

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.633 of 2014

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) Accused Nos.1, 2 and 4 to 7 in Sessions Case No.376 of 2010 on the file of the II Additional Sessions Judge, East Godavari District, Amalapuram, are the appellants herein. During the committal proceedings, accused No.3 died. Accused Nos.1, 2 and 4 to 7 were tried for the offences punishable under Sections 148, 302 and 307 IPC, for causing the death of one Vaddi Arjuna Rao (hereinafter referred to as "the deceased") and for attempting to murder one Vaddi Venkata Ratnam (PW.1), on 08.10.2009 at 6.00 a.m. Vide judgment dated 28.04.2014, the learned Sessions Judge, convicted and sentenced accused Nos.1, 2 and 4 to 7 to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- each in default to undergo rigorous imprisonment for a period two months for an offence punishable under Section 148 IPC and further convicted and sentenced the appellants to suffer 'imprisonment for life' and to pay fine of Rs.1,000/- each in default to suffer rigorous imprisonment for six months for an offence punishable under Section 302 IPC. However, the learned Sessions Judge, while acquitting accused Nos.2 and 4 to 7 for an offence punishable under Section 307 IPC, convicted accused No.1

and sentenced him to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.1000/- in default to suffer rigorous imprisonment for a period of three months. All the sentences were directed to run concurrently.

2) The gravamen of the charge against the accused is that on 08.10.2009 at about 6.00 a.m., at the Makam shed of Vaddi Arjuna Rao and Vaddi Venaktaratnam, all the accused intentionally caused the death of the deceased by attacking him with deadly weapons and all the accused also attempted to kill Vaddi Venkataratnam (PW.1).

3) The case of the prosecution in brief is as under:

i) All the accused and the deceased are residents of Tummalapalli Village of Allavaram Mandal. PW.1 is the father, PW.3 is the wife, while PW.4 is the daughter of the deceased. PW.5 is the brother of PW.1. Accused No.1 is a practicing advocate at Amalapuram Bar Association, accused Nos.2 and 5 are his brothers, while accused No.3 is his son. Accused No.4 is the son of accused No.5 and accused No.6 is brother-in-law of accused No.1. Accused No.7 is the father of accused Nos.1, 2 and 5.

ii) Accused No.1 used to maintain friendship with the deceased and as such the accused No.1 is said to have helped the deceased in purchasing land. The deceased also gave an amount of Rs.3,00,000/- to accused No.1 on different occasions. It is said

that accused No.1 demanded the deceased to give share in the landed property purchased by him on the ground that he has helped the deceased in purchasing land, to which the deceased refused. Accused No.1 is said to have threatened the deceased with dire consequences and declared that he will see his end.

iii) The evidence on record further show that the deceased purchased land to an extent of 10 acres from Vaddi Nagarjuna Chittibabu (not examined) for a consideration of Rs.12,24,000/- under oral agreement of sale. When the deceased insisted Chittibabu to execute a registered document, accused No.1 said to have prevented Chittibabu for executing the said document. PW.3 in her evidence states that the deceased gave an amount of Rs.1,50,000/- to accused No.1, but accused No.1 demanded further sum of Rs.50,000/- and also two acres of landed property. When the deceased refused, the incident in question said to have taken place.

iv) On 08.10.2009 at about 6.00 a.m., the deceased and PW.1 went to the fields for getting milk. While the deceased was taking milk to his house, which was opposite to the cattle shed, PW.1 was collecting dung at the cattle shed. At that time, all the accused armed with knives, axes and crow-bars, are said to have attacked the deceased and killed him. Due to the threat of attack, PW.1 started running towards his house. While he was running, accused No.1 came from behind to attack him. At that time, PW.1

requested accused No.1 with folded hands not to do anything, but accused No.1 is said to have hacked PW.1 on his left leg, left hand and left side of the face with knife and then ran away. PW.1 is said to have picked up one stick which was implanted in the ground and with the help of that stick, he proceeded towards his house. On seeing the injured, PWs.3, 4 and others enquired about the incident, took PW.1 on to the road, contacted ambulance service and shifted him to Area Hospital, Amalapuram. Later, PW.3 and others went to cattle shed and found the dead body of the deceased near the cattle shed. PW.3 noticed one milk can, one cycle and a pair of chappals of her husband near the dead body. On the same day at about 10.00 a.m. while PW.12-the Station House Officer, Amalapuram Town Police Station, was in the station, he received medical intimation (Ex.P10) from Area Hospital, Amalapuram. Immediately he proceeded to the hospital and recorded the statement of PW.1. Ex.P1 is the statement of PW.1. After returning to police station, he made an entry in the General Diary and transmitted the medical intimation and statement of PW.1 to Allavaram Police Station, on point of jurisdiction.

v) PW.11-the Civil Assistant Surgeon at Government General Hospital, Kakinada, treated PW.1, who was referred from Area Hospital, Amalapuram and admitted in Government General Hospital, Kakinada on 12.10.2009 at 2.00 p.m. PW.11 noticed one

cut injury over the left eye brow, one cut injury on the right leg, lacerated wound over right leg and swelling of left thigh on lateral side. After taking treatment, PW.1 was discharged on 15.10.2009 at 6.00 p.m. Ex.P9 is the Wound Certificate of PW.1.

vi) The evidence of PW.13-the Sub-Inspector of Police, Allavaram Police Station, is to the effect that on 08.10.2009 at about 8.00 a.m., he received information about the murder of one person by name Vaddi Arjunarao. After informing the same to the Inspector of Police-PW.14, he proceeded to the scene of offence situated at Thummalapalli village and guarded it with the help of staff. By 9.00 a.m., the Inspector of Police came to the scene of offence. While they were at the scene of offence, the Inspector of Police got information about the medical intimation received from Area Hospital, Amalapuram and the statement of PW.1 recorded by PW.12. On instructions, PW.13 is said to have gone to Allavaram Police Station and basing on Ex.P1, registered a case in Crime No.126 of 2009, for the offences punishable under Sections 302, 307 read with 34 IPC. Ex.P11 is the first information report. He sent the original first information report to the Court concerned and copies to the superior officers. Later, he proceeded to the scene of offence and handed over a copy of Ex.P11 to PW.14.

vii) The evidence of PW.14 is to the effect that while he was at the scene of offence he received an intimation from the Sub-Inspector of Police, Amalapuram Town (PW.12) to the effect that

he received medical intimation about the admission of PW.1 in the Area Hospital, Amalapuram, as such he instructed PW.12 to go to the hospital, record the statement of PW.1 and send the said statement to Allavaram Police Station. PW.14 is said to have instructed PW.13 also to go to Allavaram Police Station and get the statement of PW.1, which was sent by PW.12. PW.14 got photographed the scene of offence and in the presence of PWs.8 and 9, prepared a panchanama of the scene and also rough sketches. Ex.P4 is the scene observation panchanama. Ex.P12 and P.13 are the rough sketches prepared at the place where the death of the deceased took place and the place where PW.1 was attacked. At about 12.00 p.m. the dog squad and clues team came to the scene of offence. The dog "Bruno" smelt the chappal, dead body and other items available at the scene of offence for tracking purpose. The said dog moved towards the houses situated in the village. He deputed the S.I. of Police, Uppalaguptam, to watch the dog tracking. At the scene, he seized Mos.26 and 27. While the seizure proceedings were going on, it was informed by the S.I. of Police, Uppalaguptam, that the dog squad moved around the residential houses of accused Nos.1, 2 and 5 and the dog stopped at B.T.Road, leading towards Bendamurlanka. Later, PW.14 conducted inquest over the dead body in the presence of PWs.8 and 9. Ex.P5 is the inquest panchanama. At the time of inquest, PW.14 recorded the statements of PWs.3,4 and others. The panchayatdars opined that the death of the deceased took place

because of the attack by accused No.1 and his associates, due to disputes regarding landed property. After conducting inquest, the dead body was sent to Area Hospital, Amalapuram, for postmortem examination. One Dr.K.Ram Mohanrao (not examined), Civil Assistant Surgeon, Area Hospital, Amalapuram, conducted autopsy over the dead body of the deceased and issued Ex.P15-the postmortem examination report. Neither the doctor, who conducted postmortem examination nor any doctor, who is familiar with the signature of the doctor, who conducted postmortem examination, were examined.

viii) The evidence of PW.14 further discloses that he proceeded to Area Hospital, Amalapuram, and recorded the statement of PW.1. According to him, PW.1 spoke against accused No.7, as one of the person in the commission of offence and omitted to give the names of Yalangi Madalamma, Yalangi Varalaxmi, Yalangi Revathi and Yalangi Sailaja (whose names were mentioned by PW.1 in the statement recorded by PW.12). As the condition of PW.1 was critical, he got recorded the declaration of PW.1, by Smt. K.Sidevi, Principal Junior Civil Judge, Amalapuram. The prosecution neither examined the Magistrate nor marked the said statement. Thereafter, PW.14 proceeded to Thummalapalli Village, examined PW.2, Smt. V.Sayamma and Smt. K.Janaki and recorded their statements. On 15.10.2009 at about 10.00 a.m., PW.14 arrested accused Nos.1 to 6 at Guest House of one Byrraju

in Gondhi Village. All the accused were interrogated separately, who confessed about the commission of offence and showed the weapons used by them in the commission of offence. One TVS bike which was said to have been used in the commission of offence was present at the scene. On 07.11.2008, PW.14 recorded the statements of PWs.6 and 7 at Kakinada. Though the statement of V.Nagarjuna Chittibabu was recorded and he was shown as LW.6 in the list of witnesses, for the reasons best known he was not examined by the prosecution. As the involvement of women folk was not proved, their names were deleted. On 06.11.2009 at about 3.00 p.m., PW.14 arrested accused No.7 in his house and in the presence of PWs.8 and 9, recorded the confessional statement of accused No.7. After collecting all the material papers and after completing the investigation, PW.14 filed the charge sheet, which was taken on file as P.R.C.No.55 of 2010 on the file of the Additional Judicial Magistrate of First Class, Amalapuram, who in turn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal the same came to be numbered as S.C.No.376 of 2010.

4) On appearance of the accused, charges under Sections 148, 302 and 307 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

5) To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P16 and MOs.1 to 31. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. No oral evidence was adduced by the accused but Ex.D1, relevant portion of 161 Cr.P.C. statement of PW.1 was marked on behalf of the defence.

6) After appreciating the oral and documentary evidence on record, the trial Court convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

7) Sri O.Kailashnath Reddy, learned counsel appearing for the appellants would contend that there is absolutely no legal evidence to connect the accused with the crime. According to him, the first information report has to be viewed with suspicion since there are as many as four reports, which have not seen the light of the day including the statement of PW.1 recorded by the Magistrate. He would further contend that accused No.1, who is an advocate at Amalapuram Bar Association, has been implicated in the case along with his entire family on a premise that he may come to the rescue of Chittibabu, with whom the family of the prosecution party had disputes. He pleads that if really the said Chittibabu, who was cited as LW.6, was examined, real facts would

come to light. He further argued that no explanation is forthcoming as to why there is abnormal delay in F.I.R. reaching the Court. According to him, the evidence of PW.3 itself discloses that at 8.00 a.m., she has furnished the information to the police about the incident but for reasons best known, the police kept quiet till 12.00 noon for registering the first information report. The delay has been used for taking the statement of PW.1, in the manner they intended to and then got the first information report registered at 12.00 noon, which reached the Court at 5.00 p.m., though the distance between the Court and police station is very near. He would further submit that the prosecution failed to prove the cause of death itself since the doctor, who conducted post mortem examination, was not examined. He further contended that no steps were taken by the prosecution to examine the person, who is acquainted with the signature of the doctor, who conducted post mortem examination. He pleads that if really the said doctor was examined, the accused could have elicited some information from him with regard to nature of injuries sustained and also as to whether the weapons used would have caused those injuries coupled with the cause of death. The learned counsel further contended that as per the charge all the seven accused attacked PW.1 on various parts of the body with various weapons, that being so, it is very difficult to believe that PW.1 would have sustained only three simple injuries. His plea is that on hearing the news of the incident, PW.1 fell down from the chair in the house

and sustained injuries, which was taken advantage of, to show his presence at the scene of offence.

8) On the other hand, the learned Public Prosecutor would submit that the statements of PW.1, which were recorded by the Magistrate and also by the lawyer of PW.1, have no relevancy to the case. Even assuming that PW.1 has given a written complaint to his lawyer in the hospital, there is no material to show that the said lawyer made any effort to get the same registered as first information report. He further submits that the plea taken by the accused as to the manner in which PW.1 sustained injuries cannot be accepted since the doctor categorically stated that these injuries are possible by the weapon used by the accused. According to him, the plea of the accused for implicating accused No.1 and his family members appears to be without any reason, as no prudent person would implicate the entire family anticipating that accused No.1 would assist Chittibabu (LW.6) in legal matters.

9) Now the point that arises for consideration is whether the accused are responsible for the death of the deceased, and also as to whether accused No.1 was responsible for causing injuries to PW.1.

10) In order to appreciate the arguments advanced by both the parties, it would be useful to refer to the evidence in detail.

11) As stated earlier, the main ground urged by the learned counsel for the appellants is that the first information report has to be viewed with suspicion. It is his case that there are as many as three reports, which have not seen the light of the day. No explanation is being given by the prosecution for suppression of those statements. In other words, he pleads that if really all those documents toe in line with the case of prosecution, nothing prevented them from furnishing the said documents to the accused or bringing them on record.

I. Suspicion of the first information report:

12) PW.1 in his evidence deposed that on the date of incident in the early hours, himself and his son (deceased) went to the fields for getting milk. While his son was taking milk to his house, which was situated adjacent to the cattle shed, PW.1 was collecting dung at the cattle shed. At that time all the accused attacked his son with axes and crow-bars. PW.1 claims to have witnessed the entire incident and afraid of being attacked, he started running towards his house. Accused No.1 came from behind and is said to have beat him with a knife on the left leg, left hand and left side of the face. His evidence in chief is to the effect that the police came to the hospital and enquired him about the incident and that he has put his thumb impression on the statement recorded by the police. In the cross-examination, it has been elicited that after PW.1 was admitted in Area Hospital,

Amalapuram, he has sent a report to the police through his advocate. According to him, his advocate drafted the said report, which was subsequent to the statement recorded by the police. He further deposed that after giving report to the police, his lawyer came to the hospital on the information of the police.

13) PW.3 is the wife of the deceased. In her evidence she states that on the date of incident her husband went to the cattle shed first to get milk, and later PW.1 went there. She further admits in her cross-examination that she told to the police about PW.1 sleeping at the cattle shed during night times. She further states that PW.1 went to the cattle shed about 15 minutes after her husband left the house to the cattle shed. She further states that they reported the matter to the police, immediately after PW.1 returned home and informed about the incident. They claimed to have made a phone call to the police, who on receipt of the information came to the spot. It is her evidence that even before arrival of police personnel, an ambulance came and took PW.1 to the Area Hospital, Amalapuram. She further says that she gave a report to the police in writing by signing it. Her evidence is also to the effect that her statement was recorded by the police at about 11.00 a.m. on the date of incident ie., even prior to registration of the first information report and she further states that her statement was never recorded again. It would be useful

to extract the relevant portion of the evidence of PW.3, which is as under:

“We reported the matter to the police immediately after PW.1 returned to the house and informed about the incident. Immediately after we made phone call to police, police persons came to the spot. Even before the arrival of police persons, the ambulance came to take PW.1 to the hospital. Police persons themselves drafted the panchanama after noticing the injuries available on the dead body of my husband.

I was present, when cash of Rs.1,50,000/- was paid to A.1 by my husband. The demand for Rs.50,000/- was taken place in our house. I gave report to police in writing by making signature in it. My statement was recorded by the police at about 11 AM on the date of incident at my house. Subsequently, my statement was not recorded by police.”

14) PW.4, who is the daughter of the deceased, in her cross-examination admits that on the date of incident her father went to cattle shed first and PW.1 left the house to go to the cattle shed about one hour after her father left the house.

15) PW.5, who is the brother of PW.1, in his evidence states that on the date of incident at about 6.00 a.m., or 6.30 a.m., while he was collecting water from the tap situated by the side of the road, he noticed PW.1 coming from his cattle shed with the help of a stick and with injuries by uttering “Arjunrao was killed”. When enquired, PW.1 told him that all the accused killed his son Arjunrao and warned them not to go to cattle shed area

stating that the accused may kill them. Meanwhile, accused Nos. 1, 2 and 4 went towards Allavaram side on one motor cycle. PW.5 and others shifted PW.1 to the hospital in an ambulance and then went towards cattle shed of PW.1 where they found the deceased in a pool of blood with bleeding injuries. He admits that prior to the incident both accused No.1 and the deceased were very cordial and close friends. In the cross-examination, he admits that no information was given on phone to the police about the incident, but the Sarpanch of the village informed police on phone, who came to the cattle-shed area by the time they went there. He also says that the police persons did not allow them to go near the dead body. It would be useful to extract the relevant portion of the evidence of PW.5, which is as under:

“No information given on phone to police about the incident. The Sarpanch of our village informed police on phone and police came to the cattle shed area by the time we went there. The police persons not allowed us to go nearer to the dead body.”

16) Coming to the evidence of PW.8, the Village Revenue Officer, Thummalapalli Vilalge, he deposed that on 08.10.2009 he was called by the S.I. of Police, Allavaram on phone at about 6.00 a.m., to Savaram Meraka Area of Thummalapalli village. He went there with Village Servant Metla Surya Chandra Narasimharao and noticed the dead body in the cattle shed. According to him, by that time the Sub-Inspector of Police and Circle Inspector of Police

with staff were present there. The relevant portion in the evidence of PW.8 is as under:

“On 08.10.2009 I was called by the S.I. of Police, Allavaram on phone at about 6 AM to Savaram Meraka Area of Thummalapalli village. I went there with village servant Metla Surya Chandra Narasimharao. We noticed the dead body of Vaddi Arjunrao near his cattle shed, which is situated by the side of gravel road. The dead body was found in pool of blood and with bleeding injuries. The S.I. of Police and C.I. of Police with staff were present there.”

17) In the cross-examination, he states that he took the Village Servant to the scene of offence after getting phone call from the Inspector of Police. The Sub-Inspector of Police and the police staff were present at the scene of offence by the time they went there. The Inspector of Police came there subsequently. He admits that many persons other than the persons stated above were present, when Ex.P3 was drafted, but their signatures were not taken in the document. He categorically admits that he reached the scene of offence by 6.15 a.m., after receiving phone call at 6.00 a.m., and he was there at the scene of offence upto 1.30 p.m. It would be useful to extract the relevant portion as spoken to by PW.8 in his own words, which is as under:

“I myself taken the village servant to the scene of offence after getting phone call from the Inspector of police. The S.I. of police and police staff were present at the scene of offence by the time, we went there. The Inspector of Police came there subsequently. It is true

that many persons other than the persons stated above were present when Ex.P3-document was drafted, but their signatures were not taken in the document. I reached the scene of offence by 6.15 AM, when I received phone at 6 AM. I was there at the scene of offence upto 1.30 PM.”

18) From the evidence of the witnesses referred to above, it is clear that the police had information by 6.00 a.m., and by 6.15 a.m., they came to the scene of offence. The source of information about the incident is many. Firstly, the evidence of PW.5, who is the brother of PW.1, to the effect that the Sarpanch of the village informed the police on phone about the incident and police came to the cattle shed by the time they went there. It is to be noted that PW.5 in his evidence-in-chief deposed about receiving information from PW.1 by 6.00 or 6.30 a.m., and that they went to the scene of offence immediately. That being the position, the police must have got information through the Sarpanch of the village before PWs.3 to 5 proceeded to the cattle shed, which would be at 6.30 a.m. PW.3, who is the wife of the deceased, in her evidence categorically, states that they reported about the incident to the police immediately after PW.1 returned home and informed them about the incident. The information was furnished to the police by way of phone call and police persons came to the spot immediately. She further speaks about giving a written report to the police and her statement being recorded at 11.00 a.m. In her chief examination, PW.3 categorically states

that after shifting PW.1 in the ambulance to Area Hospital, Amalapuram, herself, her children and brother of PW.1 ie., PW.5 went to the cattle shed and found the dead body of her husband near the cattle shed. She also speaks about the police coming to the scene and examining her. When the evidence of PWs.3 and 5 is read together it would clearly show that the information was given to the police by way of phone at early hours and the police came to the scene. At the scene of offence PW.3 gave a written report and later her statement was recorded at 11.00 a.m.

19) The evidence of PW.8, who is the Village Revenue Officer of Thummalapalli village fortifies the defence taken by the accused and also substantially corroborates the findings given above with regard to police receiving not only oral information but also written information much prior to the time of registering the first information report basing on the statement of PW.1. As referred to earlier, PW.8 in his evidence categorically states that he received a phone call from S.I. of Police at 6.00 a.m., itself asking him to come to Savaram Meraka Area of Thummalapalli village. He reached the scene of offence by 6.15 a.m., by which time the S.I. of Police was present there. He claims to have noticed the dead body near the cattle shed by 6.15 a.m. Therefore, the version of PWs.3, 5 and 8 clearly establish that the police personnel received information about an incident in the village by 6.00 a.m., pursuant to which police called the V.R.O., to

come to the scene of offence. By 6.15 a.m., PW.8 was at the scene of offence and S.I. of Police was present there by them. The evidence of PWs.3 and 8 also indicate that PW.3 informed the police about the incident on phone and then proceeded to the scene. At the scene of offence she claims to have given a written complaint signed by her and thereafter her statement was recorded at 11.00 a.m., which was prior to registering the first information report. So, the police of Allavaram were aware about the incident by 6.00 a.m., or little later and then they were present at the scene by 6.15 or 6.30 a.m., and a written report about the incident was given to them at the scene of offence by PW.3. Those documents have never seen the light of the day. Even assuming that the information received on phone call is cryptic in nature and that the same cannot be treated as first information report but there is other material to show that police were aware about the incident by 6.00 a.m., but no action was taken. No explanation is forthcoming on this aspect.

20) At this stage, it would be useful to refer to the evidence of PWs.12 to 14, who are the investigating officers.

21) PW.12 in his evidence deposed about the information which he has received from the Area Hospital, Amalapuram at 10.00 a.m., and he proceeding to the said hospital for recording the statement of PW.1. He speaks about making a General Dairy entry after returning to Amalapuram town police station, and

transmitting the medical intimation and statement of PW.1 to Allavaram police station, on point of jurisdiction. Ex.P1 is said to be the statement of PW.1 recorded by him, which was treated as first information report and a crime was registered at 12.00 noon. According to him, the statement was recorded between 10.30 a.m. to 11.30 a.m., approximately.

22) The evidence of PW.13-the Sub-Inspector of Police, Allavaram, is to the effect that on 08.10.2009 at 8.00 a.m., he received information about the incident. He informed the same to the Inspector of Police (PW.14), who instructed him to proceed to the scene of offence. While he was at the scene of offence, the Inspector of Police came to the scene at 9.00 a.m. In the cross-examination PW.13 states that he made a General Dairy entry about the information he received at 8.00 a.m., on 08.10.2009, but failed to disclose the source of his information, nor got the General Dairy entry marked to know the source. Though he received information at 8.00 a.m., he did not register a crime till 12 noon. It is also to be noted here that Ex.P11, which is the first information report issued basing on Ex.P1-statement of PW.1, does not disclose the entry made in the General Dairy at 8.00 a.m., though column No.3 (c) deal with entry regarding first information report made in general diary. Strangely, PW.13 denies receiving of any report at Thummalapalli Village after 8.00 a.m. and also

denies receipt of any report by PW.3, which is contrary to the evidence of PW.3.

23) From the above evidence, it is clear that the prosecution has not come forward with true version and is either trying to suppress the earliest information received by them. On one hand PW.3 says that she gave a written report at the scene of offence to the police, but for the reasons best known PW.13 is denying receipt of such report from PW.3. Further, the evidence of PW.13 is silent with regard to contents of General Dairy entry made and also the source of information for him for making such General Dairy entry.

24) Coming to the evidence of PW.14-the Inspector of Police. He claims to have instructed PW.12 to go to the hospital, record the statement of PW.1 and sent the said statement to Allavaram Police Station. The relevant portion of his evidence is as under:

“I have instructed PW.12 to go and record the evidence of PW.1 and send the said statement to Allavaram Police Station”

25) But the evidence of PW.12 is silent on this aspect. In his evidence he never deposed about receiving any instructions from PW.14, asking him to go over to Area Hospital, Amalapuram and record the statement of PW.1. Further, the evidence of PW.14 discloses that as the condition of PW.1 was critical, he got his

statement recorded by the Magistrate by name Smt. K.Sridevi, Principal Junior Civil Judge, Amalapuram. Though the said Magistrate was cited as a witness, she was not examined and the statement recorded by her was not marked. No reasons are forthcoming as to why the said statement was not placed on record. If the said statement was placed on record, definitely it would have been a strong evidence to connect the accused with the crime.

26) From the evidence referred to above, it is clear that the earliest information, more particularly the written report from PW.3, the information from the Sarpanch about the incident and the statement of PW.3 recorded at 11.00 a.m., which was prior to registering the first information report, the information received by PW.13-the S.I. of Police at 8.00 a.m., are suppressed by the prosecution. Not only the above documents, but the statement of PW.1 recorded by the Magistrate was also not brought on record. All these circumstances throw a doubt as to whether really the prosecution is coming forward with true version of its case. Hence, the first information report appears to be brought into existence only after confabulations.

27) At this stage, the learned Public Prosecutor would contend that even if the first information report is suspicious, the entire fabric of the case may not collapse since PW.1 is an injured eye witness to the incident and there is a motive for the accused

to kill the deceased. He took us through the evidence of PWs.1 and 3 to show that accused No.1 was demanding money from the deceased and when the deceased refused to pay the amount, accused No.1 threatened him with dire consequences. Though the witnesses deposed in chief about the same, but their evidence is silent as to when the incident of demand and threat took place.

28) We deal with the motive aspect little later, but we intend to deal the crucial issue as to whether PW.1 was present at the scene of offence, at the time of incident.

II. Presence of PW.1 at the scene of offence:

29) In his evidence PW.1 deposed that the incident in question, took place while he was at the cattle shed and after seeing the incident and being afraid of attack, started running towards his house. At that time, only accused No.1 is said to have accosted and hacked him with a knife on left leg, left hand and left side of the face. Thereafter, he claims to have returned home by picking up a stick which was implanted in the ground. In the cross-examination it was suggested to him that after hearing the news about the incident, he fell down on the ground in the house itself and received injuries, but the same was denied. He further denies that he made a statement that he was attacked while crossing the irrigation bodhi as in Ex.D1. But, PW.14, the investigating officer, in his evidence categorically admits that PW.1 told him that he was

attacked while he was at the bund, which was at a distance of 35 feet from the place where the deceased was attacked.

30) As observed earlier, the law was set into motion basing on the statement of PW.1, which was said to have been recorded by PW.12 between 10.30 to 11.00 a.m. In the first information report, he never stated about the involvement of accused No.1 alone, in attacking him on his left leg, left hand and left side of the face. Further in Ex.P1 he refers to the involvement of women folk, who are related to accused No.1, in the commission of offence. Immediately after collecting first information report, PW.14 is said to have gone to the hospital and recorded the statement of PW.1. In the said statement, PW.1 omits the names of certain persons including the women. As per the evidence on record, there was no time gap between the statement of PW.1 which lead to registration of first information report and the statement recorded by PW.14-the investigating officer. No reasons are forthcoming as to what made PW.1, to omit some of the persons from the array of accused while giving statement to the investigating officer. Further in his evidence, PW.1 speaks about the attack by accused No.1 alone, where as the charge framed basing on the material collected during the course of investigation would show that not only accused No.1 but all the other accused also attacked PW.1. As per the charge, accused No.1 said to have hacked PW.1 with a knife on his head, accused No.2 hacked on his

right leg, accused No.4 beat with crow bar on his leg and accused Nos.5 to 7 beat with sticks and caused bleeding injuries. Therefore, the version which was said to have been put forward by the prosecution during the course of investigation is given a go bye and now only accused No.1 is attributed the role of attacking PW.1. At this stage, we feel that it would be appropriate to extract the evidence of PW.14, with regard to the statement of PW.1 recorded during the course of investigation, which is as under:

“PW.1 not stated to me in his statement to the effect that A1 hacked him on his left leg, left hand and left side of the face. The same is absent even in Ex.P1 statement of PW.1. It is true that PW.1 not stated to me in his statement as to with which particular weapon the accused persons came to him and made attack. He stated that A.1 hacked him with knife and A.3 beat him with stick. PW.1 stated that the knives were used, but the detailed description of knives were not given. It is true that PW.1 not stated to me in his statement to the effect that he reached his house with the help of a stick, which was implanted in support of banana tree. He only stated that with the help of a stick, he could reach the house. PW.1 did not state that he was collecting dung inside the cattle shed at the time of the incident. He stated that he was collecting dung at the cattle shed. It is true that PW.1 did not state specifically that attack was made in banana garden.”

31) From the evidence referred to above, it is apparent that initially he tried to involve morethan one person as the assailants, who attacked him, but strangely changed his version

and attributed the role only to accused No.1. The evidence of investigating officer and the evidence of other witnesses coupled with the charge framed clearly indicate that PW.1 is changing his version from time to time. If really he was present when his son was attacked, there is no reason for him to change his version from stage to stage. Further, if really PW.1 was present and the accused were attacking him as alleged by him in the earlier statement, the injuries sustained by him could have been grievous and more in number compared to what was found by PW.11, the doctor, who treated PW.1. As per the evidence of PW.1, accused No.1 attacked him with a knife, but the injuries sustained by him, as per Ex.P9-the wound certificate, are simple in nature. PW.1 being a person aged about 65 years, would have definitely received serious cut injuries if he was attacked with a knife. It is also to be noted that, PW.1 in his evidence-in-chief PW.1 deposed that accused No.1 attacked him with knife on his left leg, left hand and left side of the face, but the doctor did not find any injury on the left hand, on the other hand, he finds cut injury on left eye brow, cut injury on the right leg, one lacerated wound over the right leg and swelling of left thigh on lateral side. Therefore, the medical evidence does not corroborate the version of PW.1 with regard to injuries sustained by him. Keeping these circumstances in our mind, the defence taken by the accused that PW.1 sustained injuries when he fell down from a chair in his house cannot be brushed aside, more so in view of the admission by the doctor in

the cross-examination that the injuries referred in Ex.P8 are possible by fall from the chair. Having regard to above, a doubt arises as to whether really PW.1 was present at the scene, witnessed the incident and also as to whether he received injuries from the hands of the accused at that time.

III. MOTIVE:

32) Coming to the last aspect, namely motive, as observed by the Apex Court in a case of this nature, motive however is strong cannot take the place of proof, but we feel that the prosecution was not able to prove any motive for the accused to attack the deceased for the sake of property, in view of various admissions elicited in the evidence of the prosecution witnesses. Before going to the admissions made, the evidence on record more particularly the documents filed by the accused along with 313 Cr.P.C. examination shows existence of disputes in the village with regard to property and also registration of cases at the instance of the deceased against others. PW.1 categorically admits registering of criminal cases against him and his son on the reports of one Manda Prasanna Kumar and Durga Sriramulu. He further states that excluding the land under dispute, no land stand in their names either himself or his son or in the name of any of the family members. He further admits that there is no registration of land in their names in respect of the disputed land, but oral transactions were there. He further admits that Vaddi Arjanna is the junior

paternal uncle of the wife of accused No.1. He pleads ignorance as to whether Vaddi Arjanna executed a power of attorney in favour of accused No.6 to manage the disputed landed property and other properties. It would be useful to extract the above admission in the words spoken to by the witness, which are as under:

“It is true that excluding the land under dispute no land is standing in the names of either myself or my son or in the name of any of our family. It is true that no registration in our names in respect of the disputed land, but only oral transactions were there. It is true that Vaddi Arjanna, S/o. Naganna is the junior paternal uncle of the wife of A.1. It is true that A.6 is the son of the elder brother of A.1. I do not know whether or not the Vaddi Arjanna, S/o. Naganna executed power of attorney deed in favour of A.6 to manage the disputed landed property and other properties.”

33) PW.3, who is the wife of the deceased, in her cross-examination states that her deceased husband used to purchase coconuts and sell the same after collecting sufficient number of coconuts. She further admits that there is no registered property document in the names of herself or her husband and PW.1. She states that they constructed a house by purchasing the site and that she got document. She further states that at the time of construction, loans were obtained in the name of her husband and PW.1. It is said that the document under which the deceased purchased 10 acres of land from LW.6 Chittibabu is filed in the Court, but she cannot give the number of the case in which the

said document was filed. She further admits that Chittibabu is relative of accused No.1. She further admits that cases were filed by them against Chittibabu and others and they are pending in Amalapuram Court. She further admits that the accused persons are not concerned to 10 acres of property.

34) Dealing with the evidence of these witnesses, PW.14, who conducted investigation on these aspect states that his investigation discloses that subsequent to the death of one Vaddi Arjunarao, a lecturer in Rajamandry, his landed properties to an extent of Ac.9.00 is being watched by the deceased. The son of Vaddi Arjuna Rao, Lecturer at Rajahmundry informed that said landed property to an extent of 9 acres was sold to the deceased and some amount was also paid in respect of the said transaction. But however, he has not verified the documents relating to the said transaction. He has not taken the copies of the civil case proceedings during the course of investigation. He pleads ignorance as to suspension of head constable and constable when ACB made raids on the information given by the deceased. He admits that no investigation as to the financial capacity of the deceased for purchasing lands worth lakhs of rupees. He further admits that it has come to his knowledge, during the investigation, that the deceased was consulting accused No.1, who is an advocate for his problems. But, he admits that he has not done any investigation as to whether accused No.1 appeared as an advocate

for the deceased and whether he defended the deceased in criminal cases.

35) From the evidence referred to above, it can be said that there were disputes and cases were being filed by PW.1 and others against LW.6 and vice versa. A doubt also arises as to whether really the deceased and his family members have purchased the property worth lakhs of rupees, when the avocation of the deceased appears to be selling coconuts. Be that as it may, the role of accused No.1 is that he is relative of LW6 and was assisting him in all legal matters. Taking advantage of the relationship with LW.6, accused No.1 and his entire family including women folk have been falsely implicated in this case. Therefore, to sum up, it cannot be said that there was any motive for the family of accused to attack the deceased and the motive if any appears to be too remote as there are no disputes between the accused and deceased except accused No.1 advising LW.6.

36) For all the aforesaid reasons, we are of the opinion that the prosecution failed to establish the guilt of the accused beyond all reasonable doubt.

37) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/ accused in the judgment, dated 28.04.2014 in S.C.No.376 of 2010 on the file of the Judge, II Addl. Sessions Judge, East Godavari District, Amalapuram, for the offences punishable under Sections 302, 307

and 148 IPC are set aside. Consequently, the accused shall be set at liberty forthwith, if they are not required in any other case or crime.

38) As a sequel to it, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

14.06.2018
gkv

KONGARA VIJAYA LAKSHMI, J

