

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

Criminal Appeal No.878 and 1160 of 2011, and 1056 of 2013

DATED:03-07-2018

Criminal Appeal No.878 of 2011

Between:

Kasava Jayaram

and others

... Appellants

And

State of A.P., rep. by

Public Prosecutor

High Court, Hyderabad

... Respondents

COUNSEL FOR THE APPELLANTS: Smt. C. Vasundhara Reddy

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

Criminal Appeal No.1160 of 2011

Between:

M. Jayalakshmi

... Appellant

And

Merugu Harikrishna

and others

... Respondents

COUNSEL FOR THE APPELLANT: Mr. K. Suresh Reddy

COUNSEL FOR RESPONDENT NOS.1 to 10:

Smt. C. Vasundhara Reddy

COUNSEL FOR RESPONDENT NO.11: Public Prosecutor (AP)

Criminal Appeal No.1056 of 2013

Between:

The State of A.P.,

Rep. by the Public Prosecutor

High Court of A.P., Hyderabad

... Appellant

And

Merugu Harikrishna

and others

... Respondents

COUNSEL FOR THE APPELLANT: Public Prosecutor (AP)

COUNSEL FOR THE RESPONDENTS: Smt. C. Vasundhara
Reddy

The Court made the following:

COMMON JUDGMENT:

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

This batch of criminal appeals arises out of Sessions Case No.64 of 2008 on the file of the II Additional District and Sessions Judge (Fast Track Court), Srikakulam. Criminal Appeal No.878 of 2011 is filed by accused Nos.2 to 6, 8, 10 and 11 against conviction of accused Nos.2 and 5 for the offence under Section 341 of the Indian Penal Code (IPC) and sentencing them to pay a fine of Rs.500/- each and in default of payment of the fine, to suffer simple imprisonment for a period of one month; conviction of accused No.6 for the offence under Section 341 IPC and sentencing him to pay a fine of Rs.500/- and in default of payment of the fine to suffer simple imprisonment for a period of one month, and also his conviction for the offence under Section 323 IPC and sentencing him to pay a fine of Rs.1,000/- and in default of payment of the fine, to suffer simple imprisonment for a period of one month; conviction of accused No.3 for the offence under Section 341 IPC and sentencing him to pay a fine of Rs.500/- and in default of payment of the fine, to suffer simple imprisonment for a period of one month, and also his conviction for the offence under Section 323 IPC and sentencing him to pay a fine of Rs.1,000/- and in default of

payment of the fine, to suffer simple imprisonment for a period of one month; conviction of accused Nos.3, 4, 8, 10 and 11 for the offence under Section 148 IPC and sentencing them to suffer rigorous imprisonment for a period of six months for the said offence, their conviction for the offence under Section 452 IPC and sentencing to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- each, and their conviction for the offence under Section 201 IPC and sentencing them to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- each, and also their conviction for the offence under Section 302 IPC and sentencing them to suffer imprisonment for life and to pay a fine of Rs.1,000/- each and in default of payment of the fine, to suffer simple imprisonment for a period of one month each. The substantive sentences imposed against accused Nos.3, 4, 8, 10 and 11 were directed to run concurrently, while directing to set off the period of sentences, if any, undergone by them against their imprisonment. Criminal Appeal No.1160 of 2011 is filed by the defacto complainant – P.W.1, questioning acquittal of accused Nos.1, 2, 5, 6, 7, 9, 12 and 14 to 16 for the offences under Sections 302, 201, 448, 452, 324, 147, 148 and Section 354 read with Section 149 IPC, with which they are

charged and the State of Andhra Pradesh has filed Criminal Appeal No.1056 of 2013 for the same purpose for which P.W.1 has filed Criminal Appeal No.1160 of 2011.

2. The case of the prosecution as reflected from the charge sheet, in brief, is as under.

(a) One Merugu Jayalakshmi – P.W.1, defacto complainant, is a resident of Telukunchi village of Ichapuram Mandal in Srikakulam District and her husband is a retired Head Master. She had two male and two female children and both the male children are unmarried and eking out their livelihood by doing agriculture. Merugu Gurunadha Reddy (hereinafter referred to as “the deceased”) was the elder son and P.W.3 is the younger son of P.W.1. Her first daughter - P.W.2 left her husband and residing with her parents since sixteen years and her second daughter is residing with her husband in Orissa State. P.W.1 is having four acres of wet land and two slabbed houses in the village. About four years prior to the date of the occurrence, the deceased made a petition to the government against P.W.14 – Panchayat Secretary and accused No.10 – Sarpanch of Telukunchi village complaining that they issued fake native and caste certificates. As the deceased failed to follow the customary practice in the Reddika

caste people of first approaching the village caste elders for solution of their problems, the Sarpanch and some others attacked the deceased and beat him. Then the deceased decided to lodge a complaint before the Police, but the village elders forced him to raise the issue before the caste elders. The deceased and his family members approached their caste elders for justice and they directed the deceased to withdraw the petition sent by him to the Government, but the deceased refused to do so. Subsequently, the deceased sent a number of petitions to various departments against the caste elders and during enquiries by the Government officials and the Police, the village caste elders were being called to various offices for enquiry, which annoyed the caste elders.

(b) In the morning on 19.3.2006 accused No.10 - Sarpanch of the village got made a public announcement in the village and called for a village meeting at Pedda Mandapam situated in the middle of the village to discuss the village problems. Accordingly at about 09.00 Hours, caste elders – accused No.10, accused No.8 (ZPTC Member), accused No.14 (Ex. MPTC Member), accused Nos.5, 11, 12, 13 and 16 held a meeting at the Pedda Mandapam. Accused Nos.1 to 4, 6, 7, 9 and 15 and some other villagers – P.Ws.5 to 10 and L.Ws.9 to

12, 14, 15 and 17, also attended the meeting. While discussing the village problems and funds for development of the Goddess temple, the issue of the deceased causing inconvenience to the caste elders has come up. Then the caste elders, accused Nos.5, 8, 10 to 14 and 16, directed accused Nos.1 to 6 and accused No.11 to produce the deceased at the Mandapam. On the same day morning, P.W.4 – grandson of P.W.1, came to the village from Kotarisingi village of Orissa and informed about the death of sister-in-law of P.W.1. When P.W.1 left her house at about 09.30 Hours along with P.W.4 on his motor cycle to go to the said village in Orissa to pay condolence on the death of her sister-in-law, on the way, on the main road itself, accused Nos.1 to 6 and 11 obstructed P.W.1 and both accused Nos.3 and 6 beat her with hands and pushed her on the road, as she did not attend the village meeting. The other accused chased her upto her house. P.W.1 returned to her house and informed about the development to the deceased, P.Ws.2 and 3 and L.W.4 (Merugu Thatayya Reddy). P.W.1 and the deceased sent P.W.4 to Ichapuram Rural Police Station to inform the developments to the Police. P.Ws.1 and 3 made another attempt to leave the village by bus, but accused Nos.1, 3, 4 and 11, who were present at the bus stop armed with sticks,

threatened P.W.1 with dire consequences. Out of fear, they returned home at about 10.00 Hours and informed the deceased, P.W.2 and L.W.4. Then, accused Nos.1 to 6 and 11 returned to Pedda Mandapam, informed the caste elders and provoked them by stating that the family members of the deceased abused the caste elders and they were about to leave the village, and as such, the said accused felt insulted.

(c) Accused Nos.1 and 6 armed with iron rods, accused No.2 armed with stout stick (cricket stump), accused Nos.3 to 5, 9, 12 and 13 armed with stout sticks, accused Nos.7 and 15 armed with knives attacked the house of P.W.1 with common intention and common object, trespassed into the house by breaking open the rear door and front doors, that accused Nos.1 to 5 brought the deceased out of pooja room, that accused No.1 beat the deceased with a stout stick on the right leg, accused Nos.3 to 5 beat him with sticks on the body and that as a result, the deceased collapsed on the floor. Then accused Nos.1 to 5 along with the other accused dragged and physically lifted the deceased out of the house through the backyard and kept him on the Pedda Mandapam. P.W.2 – elder sister of the deceased followed the accused to Pedda Mandapam, while the other family members remained in the

house due to fear. On the Pedda Mandapam, again accused Nos.1 to 7 beat the deceased with sticks, knives and rods on the head and other parts of the body on the abetment of accused Nos.8 to 16 and as a result, the deceased received severe bleeding injuries and became unconscious. When P.W.2 tried to rescue the deceased, accused No.13 assaulted and pushed her on the ground, as a result, her blouse was torn. Due to fear, she returned to the house and informed the same to P.Ws.1, 3 and L.W.4. The caste elders, accused Nos.8 to 16, thought that the deceased died and directed accused Nos.1 to 7 to throw away the body in the outskirts. Accused Nos.1 to 7 lifted the dead body, taken it through Kotta Veedhi, went to the Goddess temple and kept the body in the fields. Accused No.4 brought one gunny bag for keeping the dead body and while the body is being shifted into the gunny bag they found some movement in the body. Then accused No.2 kept his leg on the front portion of the neck of the deceased and pressed hard, as a result of which, the deceased lost his breath. During this period, P.W.4 went to Ichapuram Rural Police Station and informed P.W.17 – Sub-Inspector of Police about the villagers assaulting P.W.1.

(d) On the directions of P.W.17, P.W.12 – Head Constable and P.W.13 – Home Guard of Ichapuram Rural Police Station, went to the house of P.W.1. When accused Nos.1 to 7 came to know about the Police visiting the village, they immediately kept the dead body of the deceased in a gunny bag, carried the same through fields and hid the dead body in the hollow of a tree situated in the outskirts of the village. Later, they burnt the bloodstained gunny bag and polyester shirt of the deceased to ashes after passing $\frac{1}{2}$ km and all the accused escaped to Orissa. All the villagers including P.Ws.5 to 10 and L.Ws.9 to 12, 14, 15 and 17, who gathered at the Mandapam got scared about this incident, and left the village apprehending arrest by the Police. P.Ws.1 to 3 and L.W.4 with the escort of P.W.2 came to Ichapuram Rural Police Station at 14.00 Hours and lodged a complaint with P.W.17, who registered the complaint as Crime No.6 of 2006 under Sections, 323, 324, 364, 448, and 452 read with Section 34 IPC and investigated into. During the course of investigation, P.W.17 prepared a rough sketch and observation report of the first scene of offence, i.e., the house of P.W.1 on 19.3.2006 at 16.00 Hours and seized two broken wooden pieces, and wrist watch of the deceased under the cover of mediators' report duly attested by

P.W.14 and L.W.25 (Annepu Surya Rao). Soon thereafter, P.W.17 prepared a rough sketch and observation report of the second scene of offence, i.e., Pedda Mandapam and the said report was attested by P.W.14 and L.W.25 - mediators. P.W.17 also seized the blood stains on the floor of the Mandapam and preserved the blood swabs collected. He got the scene of offence photographed by P.W.15 and videographed by L.W.27 and caused search for the dead body of the deceased.

(e) On 20.03.2006 at 10.00 Hours on the complaint of P.W.14 the provisions of law were altered by P.W.17, to Sections 302, 323, 324, 364, 448, 452, 147, 201 read with Section 149 IPC. P.W.18 – Inspector of Police, Ichapuram, took up the investigation and verified the investigation made by P.W.17 and continued the investigation. P.W.18 conducted inquest over the dead body of the deceased on 20.03.2006 from 12.00 to 15.00 Hours in the presence of panch witnesses – P.W.14 and L.Ws.25 and 26 and three others. During inquest, the panchayatdars unanimously opined that the deceased died only due to the injuries caused by accused Nos.1 to 7 on the instigation of accused Nos.8 to 16 after all the accused conducted meeting at Pedda Mandapam with the common intention and common object armed with deadly weapons.

P.W.18 observed the third scene of offence, i.e., the place from where the dead body was recovered, prepared a report which was duly attested by P.W.14 and L.W.25, prepared a rough sketch of the scene of offence and got the same photographed and videographed by P.W.15 and L.W.27, respectively.

(f) On 01.04.2006 on a tip of information, P.W.18 and his staff secured two mediators and went to Sasanam village main road junction, arrested accused Nos.1 to 7, 9, 11 to 13, 15 and A.16 at 10.00 Hours after informing them the grounds of arrest and recorded their detailed confessional statements from 10.00 Hours to 12.00 Hours, duly attested by P.W.14 and L.W.25. All the accused admitted their guilt and participation in the commission of the offence and also voluntarily showed and produced the weapons used by them in commission of the offence.

(f) Accused Nos.1 to 7, in pursuance of their confessional statement, led P.W.18, and mediators - P.W.14 and L.W.25, to the fields of Simhachala Baditya located in the outskirts of Birlangi Panchayat. Accused Nos.1 to 7 one after another went into the bushes and picked up iron rods, sticks and knives that were used in the commission of the offence and produced them before the P.W.18, who seized the same under different

mediators' reports duly attested by P.W.14 and L.W.25. Later, accused Nos.9, 12, 13 and 15 led P.W.18, and P.W.14 and L.W.25 – mediators, to the thrashing floor situated near the Goddess temple of Telukunchi village and they also produced the sticks and a knife which they allegedly used in the commission of the offence, and the same were seized by P.W.18, who got prepared the mediators' report duly attested by P.W.14 and L.W.25. Later, all the said accused were produced before the Court for judicial remand and later they were released on bail.

(g) P.W.18 arrested accused Nos. 8 and 10 on 01.05.2006, and accused No.14 on 15.06.2006 and produced them before the jurisdictional Magistrate and later they were released on bail. P.W.16 – Medical Officer, who conducted the post-mortem examination over the dead body of the deceased, issued Ex.P.53 - post-mortem certificate, opining that the deceased might have died of shock due to haemorrhage following the head injury and other injuries and their consequences. P.W.16 also gave treatment to P.Ws.1 and 2 and issued wound certificates as they have received simple injuries. On the requisition of P.W.18, L.W.30 – Judicial Magistrate of First Class, Tekkali, recorded the statements of PWs.1 to 3 under

Section 164 CrPC on 22.04.2006. During the investigation, based on the statements of Dr. Pydisetty Ramesh Kumar and Arisetty Jagadeeswara Rao, the plea of alibi of (the alleged) accused No.17 was proved and his name was deleted as accused. Hair and blood of the deceased were seized by P.W.16. P.W.18 forwarded the blood swabs collected from the second scene of offence (Pedda Mandapam), herb of the tree, hair collected from the herb of the tree, bloodstained banian of the deceased, hair, blood and viscera of the deceased preserved by the P.W.16 to the Regional Forensic Science Laboratory (FSL), Visakhapatnam, for analysis. The officer in-charge of the FSL opined that the blood group on the blood swabs seized from the second scene of offence and banian of the deceased are established as 'O' group. Thus, P.W.18 found accused Nos.1 to 16 liable for the offences punishable under Sections 302, 323, 324, 452, 354, 366, 147, 148 read with Section 149 IPC and 120(B) IPC and filed the charge sheet accordingly.

3. Based on the charge sheet and the material collected during the investigation, the lower Court has framed the following Charges:

“Firstly: That you A2 to A6 and A11 on or about the 19th day of March 2006 at about 10.00 a.m. wrongfully restrained L.W.1 Merugu Jayalakshmi and thereby committed an offence

punishable u/s 341 of the Indian Penal Code and within my cognizance.

Secondly: That you A3 on or about the same time, place and during the same transaction mentioned in the first charge voluntarily caused hurt to the said L.W.1 Jayalakshmi and thereby committed an offence punishable u/s. 323 I.P.C. and within my cognizance.

Thirdly: That you A6 on or about the same time, place and during the same transaction voluntarily caused hurt to said L.W.1 Jayalakshmi and thereby committed an offence punishable u/s 323 IPC and within my cognizance.

Fourthly: That you A2, A4 and A5 of you on or about the same time, place and during the same transaction mentioned in the first charge in furtherance of common intention of A3 and A6 voluntarily caused hurt to said L.W.1 Jayalakshmi and thereby committed an offence punishable u/s.323 r/w 34 IPC and within my cognizance.

Fifthly: That you A1 to A12, A14 to A16 along with A13 (died) on or about the same day, time and place and in continuation of same transaction as mentioned in the first charge were the members of unlawful assembly in prosecution of your common object of such assembly, viz., voluntarily causing hurt to one Merugu Jayalakshmi L.W.1 of Telukunchi village and murdering one Merugu Gurunadhareddy the deceased who is no other than the son of L.W.1 of Telukunchi village and thereby committed the offence punishable u/s 147 IPC and within my cognizance.

Sixthly: That you A1 to A16 (A13 died) on or about the same day, place and in continuation of the same transaction as mentioned in the first charge were the members of an unlawful assembly and in prosecution of the common object such assembly viz, as mentioned in the fifth charge committed the offence of rioting and at that time were armed with deadly weapon to wit. stout sticks etc., and thereby committed an offence punishable u/s 148 I.P.C. and within my cognizance.

Seventhly: That you A.1 to A.16 (A.13 died) on or about the same time, place and during the same transaction as mentioned in the fifth charge committed house trespass by entering into the house of said L.W.1 Jayalakshmi used as dwelling having made preparation for causing hurt to the said L.W.1 Jayalakshmi and that you thereby committed an offence punishable u/s 452 IPC and within my cognizance.

Eighthly: That you A1 to A7 on or about the same time, place and during the same transaction as mentioned in the fifth charge did commit murder by intentionally causing the death of the said Gurunadhareddy by beating with stout sticks,

knives and rods etc., and thereby committed an offence punishable u/s.302 IPC and within my cognizance.

Ninthly: That A.1 to A.7 of you committed the murder of the said Gurunadhareddy and that you A8 to A16 (A13 died) abetted the commission of murdering the said Gurunadhareddy which offence was committed in consequence of your abetment and that you have thereby committed an offence punishable u/s.302 r/w. 109 IPC and within my cognizance.

Tenthly: That you A.15 on or about the same time place and in continuation of the same transaction as mentioned in the fifth charge assaulted one Asi Dilleswari @ Eswari, a woman, intending to outrage her modesty by such assault and thereby committed an offence punishable u/s. 354 IPC and within my cognizance.

Eleventhly: That you A.15 on or about the same time, place and in continuation of the same transaction as mentioned in the fifth charge voluntarily caused hurt to the said L.W.2 Dilleswari Eswari who is no other than the daughter of L.W.1 and thereby committed an offence punishable u/s.323 IPC and within my cognizance.

Twelfthly: That you A1 to A6 (A13 died) on or about the same time, place and during the same transaction mentioned in the fifth charge knowing that certain offence to wit., murdering the said Gurunadhareddy punishable u/s 302 IPC has been committed, did cause certain evidence of the said offence to disappear to wit., hiding the dead body of the said Gurunadhareddy in a Gunny bag and concealed the same in the outskirts fields of the village with an intention of screening away of you A1 to A6 from legal punishment and thereby committed an offence punishable u/s.201 IPC and within my cognizance.

Lastly: That you A7 to A16 (A13 died) on or about the same time place and in continuation of the same transaction mentioned in the fifth charge abetted A1 to A6 in the commission of the offence of screening away the offence which was committed in consequence of your abetment and thereby committed an offence punishable u/s 201 r/w 109 IPC and within my cognizance.”

4. As the plea of the accused was one of denial, they were subjected to trial during which the prosecution examined P.Ws.1 to 19, got Exs.P.1 to P.63 marked and produced

M.Os.1 to 20. On behalf of the defence, no oral evidence was adduced. However, it has got Exs.D.1 to D.7 marked. On consideration of the evidence on record, the Court below has disposed of the case as referred to supra.

5. Before proceeding further, it is relevant to note that during the pendency of the appeal, accused No.3 died. Accordingly, Criminal Appeal Nos.878 of 2011 has abated qua the said accused.

6. Smt. C. Vasundhara Reddy, learned counsel for the appellants – accused, submitted that P.Ws.1 to 4, being the family members of the deceased, are interested witnesses and therefore the Court below ought to have discarded their testimony. That Ex.P.8 – scene observation report relating to the first part of the occurrence, i.e., the house of the deceased and P.W.1, did not show any traces of attack by as many as sixteen accused, that no bloodstains were noticed in the house, and that no paraphernalia in the house was found disturbed throwing any amount of suspicion on the case of the prosecution that the deceased was first attacked in the house. The learned counsel further submitted that except P.W.2, sister of the deceased, no one has allegedly witnessed the second part of the occurrence allegedly taken place at Pedda Mandapam

(Temple chavidi) and that in the absence of specific overt acts attributed by P.W.2 to any of the accused, her presence at the time of the alleged occurrence is highly doubtful. The learned counsel further submitted that as per P.W.1's own evidence, P.W.2 alone accompanied the deceased while he was being dragged from his house to Pedda Mandapam, that five minutes thereafter, she came back and told P.W.1 and other family members that all the accused beat and killed the deceased at Pedda Mandapam and took the dead body in a gunny bag towards Goddess temple. That in Ex.P.1 report which was given much later on that day and registered at 2.00 p.m., P.W.1 did not state that P.W.2 has witnessed the occurrence, that she has informed P.W.1 and others that the deceased was killed and the body was taken away by the Accused. That in Ex.P.1 P.W.1 merely referred to their attempt to go to Pedda Mandapam, the accused beating P.W.2 with hands and tearing her blouse and that she suspected that her son might have been killed. The learned counsel accordingly submitted that had P.W.2 witnessed the occurrence, P.W.1 would have mentioned in Ex.P.1 report what she has deposed in her evidence before the Court. The learned counsel accordingly argued that P.W.2 is a planted witness whose testimony cannot be relied upon. The

learned counsel further submitted that accused Nos.8 to 10 were accused of only abetting accused Nos.1 to 7 for committing the murder and in the absence of the charge either under Section 149 IPC (common object) or under Section 34 IPC (common intention), their conviction for the offence under Section 302 IPC is not sustainable.

7. Opposing the above submissions, the learned Public Prosecutor (AP) submitted that the lower Court has committed a serious error in acquitting accused Nos.1, 2, 5, 6, 7, 9, 12, 14, 15, 16 of the charge for the offence under Section 302 IPC. He further submitted that though P.Ws.1 to 4 are family members, their evidence is trustworthy and that the lower Court ought to have convicted the aforementioned accused along with accused Nos.3, 4, 8, 10 and 11 for the offence of murder. Opposing the above submissions of the learned counsel for the accused in Criminal Appeal No.878 of 2011, he submitted that the evidence on record shows that P.Ws.1, 2 and 4 are the eyewitnesses to the occurrence taken place at Pedda Mandapam, while P.Ws.1 to 4 are the eyewitnesses to the occurrence taken place at the house of the deceased and that their evidence would cumulatively reveal the true case against all the accused. Mr. K. Suresh Reddy, learned counsel for

P.W.1 – de facto complainant supported the submissions of the learned Public Prosecutor.

8. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record. We shall first consider the case with reference to accused Nos.4, 8, 10 and 11, who were convicted for the offences under Section 302 read with Section 109 IPC. The relevant charge against accused No.4 is charge No.8 and for accused Nos.8, 10 and 11, it is charge No.9 as extracted above. The substance of charge No.9 is that on the abetment of accused Nos.8 to 16, accused Nos.1 to 7 have committed the murder of the deceased.

9. As the prosecution case goes, on account of the deceased acting as a whistle blower, the accused developed grudge against him and his family members and that as the caste elders imposed fine against the family members of the deceased, they deposited gold as surety with the caste elders. That later as the deceased approached Ichapuram Rural Police Station and due to the interference of the Police, the caste elders returned the gold to the de facto complainant. That as the deceased was causing inconvenience to the caste elders, on 19.3.2006 accused Nos.5, 8, 10 to 14 and 16 directed accused Nos.1 to 6 and 11 to

produce the deceased at the Mandapam, and that on the same day P.W.4 – grand-son of P.W.1 came to the village and informed about the death of her sister-in-law. That while P.W.1 along with P.W.4 were traveling on the latter's two wheeler to go to the village of the brother of P.W.1, without attending the village meeting, on the main road itself accused Nos.1 to 6 and 11 obstructed P.W.1, accused Nos.3 and 6 beat her with hands and pushed her on the road and that the other accused chased her upto her house. That P.W.1 returned to her house and informed the said incident to the deceased, P.Ws.2 and 3 and L.W.4. That when another attempt was made by the deceased to send P.W.1 along with P.W.4, the same did not fructify, as the accused, who were waiting at the bus stop armed with sticks, threatened P.W.1. That P.W.1 has returned to her house, upon which on the instructions of the deceased, P.W.4 went to the Police Station and gave a report. That thereafter accused Nos.1 and 6 armed with iron rod, accused No.2 armed with stout stick (cricket stump), accused Nos.3 to 5, 9, 12 and 13 armed with stout sticks, and accused Nos.7 and 15 armed with knives proceeded to the house of P.W.1 with common intention and common object, trespassed into the house by breaking open the rear and front doors, that accused Nos.1 to 5

brought the deceased out of pooja room and that accused No.1 beat him with a stout stick on the right leg, and accused Nos.3 to 5 beat him with sticks on the body as a result of which he collapsed on the floor. That thereafter accused Nos.1 to 5 along with the other accused dragged and physically lifted the deceased out of the house through the backyard and kept him on the Pedda Mandapam. That P.W.2 followed the accused to Pedda Mandapam while the other family members remained in the house due to fear. That in Pedda Mandampam, again accused Nos.1 to 7 beat the deceased with sticks, knives and rods on the head and other parts of the body on the abetment of accused Nos.8 to 16, as a result of which the deceased received severe bleeding injuries and became unconscious. That when P.W.2 tried to rescue the deceased, accused No.13 assaulted and pushed her on the ground and in the process, P.W.2's blouse was torn and that due to fear she returned to the house and informed P.Ws.1 and 3 and L.W.4 about the incident at Pedda Mandapam. That accused Nos.8 to 16, the caste elders, thought that the deceased died, and directed accused Nos.1 to 7 to throw away the body on the outskirts. That accordingly accused Nos.1 to 7 have lifted the dead body and taken it through Kotta Veedhi, to the Goddess Temple and kept

the body in the fields there. That accused No.4 brought one gunny bag for keeping the dead body and that while the dead body was being shifted into the gunny bag, as they found some movement in the body, accused No.2 kept his leg on the front portion of the neck of the deceased and pressed hard, resulting in the death of the deceased.

10. When we compare the contents of the charge sheet with that of the evidence of P.Ws.1 and 2, we find serious contradictions between the two on many aspects. In the charge sheet, it was alleged that accused No.1 beat the deceased with a stout stick on the right leg, while P.Ws.1 and 2 in their evidence, however, deposed that accused No.1 beat the deceased with an iron rod on the head. In the charge sheet accused Nos.3 to 5 allegedly beat the deceased with sticks on the body, but as per the evidence of P.Ws.1 and 2, accused No.3 has beaten the deceased with a stout stick below the right knee and all the other accused have beaten the deceased.

11. With regard to the incident allegedly taken place at Pedda Mandapam, we find inconsistency between Ex.P.1 report, charge sheet and the oral evidence. As noted hereinbefore in Ex.P.1 P.W.1 has not stated that anyone has witnessed the occurrence. On the contrary, the contents of Ex.P.1 suggest

that when P.W.1 and her family members including P.W.2 were going to Pedda Mandapam, the accused attacked P.W.2 with hands and torn her blouse. P.W.1 did not claim in Ex.P.1 that either she or any of her other family members including P.W.2 reached Pedda Mandapam and witnessed the occurrence. In Ex.P.1, P.W.1 was also not sure whether her son was killed or not, whereas in the charge sheet, as noted above, P.W.2 was projected as a direct eyewitness present at the Pedda Mandapam and was allegedly assaulted and pushed on the ground when she tried to intervene and rescue the deceased and her blouse was torn at that place. While it is alleged in the charge sheet that due to fear P.W.2 returned from the Pedda Mandapam, the subsequent events were narrated as if somebody has witnessed the same, without disclosing the source. We, however, find a marked improvement over what is stated in Ex.P.1 and alleged in the charge sheet in the testimonies of P.Ws.1 and 2 on the alleged occurrence at Pedda Mandapam. P.W.1 categorically stated that after witnessing the occurrence at Pedda Mandapam P.W.2 returned to their house and informed P.W.1 that all the accused beat and killed the deceased at Village chavidi and took the body in a gunny bag to the Goddess temple. P.W.2 also repeated the same version. As

rightly submitted by the learned counsel for the accused, if P.W.2 had witnessed the occurrence leading to the killing of the deceased, the said fact would have been mentioned in Ex.P.1 and in such an event the question of P.W.1 suspecting that her son might have been killed would not have arisen.

12. Interestingly, based on Ex.P.1, Ex.P.54 – FIR was registered for the offences under Sections 323, 324, 364, 448 and 452 read with Section 34 IPC. This fact itself would show that till 2.00 p.m., when the FIR was allegedly registered, neither the family members of the deceased, nor the Police knew that the deceased was killed. The submission of the learned Public Prosecutor that after the body was found, FIR was altered adding Sections 302, 147 and 201 IPC read with Section 149 IPC is without any merit. If the Police had definite information of murder, law does not require that they need to wait till the body is recovered, for adding Section 302 IPC in the FIR. Hence, in the instant case, if the Police had information that the deceased was killed, there was no reason for them for not registering the FIR on 19.3.2006 under the provisions which were subsequently added, including Section 302 IPC. All these facts, cumulatively considered, would clearly prove that the prosecution has come out with an improved

version as regards the occurrence that has allegedly taken place at Pedda Mandapam after the initial registration of the FIR on 19.3.2006. It is quite evident from these facts that no one has witnessed the alleged occurrence at Pedda Mandapam due to which neither the family members of the deceased, nor the Police had any clue whatsoever as to whether the deceased was killed or alive. When once the version of the alleged eyewitnesses is found false, in our opinion, the whole prosecution case crumbles, for, no one knew as to the persons who were actually involved and the manner in which the attack has taken place at Pedda Mandapam.

13. The learned Public Prosecutor submitted that as there is no reason to disbelieve the version of P.Ws.1 to 3 with regard to the occurrence taken place at the house of the deceased and the fact of the deceased having been taken by the accused to Pedda Mandapam, P.Ws.1 to 3 shall be treated as last seen witnesses and that accordingly last seen theory is applicable to the case. We find a serious fallacy in this submission. Even if we accept the plea of P.Ws.1 to 3 as regards the accused taking the deceased to Pedda Mandapam, the prosecution failed to prove as to whether all the accused or some of them attacked the deceased and which injury caused by which accused was

fatal, causing the death of the deceased. Curiously, though the Police have altered the charge sheet by including Section 149 IPC, the Court has not charged the said accused under the said provision.

14. Under Section 464 of CrPC, no finding, sentence or order by a competent court of jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact occasioned thereby.

15. In **Bala Seetharamaiah v. Perike S. Rao**¹, the Supreme Court while holding that mere omission to mention Section 149 IPC may be considered as an irregularity, but failure to mention the nature of the offence committed by the accused cannot be said to be a mere irregularity and that if the accused were not told to face a charge punishable under Section 302 IPC read with Section 149 IPC, they cannot be convicted for the said offence. In **Darbara Singh v. State of Punjab**², the Supreme Court held that unless the court comes to the conclusion that as a consequence of non-framing of charge for specific offence

¹ (2004) 4 SCC 557

² (2012) 10 SCC 476

failure of justice occurred, the conviction of the accused cannot be set aside.

16. In the present case, if we analyze the charges framed by the Court, while charge Nos.5 and 6, pertain to attack on P.W.1 at her house referred to the unlawful assembly with the common object of voluntarily causing hurt to P.W.1 and committing the offence of rioting armed with deadly weapons, even the substance of charges 8 and 9 relating to Section 302 IPC and Section 302 IPC read with Section 109 IPC against accused Nos.1 to 7 and accused Nos.1 to 16 respectively, does not even remotely suggest commission of the offence by the accused by unlawfully assembling with the common object of committing offence under Section 302 IPC.

17. Very interestingly, the lower Court completely digressing from the case of the prosecution that the actual murder has taken place at Pedda Mandapam, returned a finding that there is no evidence about the attack on the deceased after the attack on him at his house and convicted accused Nos.3, 4, 8, 10 and 11 *inter alia* for the offence punishable under Section 302 IPC on the ground that the deceased sustained seventeen external injuries, most of which are contusions, some of which are incised injuries, abrasions, fracture of right shaft of tibia and

fibula and commuted fracture to left temporal bone of skull extending to left occipital area. The lower Court also relied upon the evidence of P.W.16 – the Medical Officer, who deposed that the deceased was beaten severely on the head, besides other parts of the body. Upon finding that P.W.2 was not an eyewitness to the alleged incident taken place at Pedda Mandapam and that she has not stated about any such incident at Pedda Mandapam before the Magistrate under Section 164 CrPC, it has concluded that the deceased died on account of the injuries sustained by him at his house.

18. In our opinion, the approach of the Court below is not only weird but also perverse, and goes against the fundamental principle of criminal jurisprudence, namely, that the court shall not convict the accused unless the prosecution proves its case as set up by it and as charged by the Court. When the prosecution has come out with a specific version, as spoken to by P.Ws.1 to 3 to the effect that the deceased after being attacked at his house, was dragged and lifted upto Pedda Mandapam where accused Nos.1 to 7 have beaten the deceased with sticks, knives and rods on the head and other parts of the body on the abetment of accused Nos.8 to 16 resulting in the death of the deceased after receiving severe bleeding injuries, it

is not permissible for the Court to propound its own theory as to the place and the manner in which the deceased was done to death. When the prosecution failed to prove the offence as pleaded by it, the Court on the purported analysis of the evidence on record cannot convict the accused after throwing out the case of the prosecution as to the place and manner of the attack on the deceased. Once the prosecution version is disbelieved, that would create reasonable doubts in the mind of the Court as to the guilt of the accused, and it is not for the Court to ally the reasonable doubts by planting its own theory contrary to what the witnesses have specifically deposed. When the prosecution miserably failed to prove the alleged attack at Pedda Mandapam, where the deceased allegedly died as a result of such attack, it is not permissible for the Court to draw an inference that instead of being killed at Pedda Mandapam the deceased might have died on account of the injuries he has received at his house, in complete deviation from the case set up by the prosecution. Further, in the absence of specific overt acts, the accused cannot be convicted for the offence of murder. So much so, the finding of the lower Court against accused Nos.3, 4, 8, 10 and 11 for the offence under Section 302 IPC is not sustainable.

19. There is one other ground on which their conviction for the offence under Section 302 IPC read with Section 109 IPC is liable to be set aside. As rightly argued by the learned counsel for the appellants in Criminal Appeal No.878 of 2011, accused Nos.8, 10 and 11 were not charged for the offence of murder. In charge No.9, they were accused of abetting accused Nos.1 to 7 to commit murder. They could not have therefore been convicted for the offence under Section 302 IPC. As regards offence under Section 109 IPC, when the very charge against accused Nos.1 to 7 that they have committed the murder is not proved by the prosecution, accused Nos.8, 10 and 11 cannot be convicted for abetment to commit murder.

20. We now propose to deal with the remaining accused in sequence as they were dealt with while awarding sentence by the lower Court. The lower Court has convicted accused No.2 only for the offence under Section 341 IPC and sentenced to pay a fine of Rs.500/- and in default of payment of the fine, to suffer simple imprisonment for a period of one month. Hence, we are of the opinion that it was not necessary for him to join accused Nos.3 to 6, 8, 10 and 11 in filing Criminal Appeal No.878 of 2011.

21. As in the case of accused No.2, accused No.5 was also convicted for the offence under Section 341 IPC and sentenced to pay a fine of Rs.500/- and in default of payment of the fine, to suffer simple imprisonment for one month. Hence the reason which was recorded in the case of accused No.2 would apply to accused No.5 also.

22. With regard to accused No.6, the Court below convicted him for the offences under Sections 341 and 323 IPC and sentenced to pay fine of Rs.500/- and Rs.1000/- respectively for the said offences, and in the facts and circumstances of the case we are of the opinion the same need not be interfered with.

23. With respect to the conviction of accused Nos.4, 8, 10 and 11 (accused No.3 has since died), their conviction for the offence under Section 148 IPC and the sentencing are sustainable in the face of the evidence of P.Ws.1 to 4 which proved that they were armed with deadly weapons and attacked the deceased at his house causing injuries. Their conviction and sentencing for the offence under Section 452 IPC is also sustainable in the light of the aforementioned evidence. We therefore find no reason to interfere with either their conviction or their sentencing for the above said offences. As

for the conviction of the said accused for the offence under Section 201 IPC, as the prosecution failed to prove the charge of murder, these accused cannot be convicted for the offence under Section 201 IPC. Accordingly, their conviction and sentencing for the offence under Section 201 IPC are not sustainable and the same shall stand set aside.

24. Coming to the appeal of the State (Criminal Appeal No.1056 of 2013), it is imperative for us to observe that the Memorandum of Grounds of Appeal are as vague as vagueness could be. No specific ground on any aspect whatsoever was raised by the State so as to question the acquittal of accused Nos.1, 2, 5, 6, 7, 9, 12, 14, 15 and 16 of some or all the charges framed against them. The Court below, based on the evidence on record acquitted accused Nos.4 and 11 of the charge for the offence under Section 341 IPC; accused Nos.2, 4 and 5 of the charge for the offence under Section 323 read with Section 34 IPC; accused Nos.1, 2, 5 to 7, 9, 12 and 14 to 16 of the charge for the offence under Section 147 IPC, accused Nos.1, 2, 5 to 7, 9, 12, 14 to 16 of the charge for the offence under Section 148 IPC; accused Nos.1, 2, 5 to 7, 9, 12, 14 to 16 of the charge for the offence under Section 452 IPC; accused Nos.1, 2, 5, 6 and 7 of the charge for the offence under Section 302 IPC;

accused Nos.9, 12, 14 to 16 of the charge for the offence under Section 302 IPC read with Section 109 IPC, accused No.15 of the charges for the offences under Sections 323 and 354 IPC, accused Nos.1, 5 and 6 of the charge for the offence under Section 201 IPC, and accused Nos.7, 9, 12, and 14 to 16 of the charge for the offence under Section 201 read with Section 109 IPC. The law is well settled that where on the basis of evidence on record two views are reasonably possible, the appellate Court in an appeal against acquittal cannot substitute its view for the view taken by the trial Court [See **Sambasivan v. State of Kerala**³ and **Ghurey Lal v. State of Uttar Pradesh**⁴]. Having thoroughly examined the entire evidence on record, we are of the opinion that the judgment of the lower Court to the extent it has acquitted the aforementioned respondents in Criminal Appeal No.1056 of 2013 does not call for any interference.

25. As regards Criminal Appeal No.1160 of 2011, for the same reasons as assigned for dismissing Criminal Appeal No.1056 of 2013 filed by the State, this appeal is also liable to be dismissed.

³ (1998) 5 SCC 412

⁴ (2008) 10 SCC 450

26. In the result, Criminal Appeal No.878 of 2011 is partly allowed setting aside the conviction of Accused Nos.4, 8, 10 and 11 for the offences under Sections 302 IPC and 201 IPC and the sentences imposed on them for the said offences, while confirming all other convictions and sentences imposed on them. The fine amounts, if any, paid by them in connection with the offences under Sections 302 and 201 IPC shall be refunded to them. Accused Nos.4, 8, 10 and 11, who are on bail, are directed to surrender themselves before the Superintendent, Central Jail, Visakhapatnam, forthwith to serve out the remaining periods of sentence, if any and their bail bonds shall stand cancelled. Criminal Appeal Nos.1160 of 2011 and 1056 of 2013 are dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

03-7-2018

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Note: LR copies to be marked.

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