

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

CRIMINAL APPEAL No.670 of 2011

Between:

Cholleti Parameshwar

..Appellant/Accused No.1

and

The State of Telangana,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

JUDGMENT PRONOUNCED ON: 07th March, 2018

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of local
Newspapers may be allowed : Yes/No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes/No
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes/No
Judgment?

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

+ CRIMINAL APPEAL No.670 of 2011

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Cholleti Parameshwar

..Appellant/Accused No.1

Vs.

\$ The State of Telangana,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

! Counsel for the appellant/accused No.1: Mr.P.Prabhakar Reddy

Counsel for the respondent: Public Prosecutor (T.S.)

<Gist :

>Head Note:

? Cases referred:

1. (2015) 6 SCC 282
2. AIR 2013 SC 2408
3. AIR 2012 SC 1979
4. (2010) 8 SCC 536

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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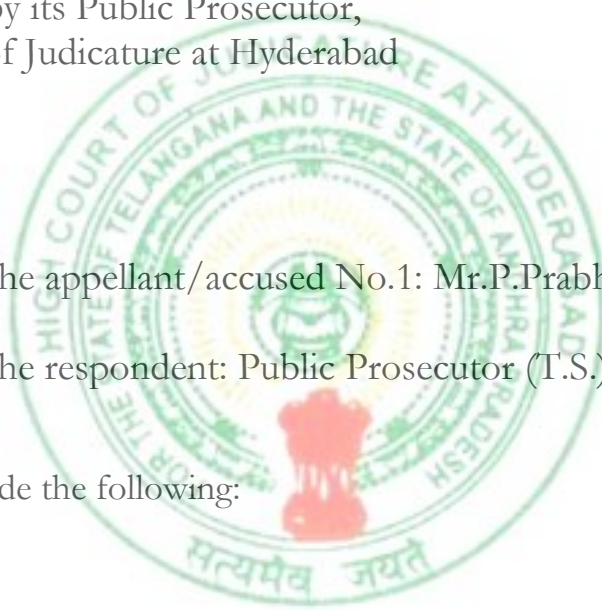
The State of Telangana,
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High Court of Judicature at Hyderabad

..Respondent

Counsel for the appellant/accused No.1: Mr.P.Prabhakar Reddy

Counsel for the respondent: Public Prosecutor (T.S.)

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Accused No.1 in Sessions Case No.88 of 2010 on the file of the Principal Sessions Judge, Karimnagar, filed this appeal feeling aggrieved by his conviction for the offence punishable under Section 302 I.P.C. and sentencing him to suffer imprisonment for life and also to pay a fine of Rs.2,000/- and in default to payment of fine, to suffer simple imprisonment for a period of six months.

2. The case of the prosecution as set out in the charge sheet, in brief, is stated hereunder.

P.W.1 – the complainant is the farm servant of Konduri Lalitha (hereinafter referred to as 'deceased No.1') and resident of Kanaparthi Village. Deceased No.1 is the daughter-in-law of accused No.2. Konduri Santhoshini (hereinafter referred to as 'deceased No.2') is the daughter of deceased No.1 and both the deceased are residents of Kanaparthi Village. The appellant/accused No.1 is the son-in-law and accused No.3 is the daughter, accused No.4 is son and accused No.5 is daughter-in-law of accused No.2 and they are also residents of Kanaparthi Village. About eight years back, the marriage of deceased No.1 was solemnized with the second son of accused No.2 viz., Srinivas and the couple was blessed with a daughter (deceased No.2), who is aged about six years at the time of the incident. On 24.06.2006, the husband of deceased No.1 committed suicide by consuming poison due to

financial problems, which is subject matter of crime No.70 of 2006 registered under Section 174 Cr.P.C. of Veenavanka Police Station. After two months of his death, accused No.2 started suspecting the character of deceased No.1 and registered his son's land in the name of his granddaughter – deceased No.2 by keeping his elder son - accused No.4 and his wife - accused No.5 as nominees, without the consent of deceased No.1. Knowing this, deceased No.1 raised objections and complained in the Police Station against the appellant/accused No.1 and his wife – accused No.3, the elder son of accused No.2 - accused No.4 and his wife – accused No.5, based on which, a case was registered against them, which was the subject matter of crime No.108 of 2006 registered for the offences punishable under Sections 498-A, 427, 420 read with Section 34 I.P.C. of Veenavanka Police Station, due to which, accused No.2 called some Village elders and discussed about his daughter-in-law's issue. At the same time, deceased No.1 abused the SC community elders by taking their caste names. On that a case was registered at Veenavanka Police Station against deceased No.1 and her relatives *vide* subject matter in Crime No.119 of 2006 registered under Section 3(x)(i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the SC ST Act'). On the complaint of deceased No.1 and the elders of SC community people, a complaint was registered against the

appellant/accused No.1, his wife – accused No.3, brother-in-law – accused No.4 and his wife – accused No.5 *vide* subject matter in Crime No.125 of 2006 registered under Section 3(x)(i) of the SC ST Act and it ended in acquittal. In this process, they faced much financial problems. The appellant/accused No.1 was also due an amount of Rs.1 lakh to deceased No.1 which was borrowed from her husband and she asked him to repay the said amount. On 04.01.2008, while the appellant/accused No.1 with his workers was digging a canal for water to his agriculture lands, deceased No.1 came to the spot, asked him and reported in the Police Station. The appellant/accused No.1 went to accused No.2 and disclosed about the bickerings of his daughter-in-law i.e., deceased No.1 by booking cases in the Police Stations. On that accused Nos.2 to 5 advised the appellant/accused No.1 to kill deceased No.1 and her daughter (deceased No.2) and get relief and also get her landed properties as since the time of her marriage with the second son of accused Nos.1 and 2, they were facing much problems. Accordingly, all the accused hatched a plan together to do away the lives of deceased Nos.1 and 2 and were waiting for an opportunity. On 16.01.2008, at about 18.00 hours, while deceased Nos.1 and 2 and their workers (P.Ws.1 and 2) were returning to their home from the field on a bullock cart, the appellant/accused No.1 way laid and came to them on his chetak scooter, stopped the bullock cart, took

an axe from his chetak, axed deceased No.1, who got down from the bullock cart. He dragged her by catching hold her hair and took her to the tomb of her husband and again axed her till her death. The daughter of deceased No.1 i.e., deceased No.2, followed her mother by weeping. The appellant/accused No.1 killed deceased No.2 too, by axing on her neck mercilessly and laid her dead body on the tomb of the husband of deceased No.1 beside the dead body of deceased No.1. While P.Ws.1 and 2 tried to catch the appellant/accused No.1, he threatened them with dire consequences. The appellant/accused No.1 escaped from the scene on his chetak scooter with the axe by covering it with a gunny bag. He went to accused Nos.2 to 5, disclosed the entire incident and fled away on his chetak scooter to his house, where he took one dress from his house and again left on chetak scooter to Karimnagar. On the way, he reached Annaram Village, Vooragutta Canal, where he changed his dress, washed his hands and axe and burnt the removed dress and also the gunny bag, which was used to bring the axe. Later, the axe was kept in the mango bushes. From there he went to Karimnagar RTC bus stand, where he kept his chetak scooter in the cycle stand of P.W.9 under proper receipt and went to Hyderabad. The appellant/accused No.1 hacked deceased No.1 and deceased No.2 with the axe on the instigation and plan of

accused Nos.2 to 5 because of their greed to get the entire landed properties of deceased Nos.1 and 2.

On 16.01.2008 at 21.00 hours, P.W.1 gave complaint to the Police about the incident. Based on the complaint, P.W.22 registered a case in Crime No.6 of 2008 under Section 302 I.P.C. and investigated into. During the course of investigation, P.W.22 examined P.W.1 and recorded his statement. On 17.01.2009, P.W.21 visited the scene of offence situated at the outskirts of Kanaparthi Village, examined P.Ws.1 to 8 and L.W.8 – Makula Shankaraiah, recorded their statements, observed the scene of offence, held inquest over the dead body of deceased No.1 from 08.00 hours to 10.00 hours in the presence of P.W.15 and L.Ws. 18 and 19 – Allapureddy Komura Reddy and Puli Sharadha respectively and later, held inquest over deceased No.2 from 10.00 hours to 11.30 hours in the presence of P.W.17 and L.Ws.21 and 22 – Muddamalla Bhaskar and Mididoddi Sujatha respectively, seized the blood stained earth, control earth and blood stained slippers and cut hair, in the presence of panchas, got photographs taken with the help of P.W.16, drew sketch in the crime details *form* in the presence of P.W.15 and L.Ws.18 and 19 and referred both the dead bodies to the Government Hospital, Veenavanka under proper escort for autopsy, where P.W.20 and L.W.26 – Dr.Shashi Rekha held autopsy over the dead bodies of deceased Nos.1 and 2 and

issued post-mortem reports. On reliable information, on 29.01.2008 at 10.30 hours, the appellant/accused No.1 and accused No.2 were arrested, P.Ws.18 and 19 were summoned to act as mediators and interrogated the said accused individually. During the course of interrogation, they confessed to have committed the offence. Their confessional statements were recorded and in the presence thereof a stick, an axe, ash and chetak scooter of the appellant/accused No.1 were seized under the cover of Panchanama in the presence of the same mediators. P.W.21 examined and recorded the statement of P.W.9. Later, P.W.21 brought the aforementioned accused to the Police Station at 15.30 hours, issued arrest memos affecting their arrest and intimated their relatives. The seized blood stained material objects have been sent to RFSL, Karimnagar and reports were received. The seized property was deposited in the Court on 12.03.2008. L.W.27 – the Special Judicial First Class Magistrate, Excise, Karimnagar, recorded the statements of P.Ws.1 to 5 under Section 164 Cr.P.C. on requisition of P.W.21. P.W.21 collected some more evidence by examining 11 to 15 witnesses on the involvement of accused Nos.3 to 5 in the commission of the offence, recorded their statements, arrested accused Nos.3 and 4 on 03.07.2008 and sent them for judicial remand. On 04.07.2008, accused No.5 was arrested and sent for judicial remand. Thus, as per the chargesheet, the appellant/accused No.1 is liable for the

offences punishable under Sections 120-B and 302 I.P.C. and accused Nos.2 to 5 are liable for the offences punishable under Sections 120-B and 302 read with Sections 109 and 201 I.P.C.

3. Based on the charge sheet, the Court below framed the following charges.

“Firstly (Against A1 to A5):

That you-A1 prior to 16-1-2008 at Kanaparthi village along with A2 to A5 agreed to do an illegal act viz., due to land disputes, family disputes and criminal cases foisted against you by Konduri Lalitha conspired to kill Konduri Lalitha and Konduri Santhoshini and that some act to wit – on 16-1-2008 at 6 PM A1 of you way laid said Konduri Lalitha and Konduri Santhoshini and axed them to death- was done in pursuance of the said agreement with A2 to A5 to commit the offence of punishable with death and that you thereby committed an offence punishable under Section 120-B of Indian Penal Code and within my cognizance.

Secondly (Against A1)

That you A1 on or about 16-1-2008 at about 6 PM at Kanaparthi village with an intention to kill Konduri Lalitha and Konduri Santhoshini due to land disputes, family disputes and criminal cases lodged by said Lalitha against you- way laid Konduri Lalitha and Santhoshini and axed them to death – did commit murder intentionally causing the death of Lalitha and Santhoshini and that you thereby committed an offence punishable under Section 302 of Indian Penal Code and within my cognizance.

Thirdly (Against A1 and A2)

That you A1 and A2 on or about 16-1-2008 at Kanaparthi village at 6 PM – knowing that certain offence punishable with death has been committed by A1 – did cause certain evidence of the said offence to disappear to wit- after axing Konduri Lalitha and Konduri Santhoshini to death – left on your chetak scooter by covering the axe in a gunny bag and at Vooragutta canal of Annaram, A1 changed your dress, washed your hands and axe and burnt the removed dress, gunny bag and kept the axe in the mango bushes – with an intention of screening the said offender from legal punishment and thereby committed an offence punishable under Section 201 of the Indian Penal Code and within my cognizance.

Fourthly (Against A2 to A5)

That accused No.1 on or about 16-1-2008 at 6 PM at Kanaparthi Village axed Konduri Lalitha and Konduri Santhoshini – aged 6 years to death and that you – A2 to A5 – abetted the said accused No.1 in the commission of the said offence of murder of Konduri Lalitha and Santhoshini - which was committed in consequences of your abetment and you have thereby committed an offence punishable u/s 302 r/w 109 of the Indian Penal Code and within my cognizance.”

4. As the plea of the accused was one of denial, they stood trial, during the course of which, the prosecution examined P.Ws.1 to 22, got marked Exs.P-1 to P-32 and produced M.Os.1 to 12. The defence examined D.W.1 and got Exs.D-1 and D-2 marked. During the trial, accused No.2 died. On appreciation of the oral and documentary evidence, the Court below acquitted accused

Nos.3 to 5 and convicted the appellant/accused No.1 as noted hereinbefore.

5. At the hearing, Mr.P.Prabhakar Reddy, learned counsel for the appellant/accused No.1, has submitted that there is a delay of three hours in lodging Ex.P-1 report; that as per the evidence of P.Ws.1 and 4, the Member of MPTC and the Sarpanch of the Village went to the scene and within half an hour; the Police also reached the scene and recorded the statements of P.Ws.1 to 3 which were not produced before the Court indicating that the Police suppressed the earliest version of the witnesses; that in Section 164 Cr.P.C. statements recorded by the Judicial Magistrate, P.Ws.3 and 4 did not refer to the presence of P.W.1 at the scene of offence and that as P.W.2 has not supported the case of the prosecution, the evidence of P.W.1 is left uncorroborated and that therefore, it is not safe to convict the appellant/accused No.1 based on such uncorroborated testimony of P.W.1. The learned counsel has further argued that in Ex.P-13 – the inquest report, the names of P.Ws.3 to 5 were not referred as eyewitnesses and that therefore, they were planted witnesses. The learned counsel has also submitted that P.W.22 – the Sub-Inspector of Police admitted that he has not sent the statements of the witnesses recorded by him along with the inquest to the jurisdictional Magistrate and it is reasonable to presume therefrom that the original statements of the witnesses

recorded by the Police were suppressed and that the statements produced before the Court at the relevant point of time were subsequently fabricated. The learned counsel has referred to the evidence of P.W.7 – the brother of the deceased and submitted that his evidence would show that his mother was at the house of the Sarpanch of the Village who was in inimical terms with the appellant/accused No.1 as the latter has not supported him during the Sarpanch elections and that at the instance of the Sarpanch, the appellant/accused No.1 was falsely implicated.

6. Opposing the above submissions, the learned Public Prosecutor (T.S.) has submitted that though there are some lacunae in the investigation, they are not fatal so as to vitiate the entire case of the prosecution. He has referred to and relied upon the evidence of P.W.1 and submitted that his evidence is natural and nothing significant was elicited from him to discard his testimony. He has also referred to the evidence of P.W.2 and submitted that though he was declared as hostile, he has admitted his giving the statement to the Police about his presence at the scene of the offence and witnessing the occurrence and that therefore, the evidence of P.W.1 lent corroboration by the evidence of P.W.2, which is sufficient to sustain the conviction of the appellant/accused No.1.

7. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record.

8. This is a case of cold-blooded murder of an young widow and an innocent child of six years age. The fact that following the death of the husband of deceased No.1 serious disputes ensued between her on the one side and accused Nos.2 to 5 on the other side is not in dispute. Accused No.2 is the father-in-law, accused No.4 is the brother-in-law of deceased No.1 and accused No.5 is the wife of accused No.4. Accused No.3, who is the daughter of accused No.2, is the wife of the appellant/accused No.1. Though there are no direct disputes between the appellant/accused No.1 and deceased No.1, evidently, he was under the influence of accused No.4, who is no other than his brother-in-law since the appellant/accused No.1 married the sister of accused No.4 and also of the husband of deceased No.1. The Court below has, however, disbelieved the theory of conspiracy and accused Nos.2 to 5 abetting the appellant/accused No.1 to commit the murders. However, in a case based on the evidence of the eyewitnesses, the motive does not assume much relevance. With this background in mind, we shall now deal with the contentions of the learned counsel for the appellant/accused No.1.

9. In his evidence P.W.1, who was examined as an eye-witness by the prosecution, no doubt, stated that after the incident, the Sarpanch of the Village and the Member of MPTC reached the spot, who were all possessing cell phones; that they have informed about the incident to the Police over their cell phones; that the Circle Inspector and other Police personnel reached the place of the occurrence within half an hour or 45 minutes and that P.W.21 enquired with the witnesses about the incident and she wrote down what P.W.1 narrated under his signature. P.W.4 also submitted this version of P.W.1.

10. The effect of suppression of the earliest report, was considered by the Supreme Court in **Abdul Razak and Others Vs. State of Karnataka rep. by Station House Officer, Hutti Police Station**¹. In that case, the Sub-Inspector of Police, PW-19, has initially recorded the statement of PW-1, disclosing the death of the deceased in that case. However, the said report was destroyed by PW-19 after another statement in writing, was given by PW-1.

Considering those facts, the Supreme Court held as under:

“It is difficult to appreciate how PW-19 could have destroyed the original complaint given to him by Hanumantha, PW-1. This implies that the earliest version about the incident was destroyed by PW-19 and a new story stated in the fardbeyan was tailored to suit the prosecution version. This has the effect of completely demolishing the prosecution case and rendering its version wholly unacceptable.

¹ (2015) 6 Supreme Court Cases 282

The only inference which can, in the circumstances, be drawn is that Basavaraj was done to death and his dead body left at the spot from where it was picked up by the police after they arrived around 10.00 p.m. The complaint presented to the Sub-Inspector perhaps did not say what the police intended to present as its case. The same was, therefore, destroyed and a new version brought in, according to which Basavaraj was shown to be alive when the police reached the spot. The fact of the matter, however, appears to be that Basavaraj was dead when his brother, mother and father discovered the body, for otherwise there was no question of the parents of the deceased and his brother leaving him alone in the condition, which they are alleged to have done. The conclusion drawn by the trial court that the prosecution had not proved the charges against the appellants beyond reasonable doubt, was, in our opinion, correct, no matter the judgment and order is not as happily worded as it ought to be, especially coming from a senior judicial officer of the level of Additional Sessions Judge. Inasmuch as the High Court has overlooked all these aspects, we are constrained to set aside the order passed by it and acquit the appellants of the charges framed against them.”

11. Though P.W.21 in her evidence denied the suggestions fallen from the defence that on the night of the occurrence itself she visited the scene of offence and recorded the statements, having regard to the unequivocal statements of P.Ws.1 and 4 in their evidence, it needs to be held that P.W.21 visited the scene of offence on the night of occurrence itself i.e., 16.01.2008 and recorded the statements. But the question to be considered is whether the entire case of the prosecution is liable to be thrown out and the appellant/accused No.1 is entitled to acquittal merely because the earliest statements of the witnesses were not produced by the Police. In our opinion, the answer must be in the negative. It needs to be noted that unlike in **Abdul Razak** (1 supra),

the report given to the Police was neither suppressed nor destroyed. The prosecution for reasons best known to it has not placed the statements of some witnesses purportedly recorded on the night of occurrence. In a case of suppression of the earliest statements, the Court needs to be circumspect and examine meticulously the evidence of the witnesses with reference to the report/complaint so as to know whether their evidence is natural or it suffers from improvements, embellishments and false implications. We start this exercise from the stage of examining the contents of Ex.P-1 report given by P.W.1.

12. In Ex.P-1 report, which was received by the Police on 16.01.2008 at 21.00 hours (about three hours after the occurrence), P.W.1 stated that from 06.11.2007, he was working as farm servant of deceased No.1; that on 16.01.2008, in order to provide urea fertilizer to the maize field of deceased No.1, he along with P.W.2 and the two deceased went to the maize field in a bullock cart; that after completing the work on the field, the two deceased and P.W.2 were returning to their house in the bullock cart and P.W.1 was walking behind the bullock cart at about 6.00 p.m.; that when they reached near the tomb of the husband of deceased No.1, the appellant/accused No.1 came on a chetak scooter, took out an axe and hacked deceased No.1 on her neck by catching hold of her tuft, dragged her towards the tomb of her husband and killed her by

hacking and throwing her on the tomb. That meanwhile, when deceased No.2 – the daughter of deceased No.1 rushed towards her mother by crying, the appellant/accused No.1 also hacked her with the same axe and thrown her on the same tomb and fled away along with the axe on his chetak scooter and that when they tried to intervene, the appellant/accused No.1 threatened to kill them if they come near him. That by the time some persons working in the fields arrived at the scene, the appellant/accused No.1 fled away. P.W.1 further added that for the last one year there were land disputes in the family of deceased No.1 and some complaints were also filed in connection therewith before the Police. He further stated that the relatives of the husband of deceased No.1 conspired for grabbing the properties and they were responsible for the double murder.

13. If we carefully scan through the deposition of P.W.1 given before the Court, we do not find any material variation. Of course, we find some embellishments in his evidence from his Section 161 Cr.P.C. statement, such as when deceased No.1 was being attacked, she cried uttering the name 'Gopalanna'.

14. Except the aforementioned minor improvements, nothing material could be elicited from the evidence of P.W.1 casting a cloud on the credibility of his version. Even during the hearing, the

learned counsel for the appellant/accused No.1 could not draw our attention to any material contradictions between the contents of Ex.P-1 and the testimony of P.W.1. Undisputedly, P.W.1 was the farm servant of deceased No.1. The defence could not bring out any circumstance which improbabilises his presence at the scene of offence. On the contrary, being the farm servant, the presence of P.W.1 at the agricultural fields was natural. Furthermore, it was not suggested to P.W.1 that he had any reason to be inimical towards the appellant/accused No.1 or the other accused. Therefore, even assuming that P.W.1's earliest version was suppressed by the Police, nothing artificial or unnatural could be elicited from his evidence to make the Court to disbelieve it.

15. The name of P.W.2 was mentioned in Ex.P-1 itself. He was stated to have accompanied the two deceased to the maize field belonging to them and he was also returning home along with the two deceased in the bullock cart. In his chief examination, P.W.2 tried to vary his earliest version. His presence at the scene of offence is confirmed but he tried to save the accused by stating that on the fateful day, he ploughed the land of deceased No.1 with a tractor, that the two deceased were coming on the cart and that he reached "that place" after both the deceased were killed. The falsity of the version spoken to by him in his chief examination was thoroughly exposed in his cross examination as he

unequivocally admitted therein that in the statement given to the Police, he stated that on the day of occurrence, himself, P.W.1 and the two deceased went to the maize field to put urea to the maize crop; that he and the two deceased were coming on the bullock cart and P.W.1 was coming behind the cart by walk; that the appellant/accused No.1 came on his scooter, hacked deceased No.1 and dragged her from the bullock cart to the tomb of her husband and killed both the deceased there and fled away from the scene of offence on his scooter along with the axe. Having said so, he again tried to vary his version by denying the suggestion that he stated to the Investigating Officer that he was present at the scene of offence and witnessed the incident. He also denied the suggestion that he was gained over by the accused. In the cross examination by accused Nos.1 and 3, he stated that he did not state before the Investigation Officer that he witnessed the murders. Under Section 154 of the Indian Evidence Act, 1872, a person can cross examine his own witness. The obvious purpose of such cross examination is to expose the falsity of the statements made against the person at whose instance he was examined.

16. In the instant case, the prosecution succeeded in eliciting from P.W.2 about the nature of the earliest statements made by the witness to the Police. Those statements as admitted by P.W.2 clearly corroborate the evidence of P.W.1 in every respect as

regards the presence of P.W.2 and the manner in which the appellant/accused No.1 hacked both the deceased to death.

17. In **Mohan Lal vs. State of Panjab**², the Supreme Court held that the statement of a hostile witness can be relied upon to the extent it supports the case of the prosecution. In **Ramesh Harijan vs. State of Uttar Pradesh**³, the Supreme Court held that the evidence of a hostile witness cannot be discarded as a whole and relevant parts thereof which are admissible in law can be used by the prosecution or the defence. In **Prithi vs. State of Haryana**⁴, the Supreme Court held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him and that the evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on careful scrutiny thereof. Therefore, though P.W.2 turned hostile, the admitted statement made by him to the Police as come out in his cross examination completely corroborated the evidence of P.W.1.

18. As regards the submission of the learned counsel for the appellant/accused No.1 that P.Ws.3 to 5 are planted witnesses, we find merit in this submission. P.W.1 did not speak about their

² AIR 2013 SC 2408

³ AIR 2012 SC 1979

⁴ (2010) 8 SCC 536

presence either in Ex.P-1 or in his evidence. Even Ex.P-11 – the inquest report did not refer to the presence of these eyewitnesses. Evidently, these witnesses were added as an afterthought. Therefore, their evidence cannot be given much credence. Even in the absence of their evidence, the guilt of the appellant/accused No.1 is established by the evidence of P.W.1 as amply supported by the evidence of P.W.2.

19. As for the recovery of the material objects, no doubt, P.Ws.18 and 19 – the independent panch witnesses turned hostile. However, they admitted their signatures on Ex.P-21 – the recovery panchanama. In our opinion, when the prosecution was able to establish the guilt of the appellant/accused No.1 beyond reasonable doubt on the strength of the direct evidence, failure to prove recovery in strict legal sense does not affect the case of the prosecution.

20. In **State of Karnataka vs. K.Yarappa Reddy**⁵, the Supreme Court held:

“19.... The Court must have predominance and pre-eminence in criminal trials over the action taken by [the] investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the Court is convinced that the testimony of a witness to the occurrence is true the Court is free to act on it....”

⁵ (1999) 8 SCC 715

In **Inspector of Police vs. John David**⁶, the Supreme Court held:

“72. It is well-settled proposition of law that the recovery of crime objects on the basis of information given by the accused provides a link in the chain of circumstances. Also failure to explain one of the circumstances would not be fatal to the prosecution case and cumulative effect of all the circumstances is to be seen in such cases.”

In **Chintakayala Kurmaiah vs. State of A.P.**⁷, a Division Bench of this Court, speaking through one of us (C.V.Nagarjuna Reddy, J), held:

“Despite the fact that PW6 was treated as a hostile witness, his evidence clearly proves that the accused has not only allegedly confessed to the fact of killing his wife but also a knife was recovered from his possession. Whether MO1 was the same knife as was recovered from the possession of the accused or not may not have much relevance or significance. The evidence on record, which includes PW2-direct witness, clearly proves the involvement of the accused in the commission of offence. Even the failure of the prosecution to produce the same weapon as was recovered from the accused will not be fatal to the case of the prosecution because there was no variation in the nature of weapon as described by PW6 in his evidence and the one which was produced as MO1 as both happened to be knives. This apart, PW9-Investigation

⁶ (2011) 5 SCC 509

⁷ 2017 (1) ALT (Crl.) 70 (DB) (A.P.)

Officer clearly deposed the fact of recovery of MO1-knife from the possession of the accused.”

21. In the facts and circumstances of the case on hand, not much significance can be attached to the recovery or otherwise of M.O.12 - the axe. In the light of the above discussion, we do not find any merit in the appeal.

22. In the result, the Criminal Appeal is dismissed. The conviction and sentence recorded against the appellant/accused No.1 in judgment, dated 15.06.2011, in Sessions Case No.88 of 2010 on the file of the Principal Sessions Judge, Karimangar, are confirmed.

23. A perusal of the record shows that the appellant/accused No.1 is presently on bail, *vide* this Court's order, dated 26.12.2016, and he is also present in the Court at the hearing. Therefore, his bail bonds shall stand cancelled and he shall forthwith surrender before the Jail Superintendent, Central Prison, Warangal.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

07th March, 2018

Note: L.R. copies to be marked.

(B/o)
GHN