komiri Venkanna @ Doctor Venkanna

.. Appellant

and

State of Andhra Pradesh, Represented
By its Public Prosecutor

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 17.11.2017

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD**

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

SANJAY KUMAR, J

T. AMARNATH GOUD, J

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+ CRIMINAL APPEAL NO.428 OF 2011

% DATED 17th NOVEMBER, 2017

Komiri Venkanna @ Doctor Venkanna .. Appellant

Vs.

\$ State of Andhra Pradesh, Represented
By its Public Prosecutor .. Respondent

<Gist:

>Head Note:

! Counsel for the Appellant : Sri S. Ashok Anand Kumar

^Counsel for the Respondent : Public Prosecutor

? CASES REFERRED:

1. (2013) 11 SCC 719
2. 2009 (1) ALD (CrI.) 846 (AP)
3. AIR 1968 SC 1270
4. 2016 (3) ALT (CrI.) 302 (DB)(A.P.)
5. (2008) 16 SCC 73
6. (2011) 6 SCC 396
7. (2010) 10 SCC 439

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.428 OF 2011

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

Burra Venkanna suffered a knife attack on 26.06.2006 at Ramachandrapuram, Gummadavally Village, Thungathurthy Mandal, Nalgonda District, and succumbed on 28.06.2006. Komire Venkanna was charged with his murder under Section 302 IPC in Sessions Case No.451 of 2009 on the file of the learned II Additional Sessions Judge, Nalgonda at Suryapet. He was also charged with committing an offence under Section 324 IPC by causing hurt to Komire Mansoor (P.W.1) with a knife. By judgment dated 09.02.2011, the Sessions Court convicted him on both charges. He was sentenced to life imprisonment apart from paying a fine of Rs.5,000/-, in default of which he was to suffer simple imprisonment for three months, in relation to his conviction under Section 302 IPC and to rigorous imprisonment for two years apart from paying a fine of Rs.1,000/-, in default of which he was to suffer simple imprisonment for one month, for his conviction under Section 324 IPC. Aggrieved by the convictions and sentences visited upon him, the accused is in appeal.

History of the case, in brief, is as under:

The Assistant Sub-Inspector of Police, Thungathurthy Police Station (P.W.19), was presented a Telugu written complaint (Ex.P1) against the accused by P.W.1 at 10.30 PM on 26.06.2006, wherein he alleged that the accused made an attempt to murder him and had also stabbed the deceased. Thereupon, P.W.19 registered Crime No.84 of 2006 under Section 307 IPC. Ex.P11 is the FIR. He

examined P.W.1 and recorded his statement. As P.W.1 had sustained injuries on his hand and stomach, he sent him to the Area Hospital, Suryapet, for treatment. On the next day, P.W.19 visited the scene of the offence at Ramachandrapuram. As there was rainfall the previous night, he did not find any material objects at the scene. He summoned panchas, P.W.14 and Thadakamalla Venkanna (L.W.21), and conducted the scene of the offence panchanama. He then examined P.W.3, P.W.6 and P.W.9 and recorded their statements. On 28.06.2006, he received intimation from Gandhi Hospital, Secunderabad, about the death of the deceased. He then altered the provision of law from Section 307 IPC to Section 302 IPC. He then went to Gandhi Hospital, Secunderabad, and examined P.W.5, P.W.7 and P.W.8. He called the photographer, Shaik Arif Hussain (L.W.19), and got the body of the deceased photographed. Ex.P12 is the set of two photographs. He conducted an inquest over the body of the deceased at Gandhi Hospital, Secunderabad, from 4.00 PM to 6.00 PM, in the presence of P.W.15 and Bojja Saidulu (L.W.23). Ex.P6 is the inquest panchanama. The body of the deceased was then sent for post-mortem examination. The Circle Inspector of Police, Suryapet Circle (P.W.21), thereupon took up the investigation after receiving the CD file from P.W.19. On 14.07.2006, he examined and recorded the statement of Komire Mahesh (L.W.3). On the same day, he apprehended the accused at his house at Ramachandrapuram at about 8.00 AM. He secured two panchas, P.W.17 and P.W.18, when the accused stated his intention of confessing to the commission of the offence. He recorded the confession statement of the accused in the presence of the two panchas. The accused then led them inside his house and showed the place where he had hidden the knife used

by him. The panchas took out the knife which was blood-stained. He then seized the knife (M.O.1). Ex.P14 is the relevant portion of the confession statement leading to the recovery. The accused was then produced before the Court for judicial remand. On 21.07.2006, P.W.21 filed a requisition before the Judicial First Class Magistrate, Nakrekal, requesting him to record the statements of the witnesses, P.W.1, P.W.3 and P.W.7, under Section 164 CrPC. Ex.P16 is the requisition. The Judicial First Class Magistrate, Nakrekal, recorded the statement of P.W.1 (Ex.P17) and the statement of P.W.3 (Ex.P18) on 29.07.2006. P.W.7 did not appear before the Judicial First Class Magistrate, Nakrekal, for giving his statement. P.W.21 then sent the blood-stained knife (M.O.1) to the FSL for examination. Thereafter, a regular Inspector of Police, Thungathurthy Circle, came on transfer and P.W.21 handed over the CD file to him. It appears that the case was transferred at this stage to the CB-CID for further investigation. P.W.23, the Deputy Superintendent of Police, CB-CID, Cyberabad, received the CD file of this case on 18.11.2006. He verified the investigation done by Thungathurthy police, viz., P.Ws.19 and 21, and found the same to be on correct lines. He examined and recorded the statements of P.W.1, P.W.3, P.W.4, P.W.6, P.W.16, Komire Srinu (L.W.5), Ubbani Venkat Narayana (L.W.14), Thirumalapragada Anuradha (L.W.16), and Komire Krishnamma. He then handed over the CD file to his successor, N.Krishna Prasad, Deputy Superintendent of Police, CID RCIU, Cyberabad (L.W.34), who laid a charge-sheet against the accused. Thereupon, the Sessions Court framed the following charges against the accused:

FIRSTLY: That you on the 26th day of June, 2006 at 7.30 p.m. at Ramachandrapuram H/o Gummadavally village of Thungathurthy Mandal, did commit murder by intentionally causing the death of Burra Venkanna, by

stabbing him with a knife in his stomach, on the ground that he intervened in the disputes between Komire Mansoor and the mother of you the accused with regard to landed property and financial matters; and that you the accused thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.

SECONDLY: That you on the date, time and place as mentioned supra, voluntarily caused hurt to Komire Mansoor by stabbing on his left hand and left side of abdomen with a knife which is dangerous weapon; and that you the accused thereby committed an offence punishable under Section 324 of the Indian Penal Code and within my cognizance.

The accused pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined 23 witnesses and marked in evidence 24 exhibits. The accused did not lead any oral evidence but marked in evidence Exs.D1 to D4, portions of the statements of P.W.6, P.W.8 and P.W.11 under Section 161 CrPC. The recovered knife was marked as M.O.1.

Salient points emerging from the evidence may be noted.

P.W.1, the injured eye-witness, turned hostile. In his chief-examination, he stated that he was a resident of Ramachandrapuram Village and lived by agriculture. He said the accused was the son of his junior paternal uncle and that he was on good terms with him previously but there was a land boundary dispute between them and a panchayat was held in connection therewith. Further, the accused borrowed a sum of Rs.1,000/- but repaid only Rs.300/- and there was another panchayat in connection with the Rs.700/- repayable by him. The mother of the accused deposited Rs.500/- with him and in connection therewith, the accused quarreled with him. He said that on one day, about four years ago, while he was returning from his agricultural well and had reached the house of Burra Lachaiah, the accused quarreled with him about the Rs.500/- deposited by his

mother. At that time, P.W.9, P.W.4 and others were present and they reprimanded the accused. On the same day evening at about 7.00 or 7.30 PM, while he was returning from his lands and reached the house of Burra Lachaiah, the accused again quarreled with him stating that either P.W.1 should buy his land or the accused should buy P.W.1's land and either P.W.1 should live or he should live. At that time, P.W.4, P.W.3 and Komire Srinu (L.W.5) were present. They took P.W.1 aside when the accused was quarreling with him. P.W.1 said that he then observed that he had sustained injuries on the left side of his stomach and also on his left hand. He said that he also sustained some nail-marks on his ribs on the left side. He said that when the said persons pushed him aside, he went to his house and learnt later that the accused had stabbed the deceased. He said that he never saw the deceased again but he along with others caught hold of the accused and handed him over to P.W.12. The relatives of the deceased took him in an auto to the hospital and 2 or 3 days later he died. Subsequently, the police came and took him to the Police Station and he orally reported the matter to the police. The police then wrote a statement on his oral instructions and obtained his thumb impression. P.W.1 identified his thumb impression on Ex.P1 report dated 26.06.2006. He said that the Thungathurthy police examined him thereafter and he stated all these facts. One month after the incident, he gave a statement before the Judicial First Class Magistrate, Nakrekal. Four or five months later, the CB-CID Police, Hyderabad, recorded his statement. He said that he did not witness the accused stabbing the deceased and denied that he had stated before the police that he did so. At this stage, he was declared hostile and cross-examined by the prosecution. Thereupon, he admitted that

he stated before the CB-CID Police on 12.02.2007 that while the accused was quarrelling with him and attacked him with a knife causing injuries on his left hand, left side of the stomach and had also scratched him, the deceased questioned the accused as to why he was unnecessarily quarrelling with him and on that, the accused stated to the deceased that he was the person doing all these things in an angry mood and attacked him. The deceased asked the accused what he was doing and what was the fault on his part and tried to hit the accused with his chappal and when the deceased bent down to remove his chappal, the accused took the knife which he had brought and stabbed the deceased in the stomach. He further stated that on that day he was sent to the hospital for treatment for the injuries received by him. In his cross-examination by the defence counsel, P.W.1 stated that he did not know how to read and write Telugu language as he was an illiterate. He said that he did not know the contents of Ex.P.1. He said that for about three years there were disputes between him and the accused. He said that the deceased and the accused were close friends prior to the incident. He said that in the evening when the quarrel took place between him and the accused, about ten persons gathered and after they separated him and the accused, he did not know what happened. He said that after the persons present there pushed him aside after separating him and the accused, he did not remain there and went to his house. He said that he did not witness the incident and at the instance of the police he had stated as in his chief-examination to support the prosecution.

P.W.2, the wife of P.W.1, also turned hostile. She said that she did not witness any incident on that day and she did not know anything about the case. She claimed that her husband never

sustained any injuries and she did not know who stabbed the deceased. She was declared hostile and cross-examined by the prosecution. She thereupon denied the suggestion that she stated before the police as in Ex.P2 statement under Section 161 CrPC. She denied that when she enquired with her husband, he informed her that the accused came and stabbed him and caused injuries.

P.W.3, another alleged eye-witness, also turned hostile. He admitted knowing P.Ws.1 and 2, the accused and the deceased, but stated that though the deceased died about four years back, he did not know how he died. He said that he did not witness any incident. In his cross-examination by the prosecution after being declared hostile, he denied the suggestion that he had stated before the police as in Ex.P3 statement under Section 161 CrPC. He denied the suggestion that he had stated the same facts before the Judicial First Class Magistrate, Nakrekal, about the incident and was deposing falsely in order to help the accused.

P.W.4 also turned hostile. While admitting that he knew the deceased and the accused and that the deceased died about four years back, he said that at about 7.00 PM on the fateful day, many persons were sitting at Burra Lachaiah's tamarind tree and he returned from the village at that time. P.W.1 was also there. The deceased and the accused were scuffling with each other and many persons gathered. He said that he did not know who stabbed the deceased. After that, he returned home and later came to know that some persons had taken the deceased to the hospital for treatment. He said that he stated to the police that somebody had stabbed the deceased and he did not know the name of the person who stabbed the deceased. At this stage, he was declared hostile and cross-

examined by the prosecution. Thereupon, he denied all the suggestions put to him. In his cross-examination by the defence counsel, he said that as he was suffering from ill-health, he did not see who had beaten whom during the quarrel.

P.W.5, the wife of the deceased, stated that on the day of the incident at about 6.00 PM, P.W.1 came to their house and took her husband to the paan shop. At about 7.30 PM, she heard the voice of her husband from the house of Burra Lachaiah. She, along with her children, rushed there and saw that her husband had sustained a stab injury and that a knife was in his stomach. She said that P.W.1, P.W.3, P.W.7 and Komire Srinu (L.W.5) were present there. She said that she and her brother-in-law, Yellaiah (P.W.7), brought her husband to her house. When she enquired with her husband, he revealed that the accused had stabbed him with a knife. Then they took her husband to the Government Hospital, Thungathurthy, and from there to the Suryapet Hospital and from there to Gandhi Hospital, Hyderabad. On the next day, her husband died due to the stab injury. In her cross-examination, P.W.5 stated that her house and Burra Lachaiah's house, where the incident took place, were very near and there was only one house between them. She said that she was at home when the incident took place and went there after hearing the cries. She said that her husband himself took out the knife from his stomach after she reached the scene. She said that he was able to talk till his death. She said that she knew one Thota Somulu, a political leader of Gummadavally Village, who contested in the MPTC election. When the said Somulu came to their house and requested her husband to cast his vote in his favour, her husband told him that as he belonged to Congress party and Somulu belonged

to TDP, how he would cast the vote in his favour. Somulu left the house and within one hour, the incident took place. She said that several criminal cases were pending against the said Somulu. She said that she made a representation to the Government that the murder of her husband took place due to political rivalry and that Thota Somulu was responsible for his murder, but the police did not take any steps against Thota Somulu. On her representation, the Government transferred the case from Thungathurthy Police to the CB-CID, Hyderabad. She admitted that prior to the incident, her husband and the accused were close friends. She also admitted that one hour prior to the incident, when the accused came to their house while her husband was taking meals, her husband asked her to provide meals to the accused but she did not provide meals to him. She however stated that she might have informed the CB-CID that when her husband asked her to provide meals to the accused, she provided meals to him also. She admitted that P.W.6, who was her elder brother-in-law, did not have proper eye sight. She however disclaimed knowledge as to whether the accused had taken P.W.6 for eye-treatment to any hospital. She admitted that as on the date of the incident, her husband did not have any enmity with the accused and the accused had no enmity with him. She denied the suggestion that on the said day, the accused did not stab her husband. She denied the suggestion that after receiving the stab injury her husband never talked to her and never stated the name of the person who stabbed him. She volunteered that P.W.1 and the accused were responsible for the death of her husband.

P.W.6, the cousin of the deceased and the son of Burra Lachaiah, stated that on the fateful day while he was in front of his

house under a tamarind tree along with P.W.4, P.W.3, the deceased and P.W.7, they saw P.W.1 and the accused sitting on the adjacent 'Banda' (stone-pial) and quarrelling with each other. As they were scuffling with each other, they were separated and P.W.1 came to them and complained to the accused that the accused was quarrelling with him. The deceased then asked the accused why he was quarrelling with P.W.1 and the accused replied that he was the person for all these things and abused the deceased in filthy language. The deceased then tried to take out his chappal and when he bent down, the accused stabbed the deceased with a knife in the 'Dokka' (flank). P.W.6 stated that he witnessed the attack and the deceased immediately fell down and he raised cries. On hearing his cries, P.W.5 came there. The neighbours also gathered. He said that he himself lifted the deceased and took him to his house and laid him on a cot. They telephoned to an auto driver and when the auto came, they took the deceased to the Government Hospital, Thungathurthy, for treatment, and from there they took him to Suryapet Hospital in a jeep provided by Anuradha (L.W.16). On the advice given by the doctors there, the deceased was sent to Hyderabad in an ambulance. On the next day at 11.00 PM, the deceased died while undergoing treatment. In his cross-examination, P.W.6 stated that in between his house and the house of the deceased, there was only one house. He said that the incident took place under the tamarind tree at his house. He said that at the time of the incident, he was sitting outside along with others and witnessed the accused stabbing the deceased when the deceased bent down. At that time, including the deceased, they were five persons present there. They are P.W.4, Komire Srinu (L.W.5), P.W.7 and himself. He said that he saw the deceased

receiving only one stab injury. He said that after he was taken to his house, the deceased lost consciousness and he was unconscious till his death. He admitted that prior to the incident, one Thota Somulu, who was contesting the MPTC election, came to the house of the deceased and requested him to vote for him and on that, the deceased asked him how he would cast his vote in his favour when he belonged to Congress party. He admitted that prior to the incident, the deceased and the accused were close friends. He denied that he was called Guddi Yellaiah (blind Yellaiah) and stated that he was called Pedda Yellaiah. He admitted that he had a flower in his eyes (cataract) and in the night time he could not see properly. He also admitted that the accused got his eyes treated at Surpayet Area Hospital. He also admitted that the accused spent Rs.2,000/- on his behalf, and volunteered that within one week he took back Rs.700/- but the amount of Rs.1,300/- was still due to the accused.

P.W.7, the younger brother of the deceased, stated that on the fateful day at about 7.00 or 7.30 PM, while he was in his house, he went to the tamarind tree of Burra Lachaiah, along with P.W.6, the deceased, P.W.1, P.W.3, Komire Srinu (L.W.5) and another Srinu whose surname he did not know and while they were sitting there at about 7.00 or 7.30 PM, P.W.1 and the accused were quarrelling with each other. The deceased asked the accused why he was unnecessarily quarrelling with P.W.1 and went near them to advise them to stop the quarrel, the accused immediately abused the deceased in filthy language and when the deceased tried to take his chappal by bending down, the accused stabbed him in the stomach with a knife. The deceased immediately fell on ground and when he went near him he saw that blood was oozing out on the ground. He

and P.W.6 raised cries and on hearing their cries, his mother (P.W.10), his other brother, Sunder (P.W.8), the children of the deceased and all the villagers came there. He along with his brother (P.W.8), mother (P.W.10), and P.W.5 took the deceased to their house. His brother vomited immediately. They telephoned to an auto at Maddirala. The auto came immediately and they tied a cloth around the stab injury and took the deceased to Thungathurthy Hospital and on the advice of the doctor, they took the deceased to the Government Hospital, Suryapet, and after first-aid there, they took the deceased to the Hyderabad Hospital. After admission in the Hyderabad Hospital, an operation was conducted. On the next day at about 11.00 PM, his brother died. In his cross-examination, P.W.7 stated that his house was situated at a distance of 400 yards from the house of the deceased. He said that there were only two houses between the scene of the offence and the house of the deceased. He said that P.W.6 was also present at the time of the incident. He said that the house situated near tamarind tree where they were sitting was a dilapidated house and nobody was residing there. He said that the deceased received only one stab injury. He said that the deceased was conscious after receiving the stab injury and was talking till he was taken to the Hyderabad hospital. He admitted that his brother and the accused were very close friends prior to the incident and on the day of the incident also, just one hour prior thereto; the accused took his meal in his brother's house along with him. He admitted that P.W.6 did not have proper eye-sight.

P.W.8, the elder brother of the deceased, stated that on the fateful day at about 7.30 PM, while he was in his house situated adjacent to the house of Burra Lachaiah, his elder paternal uncle, he

observed the deceased, P.W.1, P.W.3, P.W.4, P.W.6 and P.W.7 sitting under a tamarind tree. Meanwhile, he heard some galata from there and at that time, he was on the road in the bazaar in front of his house. He observed P.W.1 and the accused quarrelling with each other and on that, his younger brother interfered and advised both of them not to quarrel. On that, the accused stated to his brother that he was the person responsible and abused him in filthy language. When his younger brother tried to lift his chappal from his left leg by bending down in order to beat the accused, the accused stabbed him on the left side of the stomach in the 'dokka' (flank). Immediately, his brother fell on ground. He went there and saw the stab injury. Upon receiving the stab injury, his brother vomited and on hearing their cries, P.W.5 and others came there and they all took the deceased to his house and laid him on a cot and telephoned to an auto. In the said auto, they took him to Thungathurthy Hospital, and from there they took him to the Government Hospital, Suryapet, and on the advice of the doctors there, they took him to Gandhi Hospital, Hyderabad. In Gandhi Hospital, the doctors performed an operation. Next day at mid-night, his brother died. In his cross-examination, P.W.8 stated that his house was situated adjacent to the scene of the offence. He said that at the time of the incident, there were six persons under the tamarind tree including the deceased. He denied having stated before the police as in Ex.D3 portion of his Section 161 CrPC statement. He admitted that all the family members made a representation to the Government that they suspected Thota Somulu for the murder of his brother and upon considering their request, the Government transferred the case to CB-CID, Hyderabad. He also

admitted that prior to the incident, his brother and the deceased were close friends and there was no enmity between them.

P.W.9, a Village Servant of Ramachandrapuram, is a circumstantial witness and did not actually see the attack.

P.W.10, the mother of the deceased, stated that on the fateful day at about 7.00 PM, while she was sitting in front of her house, she heard the cries of her son, the deceased, from the tamarind tree 'Amma Nenu Chachanu' (Mother, I am dying). She said that she rushed there and saw her son lying on ground with stab injuries in the left side of his stomach and also found that a knife was there in his stomach. When she enquired with him, he revealed that the accused stabbed him and showed the stab injury. Then she, along with her other sons, P.W.1 and his wife, and P.W.3 took her son to her house and laid him on a cot. Meanwhile, an auto was called and in the said auto, they took him to Thungathurthy Hospital for treatment, and from there on the advice of the doctor, they took him to Area Hospital, Suryapet, and from there to Gandhi Hospital. On the next day at 8.00 or 10.00 PM, her son died. In her cross-examination, P.W.10 stated that she used to reside in the house of her deceased son. She denied the suggestion that she did not state before the CB-CID that when she enquired with her son, he revealed that the accused stabbed him with a knife. She also admitted that on the date of the incident in the evening hours, while her son was taking meals, the accused came there and he also took meals along with her son, as he was his close friend. She denied the suggestion that after receiving the stab injury, her son was not in a position to talk and he never revealed the name of the accused as the person who stabbed him.

P.W.11, another older brother of the deceased, stated that on the day of the incident, he along with P.W.3, P.W.1, P.W.4, P.W.6, P.W.7 and the deceased were present under the tamarind tree. Meanwhile, the accused came from the bazaar side and talked with P.W.1, asking as to why they were talking about him. P.W.1 replied that they were not talking about him and complained to his brother because the accused was unnecessarily making allegations. On that, his brother advised P.W.1 and the accused not to quarrel. The accused then replied to his brother that he was the main person for all these things and abused him in filthy language. On that, his brother asked the accused why he was abusing him as he just took meals in his house and tried to remove his chappal by bending down in order to hit the accused. The accused then took a knife and stabbed him on the right side of his stomach. His brother then shouted 'Anna Nannu Kathi Tho Podichadu' (Elder brother, he has stabbed me with a knife) and fell on the ground. When he tried to catch the accused, his brother stated that the accused might have got another weapon and not to go to the accused. Then, he, along with P.W.3 and one Yadgiri, P.W.5, P.W.10 and others, took his brother to their house and laid him on a cot. In his cross-examination, P.W.11 stated that his house was situated opposite the house of the deceased. He denied having stated before the police as in Ex.D4 portion of his Section 161 CrPC statement. He denied the suggestion that on the day of the incident, he was not in the village and came to know about it after the death of his brother. He denied the suggestion that the CB-CID improved the case and thereafter showed him as an eye-witness to the incident.

P.W.12, a resident of Ramachandrapuram Village, stated that on the day of the incident, while he was at his house at about 6.00 or 7.00 PM, he heard some cries and when he went to the house of the deceased, he saw him with a stab injury on his stomach. He then called an auto by phone and accompanied the deceased in the said auto to Thungathurthy Hospital and from there, to Suryapet and then, to Hyderabad. On the next day night, the deceased died while being treated in Gandhi Hospital. In his cross-examination, he said that his house was two streets away from the deceased's house.

P.W.13 stated that on the day of the incident, in the afternoon, the accused purchased one quarter of cheap liquor from him.

P.W.14 was a witness to the scene of the offence panchanama. He said that he did not observe any articles at the scene of the offence and identified Ex.P5 as the panchanama bearing his signature and that of Thadakamalla Venkanna (L.W.21). In his cross-examination, he admitted that he and Thadakamalla Venkanna (L.W.21) were related to the deceased.

P.W.15 was a witness to the inquest. He said that he was present at the time of the inquest along with Bojja Saidulu (L.W.23). He identified Ex.P6 as the inquest panchanama bearing his signature and that of Bojja Saidulu (L.W.23).

P.W.16 is the auto driver from Maddirala who took the deceased to Thungathurthy Hospital. He said that at about 7.30 PM on that day, one of the villagers of Ramachandrapuram telephoned to Mahesh Dabba paan shop and informed that somebody had consumed poison and asked him to come along with the auto. He then went to Ramachandrapuram Village along with the auto and found that one male person had sustained stab injuries. On seeing

that, he refused to take the stabbed person, but on the request of the people of Ramachandrapuram, he took the said injured person to Dr. Muralidhar Hospital at Thungathurthy. In his cross-examination, he said that he reached Ramachandrapuram within 20 minutes after receiving the call.

P.W.17, a witness to the recovery proceedings, turned hostile. In his chief-examination, he said that police called him along with P.W.18 to the house of the accused at about 8.00 AM and by the time they reached there, the Inspector of Police and the village people had gathered. At that time, no person was in the custody of the police and the accused was not present in the custody of the police. The police conducted a panchanama, drew a sketch map and a constable, upon the instructions of the Inspector, went into the house of the accused and brought a knife from inside. The police seized the said knife and after that, the police obtained their signatures on the panch chits and on the panchanama. He said that the accused did not make any confession in his presence on that day as he was not present at that time. He identified his signature on the confession-cum-seizure panchanama (Ex.P7). He also identified his signature on the rough sketch (Ex.P8). At this stage, he was declared hostile and cross-examined by the prosecution. Thereupon, he denied the suggestion that on 14.07.2006, the accused was present in the custody of the police and at the instance of the police, he along with P.W.18 enquired with him. He denied the suggestion that the accused, in their presence, voluntarily confessed to the commission of the offence and brought out the knife from his house, which was seized by the police in their presence. In his cross-examination by the defence counsel, P.W.17 said that his house was three streets away from the

house of the accused at a distance of 1½ furlongs. He denied the suggestion that on 14.07.2006, the police never called him to the house of the accused and that they did not draw up a rough sketch in his presence. P.W.18, the other witness to the confession and recovery panchanama, also turned hostile. He stated that in his presence the police did not record any confession statement of the accused and no material objects were seized. He identified his signature on the confession and also on the rough sketch, Exs.P9 and P10, but stated that he did not know anything, as he had signed on blank papers. He was declared hostile and in his cross-examination by the Additional Public Prosecutor, he denied the suggestion that on 14.07.2006, the police called him and P.W.17 to the house of the accused at 8.20 PM and the accused was in the custody of the police at that time. He said that only P.W.17 was present when the police obtained his signatures on blank papers. In his cross-examination by the defence counsel, he said that P.W.17 also signed on blank papers along with him on that day.

P.W.19, the Assistant Sub-Inspector of Police, Thungathurthy Police Station, spoke of the registration and investigation of the offence. In his cross-examination, he said that P.W.1 could read and write Telugu language but had affixed his thumb impression on Ex.P1. He said that he saw injuries on the body of P.W.1 when he came to the Police Station at the time of submission of Ex.P1. He had injuries on his left hand and the left side of his stomach. He admitted that P.W.5 did not state before him that when she enquired with her husband, he stated that the accused had stabbed him with a knife. He admitted that she did not state before him that when she reached the scene of the offence, the knife was in the stomach of her husband

and her husband himself took it out. He stated that P.W.6, in his Section 161 CrPC statement, did not state that he was present when the deceased was abused and that he saw the accused stabbing the deceased. He said that P.W.6 had stated before him as in Exs.D1 and D2 portions of his Section 161 CrPC statement. He also admitted that P.W.7 did not state before him in his Section 161 CrPC statement that when he took the deceased and laid him on a cot, he vomited. He stated that P.W.8 did not state before him that he observed from under the tamarind tree the accused stabbing his brother with a knife. He confirmed that P.W.8 had stated before him as in Ex.D3 portion of his Section 161 CrPC statement. He admitted that after receipt of Ex.P1 on 26.06.2006, he did not visit Gandhi Hospital till the death of the deceased and did not attempt to record the statement of the deceased in Gandhi Hospital, Hyderabad. He admitted that during the course of the inquest, he did not seize the clothes of the deceased. He also admitted that he did not observe any blood-stains on the clothes of P.W.1 when he came to submit Ex.P1, though he received injuries on his body. He denied the suggestion that P.W.1 never came to the Police Station on 26.06.2006 to submit Ex.P1 complaint. He denied the suggestion that the FIR was drawn up after the death of the deceased on 28.06.2006 and then sent to the Court. He denied the suggestion that due to political pressure, a false case was registered against the accused.

P.W.20, a Civil Assistant Surgeon in the Area Hospital at Suryapet, examined P.W.1 on 27.06.2006 at 11.30 PM. He found the following injuries on him:

1. Linear abrasion 1 x 1 x ½ cm. chest wall on left side caused by sharp weapon. Nature of injury simple. The age of the injury 12 to 24 hours prior to my examination.

2. Linear abrasion $\frac{1}{2} \times \frac{1}{2} \times \frac{1}{2}$ cm. on the left hand caused by sharp weapon, simple in nature. Duration 12 to 24 hours prior to my examination.

He identified Ex.P13 as the wound certificate issued by him. In his cross-examination, he said that P.W.1 alone came to the hospital along with a requisition on that day. He admitted that in Ex.P13 wound certificate, he referred P.W.1 for better treatment to Osmania General Hospital, Hyderabad. He also admitted that when a patient is referred for better treatment to another hospital, only after collecting documents from the said hospital, a certificate would be issued to that patient. He further admitted that in this case, he did not collect any documents from Osmania General Hospital before issuing Ex.P.13 wound certificate. He said that the Thungathurthy police constable collected Ex.P13 from their hospital on 14.02.2007. He denied the suggestion that he got prepared Ex.P13 at the instance of the police and issued it only to the CB-CID and not to the Thungathurthy police constable. He denied the suggestion that he had not examined P.W.1 on that day and had never treated him.

P.W.21, the Circle Inspector of Police, Suryapet Circle, spoke of the various steps taken by him during his phase of the investigation. In his cross-examination, he said that he received the case file from P.W.19 on 29.06.2006. He said that as per his investigation, P.W.1 was an illiterate and he did not know how to read or write. He said that the CD file of the case was with him till 03.09.2006 and on that day he handed it over to one Prasad who was posted as the Circle Inspector of Police, Thungathurthy Circle. He denied the suggestion that the accused did not confess to the offence leading to recovery of M.O.1 knife in the presence of P.W.17 and P.W.18. He denied the suggestion that M.O.1 was not used in the commission of the offence

and only for the purpose of the case, he had planted it. He admitted that he did not examine any of the medical officers under whom the deceased had taken treatment till his death, after receiving the stab injury. He said that he did not collect the wound certificate of P.W.1, as he was undergoing treatment at Hyderabad.

P.W.22, a Civil Assistant Surgeon in the Department of Forensic Medicine, Gandhi Medical College, Hyderabad, conducted the autopsy over the body of the deceased on 29.06.2006 from 9.30 AM to 10.45 AM. She found the following ante-mortem injuries:

1. Sutured wound of 4 cm with four sutures, 8 cm below the xiphisternum to the left side of the abdomen.
2. Sutured wound of 25 cm with 17 sutures from below the injury of xiphisternum.
3. Peritoneal drain wound of 1 cm in both flanks.
4. Sutured wound of stomach anteriorly of 7 cm with 14 sutures with black catgut. Posteriorly (back of stomach) 5 cm with 5 sutures, corresponding with injury No.2.
5. Contusion over left side of the diaphragm.
6. Contusion of small intestine.

She certified the cause of death to be the stab injury to the abdomen. She said that the approximate time of death was 24 to 36 hours prior to her post-mortem examination. She identified Ex.P20 as the post-mortem examination report issued by her. Ex.P21 was identified as the death intimation letter with summary dated 28.06.2006 issued by the duty doctor. In her cross-examination, P.W.22 said that she did not know the name of the doctor who had treated the deceased in Gandhi Hospital while he was alive. She admitted that as per Ex.P21, the cause of death of the deceased was due to cardio-respiratory failure. She denied the suggestion that she

had not properly conducted the autopsy and that her opinion that the death was due to the stab injury was not correct.

P.W.23, the Deputy Superintendent of Police, CB-CID, spoke of the steps taken by him during his investigation. In his cross-examination, he said that he took up the investigation in the case on 18.11.2006. He admitted that as per the statements of P.W.5, P.W.6, P.W.8 and P.W.9 recorded by P.W.19, they did not state that they were present and had witnessed the incident. He also admitted that P.W.5 did not state in her Section 161 CrPC statement recorded by him that her husband revealed to her upon her enquiry that the accused had stabbed him. She also did not state before him that when she reached the scene of the offence, the knife was in the stomach of her husband and he himself took it out. He admitted that P.W.10, in her Section 161 CrPC statement, did not state that she heard the cries of her son and on hearing them, she went there and saw that her son had received a stab injury and the knife was in his stomach. She did not state before him that when she enquired with her son, he revealed that the accused had stabbed him with a knife. He further stated that P.W.11 did not state before him in his 161 CrPC statement that he had witnessed the accused stabbing his brother on his right side. He confirmed that P.W.11 had stated before him as in Ex.D4 portion of his Section 161 CrPC statement. He also confirmed that he did not examine the medical officers under whom the deceased had taken treatment since the date of his receiving the stab injury till his death. He stated that during the tenure of the investigation of P.W.19, he did not hand over Ex.P13 to him along with the CD file.

The discrepancies in the case of the prosecution and the various versions put forth by its witnesses are writ large. The incident is alleged to have occurred at 7.00 or 7.30 PM on 26.06.2006. However, Ex.P1 complaint was allegedly submitted only at 10.30 PM on that day. The distance to the Police Station from the scene of the offence is stated to be only 10 kilometres. Further, Ex.P11 FIR did not reach the Court till 12 noon on 28.06.2006. Admittedly, the deceased died at 12.30 AM on 28.06.2006. The delay in the dispatch of the FIR to the Court clearly demonstrates that there was ample scope for consultations, deliberations and manipulation of the case by the police after the death of the deceased. Ex.P1 written complaint in Telugu, being the basis for the investigation, is itself rendered doubtful as P.W.1 claimed that he never presented it and that it was written on his oral statement. P.W.23, the Investigating Officer, confirmed that his enquiries revealed that P.W.1 could not read and write Telugu. The inconsistencies in the case multiply manifold from this stage. According to Ex.P1, P.W.3 was present with the deceased and P.W.1 when the accused came and picked up a fight with them. However, P.W.3 also turned hostile and stated that he never witnessed anything. Even in his cross-examination, he was only asked about witnessing the earlier argument at 4.30 PM on the fateful day and no suggestions were put to him about his being present at 7.30 PM. Most fatal to the case of the prosecution is the fact that the so-called injured eye-witness, P.W.1, also turned hostile. He asserted that he did not witness the attack on the deceased. P.W.2, his wife, said that he did not even suffer any injuries but Ex.P13 wound certificate speaks to the contrary. However, Ex.P13 seems to have been obtained by the police with considerable delay,

diluting the authenticity of the prosecution's claim that P.W.1 was actually injured in the course of the attack upon the deceased.

The claim of the family members of the deceased that they all witnessed the attack upon the deceased by the accused is unbelievable as they were clearly planted witnesses. Their initial statements under Section 161 CrPC with which they were confronted, clearly discredited their claim that they were eye-witnesses. Further, the claims of P.W.5 and P.W.10, the wife and mother respectively of the deceased, that he revealed to them that it was the accused who had stabbed him is also unworthy of acceptance, as they failed to say so to the police when their statements were recorded under Section 161 CrPC. Further, the various discrepancies in their claims, as opposed to the ultimate case put up by the prosecution, further weakens the case against the accused. Both P.W.5 and P.W.10 claimed that the knife was still in the stomach of the deceased when they went there. That being so, the claim of the prosecution that the knife was recovered from the house of the accused, after he confessed, is highly suspect. In any event, the so-called recovery is rendered devoid of credibility as P.Ws.17 and 18, the witnesses to the recovery proceedings, did not support the prosecution. To compound it further, Ex.P24 FSL report indicates that though human blood was detected on M.O.1 knife, the blood group could not be determined. As no information is available as to the blood group of the deceased and in any event, the blood group of the blood-stains found on the knife could not be determined, the so-called recovery of the knife does not advance the case of the prosecution.

The claim of all the so-called eye-witnesses that the accused stabbed the deceased on the left side of the stomach in the 'dokka'

(flank) is completely discredited by the medical evidence which shows that the deceased suffered a wound of 25 cm. length running from the top of the chest to below the belly-button in the centre of the torso. To top it, P.W.11 claimed that the deceased was stabbed on the right side! It is therefore clear that none of the so-called eye-witnesses actually saw the attack. Further, the failure on the part of the police to either examine the deceased or get his dying declaration recorded remains unexplained. P.W.5 claimed that her husband remained conscious till his death. P.W.6 stated that he fell unconscious after he was taken to his house and never recovered consciousness till his death. P.W.7 said that he remained conscious till he was taken to Hyderabad. Further, the police never examined any of the doctors, be it at Thungathurthy, Suryapet or Hyderabad, who treated the deceased before his death. The case summaries from these hospitals were also not marked in evidence whereby it could have been gleaned as to whether the deceased was conscious at all before his death. This lapse on the part of the prosecution is fatal.

It is also relevant to note that except for the knife allegedly recovered basing on the confession of the accused, no other case properties were marked. According to some of the eye-witnesses, the deceased vomited inside or outside the house but samples were not collected. The claim of P.W.19 that there was rainfall on the previous night is not supported by P.W.14, the witness to the scene of the offence panchanama. The clothes of the deceased were also not seized. Surprisingly, P.W.19 claims that P.W.1 suffered injuries on the left side of his stomach but states that he did not see any blood-stains on his clothes. It is not explained as to how P.W.19 knew that P.W.1 had suffered an injury on the left side of his stomach if the

shirt was not stained with blood. The clothes of P.W.1 were also not seized. In effect, there were no case properties except for the trumped-up knife which does not serve any purpose.

Though it is the case of the prosecution that P.W.1 was first injured by the accused and thereafter the attack upon the deceased occurred, none of the so-called eye-witnesses said anything about any attack on P.W.1 or explained as to how P.W.1 suffered injuries. None of them spoke of the accused first attacking P.W.1 with the knife and causing him injuries and then turning upon the deceased.

Though, merely because a witness turns hostile, it would not result in the prosecution case being thrown out, the Court must see the relative effect of his testimony and if the evidence of the hostile witness is corroborated by other evidence, there would be no legal bar to convict the accused. In effect, the testimony of a hostile witness is acceptable only to the extent it is corroborated by that of a reliable witness. (See **ATTAR SINGH V/s. STATE OF MAHARASHTRA**¹).

In **BEJJANKI CHINNA MAHESH @ CHINA MAHI V/s. STATE OF A.P.**², a Division Bench of this Court held that the statement recorded by the Magistrate under Section 164 CrPC is not substantive evidence of the truth of the facts, but it may be used for contradiction or corroboration of the witness who made it. It was observed that the statement of a witness is generally recorded under Section 164 CrPC so as to fix him to it when it is feared that he may resile afterwards or may be tampered with. These observations were made by this Court relying upon **RAMCHARAN V/s. STATE OF U.P.**³.

¹ (2013) 11 SCC 719

² 2009 (1) ALD (CrI.) 846 (AP)

³ AIR 1968 SC 1270

In **BODUGU RANJEETH KUMAR @ KUMAR V/s. STATE OF A.P.**⁴, this Court observed that absence of motive may not be fatal to the case of the prosecution where it is proved beyond reasonable doubt on the basis of direct evidence, as motive would then lose its significance, but if the genesis of the occurrence is not proved and no reason is given as to motive in the alleged attack, it would weigh against the prosecution. Reference may also be made to **STATE OF U.P. V/s. KISHANPAL**⁵, wherein the Supreme Court observed:

'The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eye-witnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye-witnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eye-witnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.'

Per contra, the learned Public Prosecutor would rely on **BHAGWAN DASS V/s. STATE (NCT) OF DELHI**⁶ and argue that it is the duty of the Court to separate the grain from the chaff as the maxim '*falsus in uno falsus in omnibus*' has no application in India. He also relied on **PARAMJEET SINGH @ PAMMA V/s. STATE OF UTTARAKHAND**⁷, wherein it was held that even if a prosecution witness turns hostile, his testimony can be accepted to the extent it is found to be dependable, on careful scrutiny.

⁴ 2016 (3) ALT (CrI.) 302 (DB)(A.P.)

⁵ (2008) 16 SCC 73

⁶ (2011) 6 SCC 396

⁷ (2010) 10 SCC 439

However, we find that these judgments do not advance the case of the prosecution as the claim of the so-called eye-witnesses that they actually saw the attack upon the deceased by the accused stands demolished by virtue of the various factors already set out hereinbefore. It is also well settled that in the course of separation of the chaff from the grain while evaluating the evidence of doubtful witnesses, it is not for the Court to come up with an altogether new case for the prosecution. Significantly, none of these eye-witnesses or the others who turned hostile put forth a version corroborated by the medical evidence, which indicates that the deceased was not stabbed but suffered a slash with a knife which slit open his stomach from the chest to below the belly-button. The testimony of all the witnesses was however to the effect that he was stabbed on the left side of his stomach in the flank. The ocular evidence is therefore clearly outweighed by the medical evidence indicating that the attack could not have occurred as stated by these witnesses. In effect, the genesis and origin of the occurrence has been suppressed by the prosecution.

Once the presence of the eye-witnesses is discounted, the case stands only on circumstantial evidence. In this regard, it is relevant to note that all the eye-witnesses, and more particularly the family members of the deceased, spoke in one voice of the deceased and the accused being very good friends. So much so, that even an hour prior to the incident they had a meal together at the house of the deceased. If that is so, it is difficult to believe that the accused would have vented such rage upon the deceased in the manner in which the prosecution would have it, causing his death. According to the prosecution, the ire of the accused was directed against P.W.1 with whom he had various disputes and only because of the intervention

of the deceased, the accused turned upon him. However, the injuries suffered by P.W.1, going by the highly doubtful wound certificate (Ex.P13), were only simple in nature, whereas the deceased suffered several injuries, the most fatal being the 25 cm. slash across the stomach from the chest to the belly-button.

Insinuations of the family of the deceased as to some political intervention in the murder did not result in effective investigation of that angle. Though the CB-CID was brought in, purportedly at the request of the family of the deceased, they did not take any steps to enquire into any political motive for the murder of the deceased.

On the above analysis, this Court finds that the prosecution miserably failed in establishing the guilt of the accused for both the offences. The judgment dated 09.02.2011 of the learned II Additional Sessions Judge, Nalgonda at Suryapet, in Sessions Case No.451 of 2009 holding to the contrary is therefore unsustainable and is accordingly set aside. The appeal is allowed. As the appellant/accused was enlarged on bail pending disposal of this appeal, he shall present himself before the Superintendent of Central Prison, Cherlapally, for completion of necessary formalities in the light of his acquittal. The bail bonds furnished by him at the time he secured conditional bail shall stand discharged. Fine amount paid by him, if any, shall also be refunded.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

17th NOVEMBER, 2017

Note: L.R. copy to be marked.

B/o Svv