

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

Criminal Appeal Nos.359 and 361 of 2011

DATED:07-02-2018

Crl.A. No.359 of 2011

Between:

Padala Ramu
and others

... Appellants

And

The State of A.P.
Rep. by its Public Prosecutor
High Court of A.P., Hyderabad ... Respondent

COUNSEL FOR THE APPELLANTS: Mr. N. Siva Reddy

COUNSEL FOR THE RESPONDENTS: Public Prosecutor
(AP)

Crl.A. No.361 of 2011

Between:

Thota Krishna
and others

... Appellants

And

The State of A.P.
Rep. by its Public Prosecutor
High Court of A.P., Hyderabad ... Respondent

COUNSEL FOR THE APPELLANTS: Mr. A. Prabhakar Rao

COUNSEL FOR THE RESPONDENTS: Public Prosecutor
(AP)

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT:

(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

These two appeals arise out of common judgment dt.14.3.2011 in Sessions Case No.311 of 2008 on the file of the VII Additional Sessions Judge, at Kakinada. Criminal Appeal No.359 of 2011 is filed by accused Nos.1 to 3, 5 to 11, and 13 to 15 and Criminal Appeal No.361 of 2011 is filed by accused Nos.16, 17 and 19 to 21. During the pendency of these appeals, accused No.17, who is appellant No.2 in Criminal Appeal No.361 of 2011 died.

2. The case of the prosecution as reflected from the charge sheet is as follows:

(a) All the accused and the deceased are residents of Panasapadu Village of Samalkot Mandal and are close relatives. One Lingam Venkata Rao @ Babu Rao (hereinafter referred to as "deceased No.1") was a Member of the Panasapadu Panchayat. Lingam Rambabu (hereinafter referred to as "deceased No.2") was running an Auto and eking out his livelihood. P.W.2 is the father of P.W.1 and deceased No.2; P.W.3 is the brother of P.W.2; P.W.4 is the son of P.W.9; P.W.5 and L.W.6 are brothers; L.W.7 is the wife of deceased No.1; L.W.8 is the wife of P.W.1 and P.W.6 is the father of

P.W.4. P.W.1 was running a petty coffee hotel and a pan shop in a hut in front of their tiled house. P.W.1 and his wife L.W.8, P.W.2 and his son - deceased No.2 are residing in the said house. In the year 1969, deceased No.1 purchased Acs.3.00 of land for Ramalayam, located at Panasapadu Village. Being a Trustee of the temple, deceased No.1 was maintaining the temple with the income from the said land. About seven years back, disputes arose between deceased No.1 and other residents of Pallapu Veedhi regarding the Ramalayam land. Hence, deceased No.1 filed a suit and obtained *ex parte* orders in his favour in O.S. No.1323 of 1998 on the file of the I Additional Junior Civil Judge, Kakinada. But, accused No.1 and others formed a Temple Committee and were collecting the lease on the temple land and maintaining the temple against the will and wish of deceased No.1. While so, deceased No.1 filed a private case against accused Nos.3, 9, 11 to 13 and 15 and some others before the Court of IV Additional Judicial Magistrate of First Class, Kakinada and the same was referred to the Station House Officer, Timmapuram, under Section 156 (3) of the Code of Criminal Procedure, 1973 and a case, vide Crime No.65 of 2004 under Sections 447, 427 and 506 IPC was registered. Since then disputes between deceased No.1 and the

accused became worse and both the groups were trying to pick up quarrels. P.W.2 used to threaten the public of his locality and about ten days prior to the incident the accused placed the matter before P.W.9 and L.W.15, who called P.W.2 to the Panchayat office and when they asked about his threats, P.W.2 denied the same. All these disputes led to faction between the accused and others on one hand and the family members of the deceased on the other.

(b) On 13.09.2004 at about 7.30 a.m. P.W.1 sent P.W.7 to P.W.8 – onions vendor, to bring onions on credit. But, P.W.8 refused to give the onions and asked P.W.7 to clear off the dues. On that, P.W.1 went to P.W.8 and disputed with him. On seeing the same, P.W.2 went there and pacified the matter. P.W.2 also admonished P.W.8 and sent him away and warned him not to sell the onions in his locality. Then P.W.8 packed his materials, left the temple premises and while he was about to leave the village, the accused stopped him, brought him back to the temple and made him to sell the onions at the temple in their presence. Later, at about 10.00 hours, P.W.8 left the place after completion of the sale of onions. While P.W.8 was selling the onions, the accused provoked P.W.2 and his family members.

(c) On 13.09.2004 while P.Ws.1 and 2, deceased Nos.1, 2, and P.Ws.3 and 4 were at the house of P.W.2, at about 11.30 hours, an altercation took place and having been humiliated, because of the court litigation by deceased No.1 and highhanded behaviour of P.W.2, the accused decided to do away with the lives of the injured and the deceased, formed themselves into an unlawful assembly and armed with deadly weapons trespassed into the house of P.W.2 and picked up an argument with deceased No.1. On that, accused No.2 expressed that deceased No.1 was troubling the villagers with his court litigations and P.W.2 had been threatening the villagers with his highhandedness, and aimed a knife hack on the head of deceased No.1, for which he put his hand and sustained a severe bleeding cut injury on wrist. Immediately, P.W.2 pulled deceased No.1 into front room of his house and closed the doors. While the accused were trying to break the doors, deceased No.2 obstructed them. At that time, accused No.3 hacked on the left elbow of deceased No.2 with a knife, accused No.1 hacked on his knee with a knife, accused No.5 beat on his head with a stick due to which, deceased No.2 fell down in the varandah of the house and died on the spot. When P.W.3 intervened, accused No.4 hacked below the left

knee and near left ear of P.W.3 with a knife, accused No.6 hacked on the left elbow with a knife, accused No.17 beat on the legs with a stick, accused No.10 hacked on the right buttock with a knife, accused No.11 hacked on the left calf muscle with a knife, accused No.13 kicked on the right ear with a knife, accused No.15 hacked on the right ear with a knife and accused No.19 poked on the right ankle with a crowbar. When P.W.3 fell down and P.W.4 went to the rescue of P.W.3, accused No.21 beat on the legs of P.W.4 with a stick, accused No.18 hacked on the head with a knife and accused No.14 beat on the both the legs with a stick.

(d) While the accused were beating and hacking the injured and the deceased indiscriminately, P.W.1 questioned the accused. On that, accused No.1 hacked on P.W.1's left cheek and uttered that they would not let any of them to live on that day. Accused No.3 hacked P.W.1 on the right forehead with a knife, accused No.8 beat on the left upper arm with a stick, accused No.20 beat on the right upper arm with an iron road and accused No.16 beat on both the legs with a stick. Later, the accused pushed the front doors and rear doors of the house forcibly, damaged the household articles, went inside the kitchen where deceased No.1 and P.W.2 hid, and attacked

deceased No.1. Accused No.2 hacked on the head and the face of deceased No.1 with a knife, accused No.3 hacked on the left ribs with a knife, accused No.4 hacked him on the right hand with a knife, accused No.10 hacked on the left hand with a knife, and accused No.19 poked on the right shoulder with a crowbar, that when deceased No.1 fell down in a corner of the kitchen, accused No.12 poked on the right side of the chest and back with a spear and accused No.1 hacked on the right upper arm with a knife, as a result of which, deceased No.1 collapsed. Later, accused No.7 beat on the left upper arm and back of P.W.2 with a stick, accused No.6 hacked on the above right ankle with a knife, and the bone of his right leg was cut off. Accused No.4 hacked on the left knee of P.W.2 with a knife, accused No.13 hacked on the right knee with a knife, accused No.9 hacked below the chin with a knife, accused No.11 hacked on the right leg with a knife near the cut injury. That deceased No.1 ran to the corner of the kitchen, fell in praying position, became unconscious and died on the spot. That after few minutes, P.W.2 also became unconscious and in the mean time, the injured P.Ws.3 and 4 escaped to the temple. That the accused and their family members went away from the village.

Later, P.W.6 and L.W.10 took the injured P.Ws.3 and 4 to the Government General Hospital, Kakinada, for treatment.

(e) On 13.09.2004 at about 13.00 Hours, P.W.15 – Sub-Inspector of Police, Timmapuram Police Station, received a phone call. Immediately, he visited the scene of offence, informed the incident to P.W.17 – Inspector of Police, Kakinada, Rural Circle, who visited the scene of offence and got the scene of offence photographed by P.W.10. P.W.15 shifted the injured P.Ws.1 and 2 to the Government General Hospital, Kakinada and admitted them for treatment at 15.11 Hours. Later, P.W.15 collected the Medico Legal Case Intimations of P.Ws.1 and 2 at 15.30 Hours, recorded the statement of P.W.1 in the presence of P.W.14, registered the case in Crime No.71 of 2004 under Sections 147, 148, 452, 427, 302 and 307, read with Section 149 IPC in Timmapuram Police Station at 17.45 Hours and submitted the copies of express FIR to all the concerned officials.

(f) P.W.17 took up the investigation, examined P.Ws.1 to 4 and P.W.15 at the Hospital, recorded their statements under Section 162 Cr.P.C. and seized the bloodstained clothes of P.Ws.2 to 4 on 13.09.2004. During the course of investigation on 14.9.2004, P.W.17 inspected the scene of offence in the

presence of P.W.11 and L.W.22, got drafted Ex.P.19 - scene observation report, seized the material objects from the scene of offence and prepared Ex.P.44 - a rough sketch of the scene of offence. He also conducted inquest over the dead bodies of deceased Nos.1 and 2 in the presence of P.Ws.9 and 11, and L.W.22 from 08.00 Hours to 11.30 Hours, seized a leather belt, a kaijar and bloodstained clothes from the dead bodies of the deceased and sent the dead bodies for post-mortem examination. P.W.17 also examined P.W.5, 6, 7, 8, and 9 and L.Ws.6, 7, 8, 10, 13 and 15 on 14.9.2004 and recorded their statements under Section 162 CrPC. He also arrested accused Nos.2, 4, 11, 12 and 20 on 17.9.2004; accused Nos.6, 13, 14, 15, 16 and 19 on 18.9.2004, accused Nos.1, 3, 5, 7 and 17 on 20.09.2004, accused Nos.8, 9, 10, 18 and 21 on 21.09.2004 in the presence of P.W.11 and L.W.22, got their confessional statements recorded, seized their bloodstained clothes and crime weapons under the cover of the confessional statements and sent them to judicial custody.

(g) P.W.13 who conducted the autopsy over the dead body of deceased No.1 issued Ex.P.37 – post-mortem report opining that deceased No.1 died due to shock and haemorrhage with multiple incised cut injuries. P.W.12, who conducted the

autopsy over the dead body of deceased No.2 issued the post-mortem certificate opining that deceased No.2 died due to shock as a result of chop wound on the left upper arm. P.W.14, who examined and treated P.Ws.3 and 4 issued would certificates opining that the injures of P.Ws.3 and 4 are grievous in nature. L.W.27 - III Additional Judicial Magistrate of First Class, Kakinada, recorded the dying declaration of P.W.2. P.W.17 forwarded the materials seized from the scene of offence, from the injured, the deceased and the accused to the Regional Forensic Science Laboratory (FSL), Vijayawada, through the Court for chemical analysis. During the course of investigation, it has come to light that one Katamreddi Bhadra Rao @ Veera Bhadram, who was cited as accused No.22, was working in KVR Forgings Ltd., at Atchampeta Junction, Kakinada at the time of the offence, and he did not participate in the commission of the offence and hence his name was deleted from the list of the accused on the basis of the recorded evidence. Thus, the remaining accused are liable for punishment for the offences under Sections 147, 148, 452, 427, 302 & 307 read with Section 149 IPC for having formed themselves into an unlawful assembly and armed with deadly weapons trespassing into the house of P.W.2, damaging the

household articles therein, killing deceased Nos.1 and 2 and attempting to kill P.Ws.1 to 4 with the common object.

3. Based on the charge sheet and the material collected during the investigation by the Police, the lower Court framed the following charges:

“CHARGE NO.1:- That you A1 to A3, A5 to A11, A13 to A17, A19 to A21 along with deceased accused A4, A12, A18 on 13-9-04 at 11.30 hours committed murder intentionally causing death of Lingam Venkata Rao @ Babu Rao (deceased-1) and thereby committed offence punishable U/s.302 I.P.C., within my cognizance.

CHARGE NO.2: That you A1 to A3, A5 to A11, A13 to A17, A19 to A21 along with deceased accused A4, A12, A18 on 13-9-04 at 11.30 hours committed murder intentionally causing death of Lingam Rambabu @ Ramu (deceased-2) and thereby committed offence punishable U/s.302 I.P.C., within my cognizance.

CHARGE NO.3: That you A1 to A3, A5 to A11, A13 to A17, A19 to A21 along with deceased accused A4, A12, A18 on 13-9-04 at 11.30 hours formed into unlawful assembly armed with deadly weapons, trespassed into the house of Lingam Venkata Rao @ Dorababu (LW2) damaged the household articles, picked up argument with him, hacked him on the head while the deceased- 1 Lingam Venkata Rao @ Babu Rao put his hand, he sustained bleeding cut injury on the wrist and tried to break the doors, for which the Lingam Rambabu @ Ramu (deceased-2) obstructed and you A3 hacked on the left elbow of deceased-2 with knife, A1 hacked on his knee with knife, A5 beat on the head of deceased-2 with a stick and he died on the spot, and you also hacked Lingam Venkata Rao alias Dorababu knowing fully well about it may result death, thereby committed offence U/s.307, 326, 147, 148 and 452, R/w. 149 I.P.C., within my cognizance.

CHARGE NO.4: That you A1 to A3, A5 to A11, A13 to A17, A19 to A21 along with deceased accused A4, A12, A18 on 13-9-04 at 11.30 hours when LW.1 (Lingam Chakradhara Rao) questioned, you A1 hacked on his left cheek and uttered that they would not leave anybody of them to live on that day and A3 hacked on the right forehead with knife, A8 beat on the left upper arm within a stick, A20 beat on the right upper arm with

an Iron rod, A14 of you beat on the both legs with sticks, and under such circumstances by that act, you caused death of LW.1 and you would have been guilt of murder and thereby caused hurt to LW.1 knowing fully well that it may result of death and committed offence punishable U/Secs.307, 324 R/w.149 I.P.C., within my cognizance.

CHARGE NO.5: That you A1 to A3, A5 to A11, A13 to A17, A19 to A21 along with deceased accused A4, A12, A18 on 13-9-04 at 11.30 hours when LW.3 (Lingam Tirupathi Rao) intervened, A4 hacked him below the left knee, and near left ear with a knife, A6 hacked on the left elbow of L.W.3, A17 beat on the legs of L.W.3 with sticks, A10 hacked on the right buttock with a knife, A11 hacked on the left calf muscle with knife, A13 kicked on the right ear with a knife, A15 hacked on the right ear with knife, A19 poked on the ankle of LW.3 within crowbar and under such circumstances by that act, you caused death of LW.3 knowing fully well that it may result of death and committed offence punishable U/Secs. 307 IPC., 324 and 326 R/w. 149 IPC within my cognizance.

CHARGE NO.6: That you A1 to A3, A5 to A11, A13 to A17, A19 to A21 along with deceased accused A4, A12, A18 on 13-9-04 at 11.30 hours when LW.4 (Lingam Srinivas) came to the rescue of LW.3, A21 of you beat on the legs of LW.4 with sticks, A18 hacked on the head of LW.4 with knife, A14 beat on both legs with stick, and under such circumstances by that act, you caused death of LW.4 knowing fully well that it may result of death and committed offence punishable U/Secs.307, 324 and 326 R/w.149 I.P.C., within my cognizance.:

4. As the plea of the accused was one of denial, they were tried. The prosecution examined P.Ws.1 to 17, got Exs.P.1 to P.72 marked and produced M.Os.1 to 87. On behalf of the defence, D.Ws.1 and 2 were examined and Exs.D.1 to D.8 were marked. The Court has got Exs.1 to 5 marked. On appreciation of the oral and documentary evidence, the Court below has convicted all the appellants under Section 235(2) of the Code of Criminal Procedure, 1973, and found them guilty

for the offence punishable under Section 302 read with Section 149 IPC, for committing the murder of Lingam Venkata Rao (deceased No.1) and Lingam Rambabu alias Ramu (deceased No.2) and also for the offences under Sections 307, 324, 326 read with Section 149, 147,148 and 452 read with Section 149 IPC. All the appellants were sentenced to suffer life imprisonment, and to pay a fine of Rs.100/- each and in default of payment of the fine, to suffer simple imprisonment for ten days for each offence of murder under Section 302 IPC. The appellants were also sentenced to undergo rigorous imprisonment for ten years for the offence under Section 307 IPC for attempting to murder P.Ws.1 to 4, and to pay a fine of Rs.100/- each and in default of payment of the fine, to suffer simple imprisonment for ten days. The appellants were also sentenced to undergo rigorous imprisonment for one year for the offence under Section 326 IPC and to pay a fine of Rs.100/- and in default of payment of the fine, to suffer simple imprisonment for ten days. They were further sentenced to undergo six months rigorous imprisonment for the offence under Section 324 IPC and to pay a fine of Rs.100/- each and in default of payment of the fine, to suffer simple imprisonment for ten days. They were also sentenced to suffer

rigorous imprisonment for one year, and to pay a fine of Rs.100/- each and in default of payment of fine to suffer simple imprisonment for ten days for the offence under Section 148 IPC for rioting armed with deadly weapons at the house of P.W.2. They were also sentenced to suffer rigorous imprisonment for two years for the offence under Section 452 IPC, and to pay a fine of Rs.100 each and in default of payment of the fine, to suffer simple imprisonment for ten days for trespass of the house of P.W.2. All the sentences were directed to run concurrently.

5. Of all the witnesses, P.Ws.1 to 4 are not only eyewitnesses, but also injured witnesses. P.W.6 is the father of P.W.4, one of the injured witnesses, who has taken and admitted P.W.4 in hospital. P.W.7 is the servant maid of P.Ws.1 and 2 who approached P.W.8 for sale of onions and on whose information the latter refused to give onions on credit basis. P.W.2 has allegedly forced P.W.8 to stop the sale of onions and with the alleged intervention of accused Nos.1 to 4, P.W.8 resumed the sale of onions leading to the alleged incident. P.W.11, is the Panchayat Secretary, who is a witness to Exs.P.20 and P.21 - inquest-cum-seizure reports of deceased No.1 and 2 respectively. P.W.12 is the Doctor who conducted

autopsy over the dead body of deceased No.2 and P.W.13 is the Doctor who conducted autopsy over the dead body of deceased No.1. P.W.14 – Causality Medical Officer in Government General Hospital, Kakinada, examined P.Ws.3 and 4 and treated them for injuries sustained by them. P.W.15 is the Sub-Inspector, who conducted the initial part of the investigation, and P.W.17 is the investigation officer who filed the charge sheet.

6. We have heard Mr.A.Prabhakar Rao, learned counsel for the appellants in Criminal Appeal No.361 of 2011 and Mr.N.Siva Reddy, learned counsel for the appellants in Criminal Appeal No.359 of 2011, and Mr.Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh, in detail.

7. The learned counsel for the appellants advanced the following submissions:

- (i) There is long and unexplained delay in registration of the F.I.R. and its reaching the jurisdictional Magistrate giving scope for concoctions, embellishments and false implications;
- (ii) P.W.14 - the Doctor, who treated P.Ws.3 and 4, in his evidence clearly deposed that the Police came and recorded the statements of P.Ws.3 and 4 and

that he has certified about their consciousness. That as these statements of P.Ws.3 and 4 have been suppressed by the prosecution, the real manner in which the offences were committed was suppressed by the prosecution and that, therefore, the whole case of the prosecution is liable to be thrown out;

(iii) In Exs.P-38 and 39 - the wound certificates of P.Ws.3 and 4 respectively, P.W.14 - the Doctor, who treated them, has mentioned that the injuries were said to be caused to the said two witnesses due to attack by some unknown persons at Panasapadu; and that P.W.14 in his evidence has categorically deposed that the said observation was recorded by him on being told by P.Ws.3 and 4. That the creditability of the testimony of P.Ws.3 and 4 is seriously affected by the said statement given by them to P.W.14 and that therefore, their testimony cannot be believed;

(iv) P.W.1 in his evidence clearly admitted that P.W.15 - the Sub-Inspector of Police did not ask him at his house as to what happened till the latter recorded his statement at 5.00 p.m. on that day; that

P.W.15 also admitted that he was at the scene of offence from 1.20 p.m. to 2.45 p.m.; that he did not record the statements of the witnesses or the injured and that therefore, the conduct of the Police in not recording the statements of the witnesses at the earliest point of time was unnatural throwing any amount of suspicion on the whole case of the prosecution;

(v) While P.W.2, whose dying declaration was recorded, spoke about the presence of accused Nos.1 to 4, 7, 9 and 11, he has not given specific account of the overt acts against each accused and that, though he did not name any other accused, the F.I.R. was registered against as many as 22 persons after consultations and confabulations.

(vi) The prosecution failed to establish the motive for the accused to attack the two deceased and their family members as, it has failed to produce any evidence to show that civil disputes including a civil suit over the management of Ramalayam were pending between the accused and the defence party; and

- (vi) There is a discrepancy in the Door numbers of the houses where the offence allegedly took place raising any amount of doubt on the case of the prosecution regarding the place where the offence has allegedly taken place.

The learned counsel also has taken us through the oral evidence of the prosecution witnesses, the omissions extracted from their testimonies and the overt acts spoken to by each of the witnesses and submitted that the creditability of the prosecution version was seriously affected by inherent defects referred to above.

8. Opposing the above submissions, the learned Public Prosecutor (A.P.) contended that the alleged delay in the registration of the F.I.R., the failure of P.W.15 to ascertain the cause and manner of attack from P.W.1, and P.Ws.3 and 4 allegedly informing P.W.14 that unknown persons attacked them at Panasapadu, pale into insignificance in the face of the fact that the testimony of P.Ws.1 to 4 - the injured witnesses enjoys the highest creditability.

9. He has also contended that the lapses on the part of the investigation pointed out by the appellants, would not outweigh the evidence of the injured witnesses whose presence at the

scene of offence was clearly established by their receiving injuries. He has further argued that while there is no doubt about the two murders taking place and P.Ws.1 to 4 receiving injuries, the defence has failed to probablize the commission of the offences by anyone other than the accused and therefore, the Court below has rightly held all the accused guilty of the offences of murder, causing grievous injuries, house trespass, unlawful assembly and common object and that therefore, the judgment under appeal is not liable to be interfered with.

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

11. We shall first deal with the submission regarding the delay in the registration of the F.I.R. In Ex.P-1 - report given by P.W-1, he stated that after taking place of the initial rupture between the accused party and the defence party, at around 11.30 a.m., all the 22 accused came to the house of P.W.2 with sticks, knives and spears and indiscriminately attacked himself and various others. A perusal of Ex.P-40 - F.I.R. shows that information was received at the Police Station on the same day at about 5.45 p.m., F.I.R. was registered and the same was received by the jurisdictional Magistrate's Court at 10.30 p.m.

on the same day. In Column No.8 of the F.I.R., *i.e.*, “Reasons for delay in reporting by the complainant/informant”, it is written as “For emergency purpose, wound patients shifted to GGH”.

12. P.W.15 - the Sub-Inspector of Police in his evidence deposed that on 13.9.2004 at 1.00 p.m., while he was present in the Police Station, he received a phone call from an unknown person that a mob attacked the house of P.W.2; that immediately, he left the Police Station and went to the house of P.W.2 at 1.20 pm; that he informed the matter to the Inspector of Police; that the Inspector of Police came to the scene of offence, got photographed the scene of offence and instructed him to shift the injured to the GGH, Kakinada; and that, accordingly, he shifted the injured to the hospital. He further deposed that on receiving the intimation of both the injured, he recorded the statement of P.W.1 from 3.30 p.m. to 5 p.m., returned to the Police Station at 5.45 p.m. and registered the statement of P.W.1 as a case in Crime No.71 of 2004 for the offences punishable under Sections 147, 148, 452, 427, 302 and 307 read with 149 I.P.C. He further deposed that he also received the hospital intimation about injuries to P.Ws.3 and 4 at 7.00 p.m., visited the scene of offence and handed over the

F.I.R. to the Inspector of Police - P.W.17 to take up further investigation.

13. P.W.17, who took over the investigation from P.W.15, deposed that on 13.09.2004 at 1.20 p.m., P.W.15 contacted him over phone and informed about the attack on the house of P.W.2 and found P.W.1 suffering bleeding injuries and P.W.2 in the condition of shock with the dead bodies of deceased Nos. 1 and 2 lying in kitchen and verandah respectively. That on hearing the same, he (P.W.17) left his house, proceeded to the scene of offence i.e., house of P.W.2, got the same photographed through P.W.10 and instructed P.W.15 to shift the injured to the hospital, to record their statements and register the case. That while he remained at the scene of offence, P.W.15 shifted the injured to the hospital, recorded the statement of P.W.1 and on return from the hospital to the Police Station, he (P.W.15) registered the F.I.R.

14. The evidence discussed above would show that there is a time lag of about 5½ hours between the time of occurrence and registration of the F.I.R. The defence has not disputed the fact that initially, P.W.15 arrived at the scene of offence and later, P.W.17 also visited the scene of offence and thereafter, P.W.15 shifted the injured to the hospital, where he recorded the

statement of P.W.1 (P.W.2 being in a state of shock).

One cannot forget the fact that the incident resulted in gruesome murder of two persons and serious injuries to four persons.

The intensity of the attack and its result must have obviously driven everybody into a state of shock. It would have,

therefore, taken some reasonable time for everybody to recover

from the shock and act. After P.Ws.1 and 2 – the injured,

stated to have been shifted to the hospital at around 2.30 p.m.,

P.W.15 recorded the statement of P.W.1 from 3.30 p.m. to 5.00

p.m. and F.I.R. was registered thereafter at around 5.40 p.m. In

these circumstances, we are of the opinion that the time gap of

around 5 ½ hours would not have been deliberate with an

intention to foist a case against the accused or to make false

implications. We, however, hasten to add that whatever might

be the reason for the delay in registration of F.I.R., such delay

more often leads to false implications, for the delay gives time

for the defence to implicate even innocent, especially, when

rivalry exists between the two parties. In this scenario, the

delay in registration of F.I.R. leading to the possibility of false

implications of some of the accused cannot be ruled out. The

law is well settled that mere delay in lodging the F.I.R. is not by

itself fatal to the case of the prosecution (See **Ashok Kumar**

Chaudhary v. State of Bihar¹). In **State of Himachal Pradesh v. Gian Chand²** a three-Judge Bench of the Supreme Court had observed thus:

“12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

On the facts and circumstances of the case, we are of the opinion that the time gap of 5½ hours is not fatal to the case of the prosecution. We shall, however, consider whether there were any embellishments in the prosecution version or false implications, with reference to the evidence on record.

15. With regard to the submission of the learned counsel for the appellants that P.W.14 – the Doctor, who treated P.Ws. 3 and 4, clearly stated that the statements of P.Ws.3 and 4 were recorded by the Police and that the failure of the prosecution to produce those statements would give raise to a presumption that the prosecution has not come out with true manner in which the offences took place.. No doubt, P.W.14 – the

¹ (2008) 12 SCC 173

² (2001) 6 SCC 71

Doctor, in his cross-examination stated that the Police recorded the statements of P.Ws.3 and 4, P.W.3 stated that the Police recorded his statement between 3.00 and 4.00 p.m. and that that was the only time when he gave statement to the Police. P.W.17 deposed that after dispatching the F.I.R. to the Court, he left the scene of offence and visited the Government General Hospital, Kakinada, examined P.Ws.1 to 4 and that P.W.15 recorded their statements. Significantly, it was not suggested to P.Ws.15 and 17 that prior to their recording the statements of P.Ws.3 and 4 after registration of the F.I.R., they recorded the statements of the said witnesses. Even, P.W.14 – the Doctor, did not indicate as to which Police recorded the statements of P.Ws.3 and 4. It is, therefore, reasonable to conclude that after recording the statement of P.W.1, who was also in the Government General Hospital, Kakinada, receiving treatment along with P.Ws.2 to 4, P.Ws.15 and 17 recorded the statements of P.Ws.3 and 4, which could be treated as the statements recorded under Section 161 Cr.P.C. Therefore, the statements of P.Ws.3 and 4 recorded by the Police could not be treated as the earliest statements recorded prior to the statement of P.W.1, based on which the F.I.R. was registered. Consequently, Ex.P-1 is not hit by the provisions of Section

162 Cr.P.C. and the question of the Police suppressing the real manner in which the offences were committed, as contended by the learned counsel for the appellants, does not arise.

16. As regards submission No.3 of the learned counsel for the appellants, in Exs.P-38 and 39 – the wound certificates pertaining to P.Ws.3 and 4 respectively, P.W.14 – the Doctor, who issued the said certificates and treated the said injured, mentioned that the injuries were said to have been caused due to the attack by some unknown persons. In his evidence also, P.W.14 – the Doctor, deposed that he recorded the said observations on being so informed by P.Ws.3 and 4. When P.W.3 was confronted on this issue, he denied the suggestion which reads as under.

“It is not true to suggest that I told the doctor that I was beaten by unknown persons. It is not true to suggest that I was not hacked by the accused with knives as I deposed in my chief examination.”

P.W.3 received as many as nine injuries, out of which, injury Nos.3 and 4 were certified as grievous in nature in Ex.P-38. Similarly, P.W.4 received six injuries, out of which, injury No.6 was certified as grievous in nature in Ex.P-39. No suggestions were put to P.Ws.3 and 4 that they might have received those injuries in an incident unconnected with the attack resulting in the death of deceased Nos.1 and 2 and injuries to P.Ws.1 and 2.

Therefore, it is highly improbable for P.Ws.3 and 4 to have informed the Doctor that the injuries were caused to them by unknown persons. When serious injuries are received, it would be against the natural conduct of anyone to suppress the names of the real offenders. We cannot, therefore, assign much weight to the statement of P.W.14 – the Doctor, when P.Ws.3 and 4 categorically denied that they informed the Doctor that they were attacked by unknown persons. Indeed no purpose would have been served for P.Ws.3 and 4 to not disclose the names of the real offenders.

17. Apropos submission No.4 of the learned counsel for the appellants, P.W.15 admitted that he reached the scene of offence at 1.20 p.m. and he did not record the statements of the witnesses or the injured. He explained the reason for this by stating that due to the injuries, they were in a hurry to admit the injured in hospital, apart from the fact that one of the injured (P.W.2) was in unconscious state and another witness (P.W.1) was unable to state anything. He, however, admitted that he did not mention the said fact anywhere. It is not in dispute that P.W.2 was in unconscious state. Therefore, there was no possibility of recording the statement of P.W.2 by the Police. Insofar as P.W.1 is concerned, Ex.P-42 – the wound certificate

of the said witness, would show that out of the four injuries received by him, three injuries were received at different parts of the head and shoulder. Injury No.2 is an incised wound of 3 cms. x 1 cm. on the left cheek extending from left ear to angle of mouth, red in colour. This injury was described as grievous in nature in the said wound certificate. Thus, the statement of P.W.15 that P.W.1, due to the grievous nature of the injury to the cheek, was not in a position to talk is supported by Ex.P-42. Therefore, the possibility of P.W.15 enquiring P.Ws.1 and 2, who alone were present at the scene of offence when he arrived (as P.Ws.3 and 4 already left for the hospital) or recording their statements did not exist. In such a situation, the conduct of P.W.15 is not blameworthy and no inference adverse to the prosecution case can be drawn therefrom.

18. As regards submissions No.5 of the learned counsel for the appellants, we have carefully perused Ex.P-68 – the purported dying declaration (statement) of P.W.2, which was recorded by III Additional Judicial First Class Magistrate, Kakinada, who was examined as D.W.2 on behalf of the defence. In this statement, P.W.2 stated that accused Nos.1, 4, 7, 9 and 11 came to his house and hacked his senior paternal uncle – deceased No.1, his two sons, his younger brother and

his cousin. He further stated that the total number of the persons, who attacked them, was about twenty five (25) and that all of them stood on the road and attacked the victims in batches. That when P.W.2 was in a room, they came inside and hacked him, that when D.W.2 asked P.W.2 whether he had anything more to say, he stated that when he and others were sitting inside, the assailants arrived there at, in separate groups and attacked them from behind. P.W.2 further stated that accused Nos.2 and 3 arrived at the scene by holding crowbars. D.W.2 in her chief examination stated that P.W.2 did not state to her that he was unable to give full statement as he was suffering with pain. She further stated that P.W.2 narrated the manner in which the attack on others was made by stating that the assailants were standing on the road and came in batches.

19. A perusal of Ex.P-68 – the purported dying declaration (statement) of P.W.2, shows that the same is crisp and brief. The Court should not be oblivious of the fact that P.W.2 not only received serious injuries but also he was unconscious for sometime and that therefore, the said statement was recorded treating the same as dying declaration, which clearly shows his serious condition. Ex.P-43 – the wound certificate of P.W.2, shows that he received as many as nine injuries, out of which,

injury No.8 was described as grievous in nature. The said injury is an incised wound (traumatic amputation of lower 1/3rd of right leg above ankle) hanging with a tag of skin red in colour. One can imagine the excruciating pain P.W.2 must have been suffering from that kind of injury accompanied by eight other injuries, all of which are incisions of significant sizes caused at different parts of the body. Therefore, it may not have been possible for him to name all the assailants, who participated in the attack. Moreover, his evidence reveals that when accused No.2 hacked deceased No.1 on his head with knife, the latter raised his left hand in order to avert the blow and his left hand got cut off upto the wrist and then, the witness dragged deceased No.1 to inside the house, closed the doors and they hid themselves in the kitchen. Therefore, there was no possibility of P.W.2 noticing all the assailants. He could only come out with the names of those persons whom he noticed when they were attacking himself and deceased No.1. This clearly shows the truthfulness of the evidence of P.W.2 who had no opportunity of naming all other accused. Hence, the mere fact of P.W.2 not naming all the accused other than accused Nos.1 to 4, 7, 9 and 11 does not affect the credibility of

the case of the prosecution as regards the involvement of other accused.

20. As regards the submission of the learned counsel for the appellants relating to the absence of the motive, as discussed hereinbefore, there was a serious dispute over the management of Ramalayam and the property owned by the temple between the two groups. Though the defence has taken the stand that deceased No.1 has not filed any suit in connection with the management of Ramalayam, P.Ws.1 to 4 spoke about the existence of such disputes. No doubt, P.W.17 – the Investigating Officer, deposed that he did not collect the evidence of pendency of the suit. Significantly, though P.Ws.1 and 2 spoke about the pendency of the suit filed by deceased No.1, no suggestion was put to these witnesses on behalf of the accused that no such suit is pending. Obviously, as an afterthought such suggestions have been put to P.Ws.3, 4 and 17, who were examined thereafter. However, the evidence of P.Ws.1 to 4 would clearly establish that serious disputes between the two groups exist over the management of Ramalayam and the land standing in the name of the temple.

21. In **Shivaji Genu Mohite v. State of Maharashtra**³, the Supreme Court held that evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence, that such evidence would form one of the links in the chain of circumstantial evidence in such a case, but, that would not be so in cases where there are eye-witnesses of credibility, though even in such case if motive is properly proved such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion, but that does not mean that if motive is not established the evidence of an eye-witness is rendered untrustworthy.

22. In a catena of decisions, the Supreme Court held that even if the absence of motive as alleged is accepted, that is of no consequence and it pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to the commission of an offence, the motive part loses its significance and if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance (**Hari Shanker v.**

³ AIR 1973 SC 55

State of U.P.⁴, Bikau Pandey and others v. State of Bihar⁵, and Abu Thakir and others v. State of Tamil Nadu⁶).

23. In **Suresh Chandra Bahri v. State of Bihar⁷** the Supreme Court held that motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention, that in a case where there is clear proof of motive for the commission of the crime, it affords added support to the finding of the court that the accused was guilty of the offence charged with, but it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless becomes untrustworthy and unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to adopt a certain course of action leading to the commission of the crime. In **Ujagar Singh v. State of Punjab⁸** the Supreme Court reiterated its view that motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

⁴ (1996) 9 SCC 40

⁵ (2003) 12 SCC 616

⁶ (2010) 5 SCC 91

⁷ 1999 SCC (1) Supp. 80

⁸ (2007) 13 SCC 90

24. In **Subedar Tewari v. State of Uttar Pradesh**⁹ the Supreme Court observed that the evidence regarding existence of motive which operates in the mind of an assassin is more often than not within the reach of others and that the motive may not even be known to the victim of the crime.

25. In the light of the settled legal position as above, if the prosecution has let in the evidence of eyewitnesses which is found trustworthy, the accused is liable to be convicted even if motive is not fully established.

26. With regard to submission No.6 of the learned counsel for the appellants relating to the discrepancy relating to the door number of the house, which was projected as the scene of offence by the prosecution, in Ex.P-20 – the F.I.R. as well as Ex.P-21 – the inquest report, the door number of the house forming part of the scene of offence was shown as 1-1-33.

In his cross-examination, P.W.1 stated that he had no idea whether door number of his house is 1-89 or 1-90. He, however, added that their door number is 1-1-33; that he cannot say on which door number, he was paying the taxes for his house and that he also does not know whether door number was changed or not as he did not go to Panasapadu

⁹ 1989 Supp (1) SCC 91

after the incident. He, however, asserted that as per the door number affixed on the door of his house, its number is 1-1-33. He denied the suggestion that the said door number belongs to one Rayapudi Gangabavani and not to him. He also denied the suggestion that by the date of the incident, his door number was 1-89 or 1-90 and further, he volunteered to say that no such number was affixed to the door of his house. In his evidence, P.W.11 – the Panchayat Secretary, Panasapadu, admitted that as per Ex.D-7 certificate, house bearing No.1-1-33 was in the name of Rayapudi Bhavani. Though the defence sought to elicit some discrepancy in the door number forming part of the scene of offence, no suggestion was put to any of the prosecution witnesses that the alleged offences did not occur at the place projected by the prosecution and that it deliberately shifted the scene of offence. In the absence of such suggestion, the alleged discrepancy in the door number has no relevance at all and that it does not, in any manner, weaken the case of the prosecution. The evidence of the injured eyewitnesses regarding the scene of offence remained unshaken. The injured witnesses are also termed as stamped witnesses.

27. In criminal jurisprudence, the testimony of an injured witness has high evidentiary value, for, ordinarily a person who suffered injuries at the hands of another would not shield the real offender and falsely implicate an innocent. This view of ours is supported by a catena of judgments (Vide **Ramlagan Singh v. State of Bihar**¹⁰, **Malkan Singh v. State of U.P.**¹¹, **Machhi Singh v. State of Punjab**¹², **Appabhai v. State of Gujarat**¹³, **Bonkya v. State of Maharashtra**¹⁴, **Bhag Singh v. State of Punjab**¹⁵, **Mohar v. State of U.P.**¹⁶, **Dinesh Kumar v. State of Rajasthan**¹⁷, **Vishnu v. State of Rajasthan**¹⁸, **Annareddy Sambasiva Reddy v. State of A.P.**¹⁹, and **Balraje v. State of Maharashtra**²⁰).

28. In **State of Madhya Pradesh v. Mansingh and others**²¹, the Supreme Court held that the evidence of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

¹⁰ (1973) 3 SCC 881

¹¹ (1975) 3 SCC 311

¹² (1983) 3 SCC 470

¹³ 1988 Supp SCC 241

¹⁴ (1995) 6 SCC 447

¹⁵ (1997) 7 SCC 712

¹⁶ (2002) 7 SCC 606

¹⁷ (2008) 8 SCC 270

¹⁸ (2009) 10 SCC 477

¹⁹ (2009) 12 SCC 546

²⁰ (2010) 6 SCC 673

²¹ (2003) 10 SCC 414

29. In **B.K. Channappa v. State of Karnataka**²², though the Supreme Court found certain contradictions in the evidence of the material witnesses, it has placed heavy reliance on the testimony of injured witnesses despite some improvements, contradictions and omissions therein. After referring to relevant case law on this aspect, the Supreme Court in **Abdul Sayeed v. State of M.P.**²³, succinctly summarized the law as under:

“The law on the point can be summarized to the effect that the testimony of the injured witness is accorded a special status in law. This is as a sequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

Hence, the alleged discrepancy in the door number is wholly insignificant.

30. The stage is now set for considering the crucial aspect of the evidence, against each of the accused. It is necessary for us to refer to and discuss the oral testimony of the direct witnesses with reference to the medical evidence and the omissions elicited from the evidence of P.W.17. Ex.P-37 is the postmortem report pertaining to deceased No.1 issued by

²² (2006) 12 SCC 57

²³ (2010) 10 SCC 259

P.W.13 and Ex.P-36 is the postmortem report pertaining to deceased No.2 issued by P.W.12.

31. As regards the part played by appellant No.1 in Criminal Appeal No.359 of 2011/accused No.1, P.W.1 deposed that the said accused hacked deceased No.2 on his left knee with knife. No omission could be elicited on this aspect from P.W.17. In all, seven injuries were found on the body of deceased No.2. Injury No.4 corresponds to the aforesaid overt act given by appellant No.1/accused No.1 i.e., a skin deep cut incised wound of 2½ cms. x 1½ cm on the front of middle of left leg, 18 cms. below the left knee. P.W.1 also deposed that the said accused hacked him on his left cheek. Ex.P-42 is the wound certificate of P.W.1 issued by P.W.16. In all, four injuries were received by P.W.1. Injury No.2 is an incised wound of 3 cms. x 1 cm. on left cheek extending from left ear to angle of mouth red in colour. Thus, the overt acts relating to the attack on deceased No.2 and also himself (P.W.1) attributed to appellant No.1/accused No.1 is amply supported by the medical evidence. P.W.2 also spoke about appellant No.1/accused No.1 hacking deceased No.1 with knife on his right shoulder. Injury No.8 in Ex.P-37 corresponds to this injury. P.W.3 also corroborated P.W.1's testimony of attack on him by appellant

No.1/accused No.1 on his (P.W.1's) left cheek with knife. Thus, the attack on P.W.1 as well as deceased No. 2 by accused No.1 is amply proved by the oral testimony supported by the medical evidence.

32. As regards appellant No.2 in Criminal Appeal No.359 of 2011/accused No.2, P.W.1 deposed that the said accused hacked on the head of deceased No.1 with knife and when the latter put his left hand to avert the blow, the same landed on his left hand wrist. P.W.2 deposed that the said accused hacked deceased No.1 on his head with knife on the front and back side and also on his face. P.Ws.3 and 4 also corroborated the testimony of P.W.1. Injury No.3 in Ex.P-37 as spoken by P.W.13 supports the testimony of P.Ws.1, 3 and 4. Various injuries on the head of deceased No.1 were spoken only by P.W.2, obviously for the reason that these injuries were inflicted after deceased No.1 was pulled inside a room by P.W.2 and closed the doors and the accused party forced to open the doors and attacked both deceased No.1 and P.W.2 inside the room, leaving no possibility for P.Ws.1, 2 and 3, who remained outside, to observe this part of the attack. Injury Nos.1 to 4, correspond to the injuries spoken by P.W.2. This evidence,

thus, clearly establishes the attack on deceased No.1 by accused No.2.

33. Coming to appellant No.3 in Criminal Appeal No.359 of 2011/accused No.3, P.W.1 deposed that the said accused attacked him with knife on his left side of forehead, apart from attacking deceased No.2 on his left hand elbow with knife. P.W.2 deposed that this accused hacked deceased No.1 on the left side abdomen with knife. P.W.3 deposed that the said accused hacked deceased No.2 with knife on his left forearm. As regards the injuries on P.W.1, injury No.1 in Ex.P-42 corresponds to the injury spoken by him. As for the injuries caused to deceased No.2, injury No.2 in Ex.P-36 corresponds to the injury spoken by P.Ws.1 and 3. Thus, the evidence of P.W.1 as corroborated by P.W.3 is amply supported by the medical evidence.

34. Since accused No.4 died, it is not necessary to discuss the evidence relating to him.

35. As regards appellant No.4 in Criminal Appeal No.359 of 2011/accused No.5, P.W.1 alleged that he beat deceased No.2 with a stick on his head. This injury corresponds to injury No.6 in Ex.P.36 – a contusion of 2 cms. x 2 cms. under the scalp of right side of occipital region. P.W.12 was not subjected to

cross-examination on this injury. Thus, the testimony of P.W.1 is corroborated by Ex.P-36.

36. In respect of appellant No.5 in Criminal Appeal No.359 of 2011/accused No.6, P.W.1 deposed that he hacked P.W.3 with knife near his left hand elbow. P.W.3 corroborated the evidence of P.W.1 in this regard. There is a slight variation regarding the part on which the blow landed. Injury No.4 *viz.*, a laceration on left forearm measuring 3 cms x 2 cms. red in colour in Ex.P-38 wound certificate of P.W.3 corresponds to the injury spoken by P.Ws.1 and 3. The slight variation regarding the part on which the blow landed between oral evidence and medical evidence which is not of much significance as P.W.3 received injury on his left hand. Regarding the attack on P.W.2, he deposed that the said accused hacked him with knife on his left knee. We do not find corresponding injury in Ex.P.43. However, participation of the said accused in the attack on P.W.2 is amply proved by the testimony of P.Ws.1 and 3 and the medical evidence.

37. As regards appellant No.6 in Criminal Appeal No.359 of 2011/accused No.7, in the charges framed by the Court, no specific overt acts have been alleged against this accused. However, omnibus charges have been framed that he along

with the other accused committed the offences punishable under Sections 302, 307, 326, 147, 148, 452 read with Section 149 I.P.C. for causing the death of two persons *viz.*, deceased Nos.1 and 2 and injuries to four persons *viz.*, P.Ws.1 to 4. No doubt, in Ex.P-1 report of P.W.1, the presence of this accused was referred to but no specific overt acts were attributed to him. However, in the charge sheet filed by the Police, this accused allegedly beat P.W.2 with a stick on his left upper arm. P.W.2 also deposed in his evidence that accused No.7 beat him with a stick on his left upper arm. Ex.P-43 – the wound certificate does not disclose any injury on the left arm of P.W.2. Not only that P.W.2's evidence was not corroborated by the testimony of any other eyewitness but also the overt act alleged against the said accused by P.W.2 is not supported by the medical evidence. Therefore, the presence and participation of accused No.7 in the commission of the offences are not proved by the prosecution.

38. We shall now deal with appellant No.7 in Criminal Appeal No.359 of 2011/accused No.8. In Ex.P-1 report, P.W.1 stated that this accused beat him on his left wrist. In the charge sheet filed by the Police, it was alleged that accused No.8 beat P.W.1 on the left upper arm with a stick. In charge

No.4 framed by the Court also the said overt act was attributed to accused No.8. P.W.1 in his evidence deposed that accused No.8 beat him with a stick on his right upper arm. Ex.P-42 – the wound certificate of P.W.1, does not contain a corresponding stick injury on the right upper arm. Injury No.4 pertains to an incised wound of 2 cms x 1 cm on the back of right shoulder, which could not have been caused with a stick. Further, we find serious contradiction between Ex.P.1 and the charge on one side, and the oral testimony of the witnesses on the other, regarding the hand to which injury was caused.

39. Accused No.8 is also charged with the attack on P.W.4 with a stick on the back of his head. Ex.P-39 – wound certificate of PW-4 refers to 4 injuries on the head portion. Injury No.4 - a lacerated wound of size 3 cms. x 2 cms. present in occipital region with bleeding, corresponds to the injury attributed to this accused. The learned counsel for the appellants has submitted that since there are three more injuries found on P.W.4 on his head region, it is not safe to convict this accused. He has further submitted that the defence was able to extract omission from P.W.17 to the effect that P.W.4 did not state that accused No.8 attacked him.

40. In our opinion, when three persons i.e. accused Nos.8, 18 and 20 are alleged to have attacked P.W.4 and when four injuries were present on P.W.4, it is quite probable that accused Nos.18 and 20 must have individually attacked and caused other injuries to him. The testimony of P.W.4 is corroborated by Ex.P-39.

41. As regards the submission of the learned counsel for the appellants about the omission extracted from P.W.17, in our opinion, mere omission on the part of P.W.4 to refer to the attack of accused No.8 cannot be taken as the sole factor for giving him the benefit of doubt. After all, the Court has to keep in mind, the brutal nature of the attack, resulting in death of two persons and causing of serious injuries to four others, including P.W.4. In this situation, we cannot expect a victim to have a vivid memory of the persons by whom and the manner in which the attack has taken place, when his statement is recorded by the Police, close on the heels of the incident, especially as the victims would not have recovered from the deep shock, they must have gone at the time of recording their statements. The evidence on record, thus, proves attack of P.W.4 by accused No.8 though his attacking P.W.1 was not proved by the prosecution.

42. As for appellant No.8 in Criminal Appeal No.359 of 2011/accused No.9, P.W.1 in Ex.P-1 names the said accused. However, no specific overt act has been alleged against him. In the charge sheet filed by the Police, it was alleged that accused No.9 hacked P.W.2 below the chin with a knife. P.W.1, however, stated that accused No.9 hacked him on his forehead on the right side with knife, but P.W.2 deposed that accused No.9 hacked him below his chin. Injury No.1 in Ex.P-43 - an incision of 2 cms. x 1 cm on right mandible medially, red in colour, corresponds to injury spoken by P.W.2.

43. With regard to this accused also, the learned counsel for the appellants has advanced the same submissions as was done in the case of accused No.8 *viz.*, that P.W.17 admitted that P.W.2 did not state before him that accused No.9 attacked him. The fact, however, remains that the testimony of P.W.2 is amply corroborated by the medical evidence. Though P.W.1 deposed that accused No.9 attacked P.W.2 on his forehead, this contradiction cannot be viewed as serious because, in the fury of attack, every witness is not expected to remember the graphic details as to which accused attacked which person on which part. In any event, the injuries spoken to by P.W.1 are also on the face and not far away from mandible area.

44. The same reasons as assigned in case of accused No.8, equally apply in the case of accused No.9 also as regards the omission spoken to by P.W.17.

45. With respect to appellant No.9 in Criminal Appeal No.359 of 2011/accused No.10, the charge sheet filed by the Police alleged that he hacked on the right buttock of P.W.3 with a knife. Both the charge sheet and the charge framed by the Court alleged that there was collective attack by all the accused including accused No.10 on deceased No.1 apart from accused No.10 hacking P.W.3 on his right buttock with a knife. Ex.P-1 did not allege specific overt acts to this accused. In the charges framed by the Court, charge No.5 alleged that this accused hacked on the right buttock of P.W.3 with a knife. P.W.2 deposed that accused No.10 hacked deceased No.1 on his hands with a knife. Ex.P-37 – post mortem report of deceased No.1 shows as many as seven injuries i.e., injury Nos.7 to 13 over both the hands which were described as incised cut injuries. Thus, the oral testimony as well as the medical evidence prove the overt acts attributed to this accused against deceased No.1. As regards the attack on P.W.3, in Ex.P-38 – the wound certificate of P.W.3 does not contain any corresponding injury. Therefore, the charge to this effect is not

proved. Charge on accused No.10 attacking deceased No.1 has nevertheless been proved.

46. As regards appellant No.10 in Criminal Appeal No.359 of 2011/accused No.11, he is charged with hacking P.W.3 with a knife on the left leg calf muscle. In his evidence, P.W.3 deposed to the said effect. P.W.4, however, has a different version to come out with. He has alleged that accused No.11 has hacked P.W.3 on the left ear (ear lobe severed) and legs with a knife. He also deposed that this accused has also hacked P.W.1. There is severe contradiction between the evidence of P.Ws.1 and 3 on the one side and P.W.4 on the other. The injuries attributed by P.W.4 to P.Ws.1 and 3, were not spoken to by the latter, who are the alleged victims at the hands of accused No.11. In Ex.P-38 – wound certificate of P.W.3, injury No.9 is ‘a laceration on back left ear 2 x 1 cm bleeding present’ corresponds with the injury spoken to by P.W.4 as inflicted by this accused on P.W.3. However, P.W.1 has alleged that this injury was caused by accused No.4 to P.W.3. Thus, the injury on the left ear of P.W.3 cannot be attributed to accused No.11. As regards the injury on left leg calf muscle, the specific allegation is that accused No.11 has hacked P.W.3 with a knife. P.W.14 - the Doctor who issued Ex-P38 – wound certificate of

P.W.3, in his chief-examination, deposed that injury Nos.1 to 6 could be caused by M.O.14 (crowbar). In his cross-examination, he deposed that there are no incised wounds as per Exs.P-38 and 39 and that if sharp edge of M.O.1 (knife) is used, none of the injuries as shown in Ex.P38 and 39 could be caused. He, however, added that they could be caused if blunt side of M.O.1 could be used. When it is the specific case of the prosecution that accused No.11 has hacked P.W.3 with a knife, it cannot be presumed that he could have caused the injury on the left leg calf muscle of P.W.3 with the blunt side of the knife. Thus, the medical evidence does not support the charge against accused No.11. Accordingly, accused No.11 is entitled to the benefit of doubt.

47. Accused No.12 expired during the pendency of the appeals and hence, it is not necessary to discuss evidence against him.

48. Coming to appellant No.11 in Criminal Appeal No.359 of 2011/accused No.13, the charge sheet filed by the Police as well as the charges framed by the Court, allege that he hacked P.W.2 on the (right) knee with a knife. Though an omission was elicited from P.W.17 that P.W.2 did not state about accused No.13 attacking him, the evidence of P.W.2 is amply supported

by the medical evidence i.e. Ex.P-43 - the wound certificate of P.W.2, wherein injury No.5 is described as an incision of 5 cms. x 3 cms. above the left knee red in colour. Nothing could be elicited from P.W.16 - the Doctor, who issued Ex.P-43 to discredit the medical evidence. Therefore, the prosecution has succeeded in proving the charge against accused No.13.

49. Appellant No.12 in Criminal Appeal No.359 of 2011/accused No.14 was alleged to have beaten P.W.4 with a stick on left wrist. As per the charge sheet filed by the Police as well as the charges framed by the Court, this accused allegedly beat P.W.4 on both legs with sticks. However, P.W.4 deposed that accused No.14 beat him with a stick on left wrist. Though injury No.6 in Ex.P-39 shows that P.W.4 sustained swelling over left forearm. Thus the ocular evidence is in complete contradiction with the specific charge that the said accused attacked P.W.4 with sticks on his legs. This accused is therefore entitled to benefit of doubt.

50. The charge against appellant No.13 in Criminal Appeal No.359 of 2011/accused No.15 is two fold; that he hacked P.W.1 on his right shoulder with knife and he also hacked P.W.3 on the right ear with a knife. P.W.1 in his evidence spoke about the fact of accused No.15 attacking him as alleged by the

prosecution. Ex.P-42 – wound certificate of P.W.1 issued by P.W.16 describes injury No.4 as an incised wound of 2 cms. x 1 cm on the back of right shoulder. P.W.16 - the Doctor, also opined that the said injury is possible with MOs.9 and 15 i.e. knives. Thus, the prosecution is able to prove that accused No.15 attacked and caused injury to P.W.1. As regards the attack on P.W.3, Ex.P-38 – the wound certificate of P.W.3 issued by P.W.14 – the Doctor, describes injury No.7 as an abrasion over right leg below knee joint measuring 2 cms. x 1 cm, red in colour. The medical evidence amply corroborates the oral evidence of P.W.3. Therefore, the guilt of accused No.15 is proved beyond reasonable doubt.

51. Appellant No.1 in Criminal Appeal No.361 of 2011 /accused No.16 allegedly beat P.W.1 on his legs with a stick. Ex.P-42 – the wound certificate of P.W.1 issued by P.W.16 does not find a corresponding injury on P.W.1. Therefore, the conviction of this accused cannot be sustained.

52. The charge against appellant No.3 in Criminal Appeal No.361 of 2011/accused No.19 is two fold, *viz.*, that he attacked deceased No.1 on his right shoulder with a crowbar and also poked P.W.3 with a crowbar on his right ankle. P.W.2 deposed that accused No.19 attacked deceased No.1 with a

crowbar on the right side of his back. P.W.3 stated that this accused poked him with a crowbar on his right ankle. While Ex-P37 – the post mortem report relating to deceased No.1, does not find a corresponding injury, however, Ex.P-38 - the wound certificate of P.W.3, finds injury No.6 which is described as a lacerated injury over back of right ankle measuring 2 x 1 cm bleeding present. P.W.14 - the Doctor, who issued Ex.P-38, deposed that the said injury could be caused by hard and blunt object like M.O.14 – crowbar. Thus, the ocular and medical evidence completely support the charge that accused No.19 attacked P.W.3 with a crowbar and caused injury on his right ankle. Thus, accused No.19 was rightly convicted by the Court below.

53. With regard to appellant No.4 in Criminal Appeal No.361 of 2011/accused No.20, the specific charge framed by the Court below is that, this accused beat P.W.1 on the right upper arm with an iron rod. However, P.W.1 in his evidence deposed that this accused beat him on his left shoulder with iron rod. In Ex.P.42 –the wound certificate of P.W.1, injury No.4 is described as an incised wound of 2 cms. x 1 cm on the back of right shoulder corresponding to the said injury. P.W.16 – the Doctor who issued Ex.P-42 - wound certificate, opined that all

injuries are possible with the weapons like M.Os.9 and 15 i.e. knives. Thus, there is huge contradiction between the charge and the oral evidence and also the medical evidence. As noted herein before, while the charge is that accused No.20 attacked P.W.1 on the right shoulder, the latter, however, deposed that he was attacked on the left shoulder. Added to this, the nature of the injury and the weapon allegedly used, are not supported by the medical evidence. Regarding the alleged attack by this accused on P.W.4, the said witness deposed that he was hacked by accused No.20 on his forehead and a knife was allegedly seized from the possession of this accused. Injury No.1 in Ex.P.39 - the wound certificate of P.W.4, is described as a lacerated wound of size 3 cms. x 1 cm. present on the forehead of P.W.4. The allegation that P.W.4 was hacked, pre-supposes the use of a sharp edged weapon like a knife. Though P.W.14 - the Doctor, who issued Ex.P-39, in his chief- examination opined that injuries No.1, 2, 3 and 4 could be caused by M.Os.1, 4, 14 and 23 – knife, iron rod, crowbar and stick respectively, in his cross-examination, he admitted that M.O.1 is a cutting weapon, that no incised wounds are shown in Ex.P-38 and that, if sharp edge of M.O.1 is used, none of the injuries as described in Ex.P-38 could be caused. He further added that

those injuries could be caused if blunt side of M.O.1 is used. Thus, the medical evidence does not support the case of the prosecution. While it is the specific case of the prosecution that P.W.4 was hacked by accused No.20 on the forehead, no such hacking injuries were found in Ex.P-38. It is not the case of the prosecution that the blunt side of the knife was used by accused No.20 to cause lacerated injury over the forehead of P.W.4. For these reasons, we do not feel persuaded to accept the finding of the Court below in holding accused No.20 guilty of the charges.

54. As for Appellant No.5 in Criminal Appeal No.361 of 2011/accused No.21, he was charged with attacking P.W.4 with a stick. Both P.Ws.3 and 4 spoke about this charge. Injury No.5 in Ex.P-39 issued by P.W.14 is described as an abrasion over right and left knee joint measuring about 2 cms. x 2 cms., red in colour. P.W.14 in his evidence stated that injury No.5 could be caused with sticks. This evidence would clearly prove the case of the prosecution *qua* accused No.21.

55. In the result, the Criminal Appeals are allowed in part. The conviction and sentencing of Appellant Nos.1 to 5, 7, 8, 9, 11 and 13 in Criminal Appeal No.359 of 2011 (Accused Nos.1 to 3, 5, 6, 8, 9, 10, 13 and 15 in S.C.No.311 of 2008) and

Appellant Nos.3 and 5 in Criminal Appeal No.361 of 2011 (Accused Nos.19 and 21 in S.C.No.311 of 2008) are confirmed.

56. The conviction and sentencing of Appellant Nos.6, 10 and 12 in Criminal Appeal No.359 of 2011 (Accused Nos.7, 11 and 14 in S.C.No.311 of 2008) and Appellant Nos.1 and 4 in Criminal Appeal No.361 of 2011 (Accused Nos.16 and 20 in S.C.No.311 of 2008) are set aside. Since all the appellants are stated to have been enlarged on bail, they shall forthwith surrender before the Superintendent, Central Prison, Rajahmundry. Out of all the appellants, appellant Nos.6, 10 and 12 in Criminal Appeal No.359 of 2011 and appellant Nos.1 and 4 in Criminal Appeal No.361 of 2011 shall be released after completing the required formalities. The fine amount, if any, paid by them shall be returned to them.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

07-02-2018

bnr/dr/ghn/msb

Note: LR copies to be marked.

(B.O)

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