

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT JUSTICE K. VIJAYA LAKSHMI

CRIMINAL APPEAL No.572 of 2014

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

1) A-1, A-2, A-4 to A-8 in S.C.No.79 of 2011 on the file of the Additional District and Sessions Judge at Vikarabad, Ranga Reddy District, are the appellants herein. They were tried for the offences punishable under Sections 147, 148, 452, 302 read with 149 IPC; Further, a charge under Section 324 IPC came to be framed against A-2 and A-4; while another charge under Section 307 IPC was framed against A-7 and A-8. By its judgment dated 15.05.2014, the learned Additional District Judge, Vikarabad, acquitted A-2 and A-4 for the offence punishable under Section 324 IPC and also A-7 and A-8 for the offence punishable under Section 307 IPC. However, convicted all the accused for the offence punishable under Section 147 IPC and sentenced to under go R.I. for a period of two years; under Section 148 IPC and sentenced to under go R.I. for three years; under Section 452 IPC and sentenced to under go R.I. for three years and under Section 302 read with 149 IPC sentenced to undergo Imprisonment for Life and to pay a fine of Rs.10,000/-. But, however, no default clause is imposed for non-payment of fine.

2) The substance of the charge against the accused is that on the intervening night of 30/31.07.2009, all the accused along with

A-3(who is a juvenile) formed themselves into an unlawful assembly and pursuant thereto, they are alleged to have caused the death of one Chilumala Ganesh (hereinafter referred to as "the deceased"). During the course of the same transaction, they also caused injuries to P.Ws.1 and 2.

3) The case of prosecution as unfurled by the evidence of prosecution witnesses is as under:-

i) All the accused and material prosecution witnesses are residents of Gatevanampally village, Nawabpet, Ranga Reddy District. P.W.2 and the deceased are parents of P.Ws.1 and 8 while P.W.3 is the father of P.W.2. A-1, A-5 and A-6 are brothers of the deceased. A-7 and A-8 are the wives of A-5 and A-1 respectively. A-2 is the son of A-1 and A-4 is the son of A-5. The deceased went as an illatam son-in-law after marrying P.W.2. Subsequently, the brothers of the deceased partitioned their properties and setup separate families. Disputes arose between the accused and the deceased with regard to shares in the property. Pursuant thereto, a panchyat was convened. But as it was late in the night, the same was postponed to next day morning for discussion. On 30.07.2009, a panchayat with regard to land dispute was convened between one Manemma, the accused and the deceased, wherein the accused are alleged to have occupied the lands of Manemma, was to take place. P.W.4 was asked to conduct the said panchayat against Manemma. But, however, as it was late, P.W.4 sent them away. Thereafter, the deceased, P.Ws.1, 2 and 8

returned home. At about 11.00 p.m., the accused came to the house of P.Ws.1, 2, 8 and the deceased and switched off the lights. On knocking of the door, P.W.8 opened the door. A-1 is said to have entered the house armed with stick and beat P.W.8 with a stick. A-5 was armed with an axe while A-2 and A-4 were armed with hunting sickles. It is said that A-1, A-5 and A-6 attacked the deceased first and fell him down. When P.W.1 intervened, A-2 and A-4 are said to have attacked him. When the accused attempted to attack P.W.8, he escaped and fled away. Thereafter, A-7 and A-8 attacked P.W.2, who is the mother of P.W.1, with sticks. The deceased, who received injuries in the hands of the accused, fell down. A-2 and A-4 attacked P.W.1 and when he became unconscious, he was thrown on to the other side of the fence by the accused. After some time, P.W.8 returned home, switched on the lights, brought P.W.1 into the house and gave him water. Then P.W.1 claims to have noticed his father lying on the ground. On seeing the same, P.W.8 brought an Ambulance and shifted the deceased and the injured to the Government Hospital at Vikarabad. P.Ws.1 to 3 also claimed to have accompanied the deceased. The injured were given first-aid and then shifted to Osmania Government Hospital, Hyderabad.

ii) It is the case of prosecution that on 31.07.2009 at about 4.00 a.m., P.W.1 lodged a report before the Nawabpet Police Station, which came to be registered as a case in Cr.No.75 of 2009 under

Sections 452, 307 and 324 read with 34 IPC. Ex.P-55 is the FIR, which reached the court on 31.07.2009 at 12.00 noon.

iii) It is also pertinent to mention here that at about 10.00 a.m., on 31.07.2009, the deceased died in Osmania Hospital, Hyderabad while taking treatment. On the same day P.W.15-the Inspector of Police, Chevella, received information about the alteration of section of law from 307 IPC to 302 IPC and as such , he took up investigation in this crime. Immediately, he proceeded to the Osmania General Hospital, Hyderabad and conducted inquest over the dead body in the presence of P.W.10 and another. Ex.P-8 is the inquest report. At the time of inquest, he recorded the statements of P.Ws.1, 2 and 8. Thereafter, he sent the body for post-mortem examination.

iv) P.W.14-the Assistant Professor, Forensic Medicine, Osmania Medical College, Hyderabad, conducted autopsy over the dead body of the deceased at about 4.00 p.m., and issued Ex.P-37-the post mortem report. According to him, he noticed 16 injuries on the dead body and the cause of death was due to the injury No.9, i.e., chopping of lateral end of the collar bone extending to the front of the chest. P.W.15 continued with the investigation by visiting the scene of offence, wherein he prepared a panchanama of the scene under Ex.P-6 in the presence of P.Ws.7 and 9. He also drew the rough sketch of the scene, which is also placed on record as Ex.P-7. During the said proceedings, he recorded the statements of P.Ws.3 to 6.

v) On 06.08.2009 on receipt of credible information, he deputed A.S.I. of Police and other staff proceeded to Vikarabad Bus stop, where the accused were apprehended, while they were at bus station, Vikarabad and produced before him. On interrogation, in the presence of P.Ws.11 and 12, the accused are alleged to have confessed about the commission of the offence. Pursuant to the confession made, police discovered sickles at the instance of A-1, A-2, A-6 and A-7 under Exs.P-45 to 52. M.Os.1 to 4 are the sticks recovered while M.Os.5 and 6 are sickles seized from A-4 and A-8 respectively. P.W.16 the C.I. of Police, Vikarabad stated that after collecting all the necessary documents and after verifying the investigation done by his predecessors, filed the charge-sheet, which was taken on file as P.R.C.No.36 of 2010 by the Additional Judicial Magistrate of I Class, Vikarabad, who in turn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.79 of 2011.

4) Basing on the material available on record, charges under Sections 147, 148, 452, 302 read with 149 IPC were framed against A-1, A-5 and A-6; u/s.324 IPC against A-2 and A-4; u/s.307 IPC against A-7 and A-8, read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

5) To substantiate its case, the prosecution examined PWs.1 to 16 and got marked Exs.P-1 to P-55. Out of 16 witnesses examined by the prosecution, P.Ws.5, 6, 7, 9, 11 and 12 did not support the prosecution

case and were treated hostile by the prosecution. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. No oral evidence was adduced except marking Exs.D-1 to D-3, which are the certified copies of judgment in O.S.No.19 of 2005, chief affidavit and plaint, apart from M.Os.1 to 7.

6) Relying upon the evidence of P.Ws.1, 2, 4 and 8 coupled with the medical evidence, the learned Sessions Judge convicted the accused as referred to above. Assailing the same, the present appeal came to be filed.

7) The learned counsel for the appellants mainly submits that there are number of circumstances to indicate that the accused have been falsely implicated in this case. It is said that there were disputes between the family of the deceased and Manemma and taking advantage of the same, the accused have been implicated, more particularly due to the suit filed by A-5 against Manemma for cancellation of the sale deed executed in her favour with regard to land standing in the name of the father-in-law of P.W.4. He further submits that the motive as alleged by the prosecution is not proved beyond reasonable doubt.

8) Coming to the incident in question, learned counsel for the appellant would contend that when P.Ws.1 and 2 were in Osmania

General Hospital after the incident, no explanation is forthcoming as to how P.W.1 gave a report in Nawabpet Police Station at 4.00 a.m., which is faraway from the Osmania General Hospital. He further submits that the person to whom the First Information Report was lodged, is not examined, which makes the very registration of crime against the accused suspicious. He also comments on the various versions given by P.W.1 and other witnesses with regard to lodging of the report. He further submits that though P.Ws.1 and 8 were examined as injured eyewitnesses to the incident, but P.W.13-the Doctor, who was examined to speak to the wound certificate issued for the treatment given to P.Ws.1 and 8, states that those certificates were never issued by him and that he did not treat them. Having regard to the above, he submits that a doubt arises whether really P.Ws.1 and 8 received injuries in the course of the present transaction. It is his case that when the substance of the prosecution case with regard to the attack on P.Ws.1 and 2 was disbelieved by the trial court, not only their presence is doubtful but also the attack on the deceased as well become suspicious. He also comments upon the conduct of P.W.2 in going to the house of Sarpanch, when the deceased, P.Ws.1 and 8 were being attacked in her house. Hence, pleads that the accused are innocent of the offence and they have been falsely implicated by taking advantage of the disputes between Manemma, A-5 and the prosecution party.

9) The learned Public Prosecutor would contend that the presence of P.Ws.1 and 8 cannot be disputed merely because the prosecution failed to prove the injuries on P.Ws.1 and 8. According to him, the same does not by itself mean that these two witnesses were not present in the house at that time. They being the inmates of the house, their presence in the night cannot be doubted. He further submits that merely because there are some discrepancies with regard to lodging of the report, the entire prosecution case cannot be doubted with suspicion. In any event the learned Public Prosecutor would contend that when there is strong motive for the family of the accused to eliminate the deceased and having regard to the fact that a panchayat was held just prior to the incident, the only inference that can be drawn, is participation of the accused in commission of the offence, more so, in view of the evidence of P.Ws.1, 2 and 8 who can be treated as natural witnesses.

10) The point that arises for consideration is "Whether the accused are responsible for the incident?"

11) In order to appreciate the rival contentions made, it would be appropriate to refer to the evidence of P.Ws.1, 2 and 8 and also the evidence of the Doctors i.e, P.Ws.13 and 14, who are said to have treated the injured and conducted post mortem examination on the deceased.

12) Before dealing with the evidence of the witnesses, it is to be noted that all the accused and the prosecution witnesses are related to each other and are having disputes not only among themselves but also with one Manemma. Keeping this circumstance in back ground, we shall appreciate the evidence available on record.

13) P.W.1 is none other than the son of the deceased. According to him on 30.07.2009 all of them returned from the agricultural work. At about 8.00 p.m., the accused held a panchayat in the village with regard to disputed land at the house of one Srisailam of their village. The deceased who went as illatam was denied share in the ancestral property, by the accused. But, the deceased was insisting for the same. As no decision could be arrived at in the panchayat, all of them returned home. At about 11.00 p.m., while the prosecution witnesses and deceased were sleeping in their house, the accused are said to have disconnected the electricity supply to their house and knocked the door. When the door was opened, A-1 armed with a stick, A-5 armed with an axe and A-2 and A-4 having hunting sickles, entered the house of the deceased. At first A-1, A-5 and A-6 attacked the deceased. When P.W.1 intervened, A-2 and A-4 attacked him. Thereafter, the accused attempted to attack P.W.8, but he escaped. At that point of time A-7 and A-8 who are women, are said to have attacked P.W.2 with sticks. As a result of attack, the deceased fell down and lost conscious. While leaving, the accused are said to have thrown P.W.1 on to the other side of the fence. Some time later,

P.W.8 returned home switched on the electricity and brought P.W.1 inside the house. At that time P.W.1 noticed his father lying on the ground in the house. On seeing the same, P.W.8 called an Ambulance and then they shifted the deceased to Vikarabad Govt. Hospital, where they were given first aid and sent to Osmania Hospital, where the deceased died. While taking treatment. His evidence in chief is to the effect that he lodged the report to the police at the hospital vide Ex.P-1 against the accused and one Murali. P.W.1 was subjected to lengthy cross-examination wherein he admits that he did not scribe Ex.P-1 and that he does not know the time when they reached Hyderabad. He admits that he was sitting outside the Hospital at the time of death of his father, which was late in the night and that he lodged the report at about 7.30 a.m. According to him Ex.P-1 was scribed by the police. He admits that he has not stated to police that his brother returned and switched on the light. He further admits that he has not mentioned in his report that his father died. He further admits that he has not lodged any report/complaint prior to the death of his father. He admits that Ex.P-1 does not refer to the death of his father. He further adds that he has stated to the police that his father died at the time of scribing of Ex.P-1. To a suggestion that Ex.P-1 was fabricated, was denied by him. It is elicited in the cross-examination of P.W.1 that the accused dismantled the doors of their house prior to entering and that he could identify the accused in the moon light. He further admits that the land and house were

partitioned about 14 years ago, in favour of the deceased and that he does not know in whose name the disputed lands stand. He claims to have acquaintance with Bandaru Manemma, but states that he does not know how she is related to him. He further admits that a suit was filed by Manemma against his father and Parmaiah i.e., A-5. He states that he is not aware about his father and uncle filing a suit against Manemma for cancellation of sale deed. He further adds that the land in dispute with Manemma is different from the land in dispute between his father and his brothers. To a suggestion that P.W.1 and his mother never suffered any injuries and were never treated in Osmania Hospital, was denied.

14) From the evidence of P.W.1, it is clear that he claims to have lodged a report with the police while he was at the hospital. His evidence further discloses that the said report was given at 7.30 a.m. and that he never lodged any report disclosing the death of his father. He further admits that he has not lodged any complaint prior to the death of his father and his evidence also discloses the existing disputes between Manemma and his family. But, however, states that the dispute with Manemma is different from the land in dispute between his family and his brothers. His evidence also shows that immediately after the incident, all of them including the deceased were first taken to Hospital at Vikarabad and from there they were sent to Osmania General Hospital, where they were given first aid. His evidence also discloses that he was there in Osmania General

Hospital till the death of his father, which was at about 10.00 a.m. on 31.07.2009.

15) His evidence show that he never lodged any report prior to the death of his father. If that is so, any report lodged after the death of his father, should refer to the death of his father in the hands of the accused, which is not reflected in the First Information Report. Apart from that a reading of the First Information Report which is placed on record as Ex.P-55 and also Ex.P-1-document shows that the report about the incident was lodged at Nawabpet Police Station at about 4.00 a.m., and the General Diary entry was also made at 04.00 am. on 31.07.2009. The fact that the First Information Report came to be registered as a crime at 4.00 a.m., is also evident from the evidence of P.W.15-the Investigating Officer, who in his cross-examination admits about receiving the report by G.Ramulu-L.W.17 at 4.00 a.m., which lead to registration of a case in Cr.No.75 of 2009. The said report which was said to have been lodged at 4.00 a.m., reached the court at 12.00 noon on 31.07.2009. When the evidence P.W.1 is to the effect that he gave a report at the Osmania General Hospital and that too at 7.30 a.m., it is strange as to how the F.I.R. came to be registered at 4.00 a.m., at the instance of P.W.1. Further, P.W.1 in his cross-examination admits that the report came to be lodged after the death of his father, if that is so definitely he would have mentioned the same in the First Information Report. But now tries to explain that his father died at the time of scribing of Ex.P-1,

meaning thereby, the First Information Report came to be prepared at 10.00 a.m., at which time when his father died. Further, P.W.1 in his evidence also states that he gave a report to the police at 7.30 a.m., in the Hospital. From the above, it is clear that different versions are being set forth as to when the report came to be lodged. Therefore, it appears that even P.W.1 was not sure as to when he lodged the report. Therefore, a doubt arises as to lodging of the report by P.W.1, as claimed by him. When the F.I.R. itself becomes suspicious, the entire case in our view has to be viewed with suspicion, unless established otherwise.

16) Coming to the evidence of P.W.2, she is wife of the deceased. According to her, a panchayat was held by Sarpanch at the house of Patwari i.e., Srisailam since the accused refused to give his share in the lands of the ancestors of the deceased. As no conclusion could be arrived at, the Sarpanch is said to have advised them to come on the next day for further discussion. According to her, at about 12.00 midnight all the accused came to her house. A-1 is said to have hit her husband on his head with a stick while A-5 is said to have hit her husband with a stick. Later A-2, A-4, A-7 and A-8 hit her on the right hand with a sickle when she tried to defend her husband. On seeing the blood, P.W.8 ran out and called for Ambulance. It is further stated that A-4 hit P.W.1 on his head with an axe and caused deep a cut injury. According to P.W.2, the accused chopped the left hand small finger of the deceased as a result of the injuries the deceased

fell down. Thereafter, she went to the house of Sarpanch and complained to him against the acts of accused but he is said to have asked her to do whatever she wants to do. Hence, she returned home. Thereafter, she is claimed to have shifted her husband (the deceased) in the Ambulance to Vikarabad Hospital where her husband was given first aid and then referred to Osmania Hospital where the deceased died on the next day morning.

17) In the cross-examination, she admits that one Chandraiah is her father-in-law and the ancestral land stood in his name. She admits that A-5 and deceased filed a suit against one Manemma for cancellation of the sale deed executed in her favour with regard to the land standing in the name of her father-in-law. She also admits that her husband deposed in the said suit. She further states that Manemma lodged a criminal complaint against the deceased and A-5. She further admits that in view of the suit filed by Manemma the lands were not mutated either in the name of A-5 or in the name of her husband. She further states that the subject matter of the suit filed by Manemma, is the land which fell to the share of her husband and A-5. She further admits that in view of the said suit, there were grudges between Manemma and their family. She also admits that her husband also quarreled with one Challa Chinna Kista Reddy. She further admits that after the attack she fell unconscious and regained consciousness one hour after the attack. However, she admits that she did not state before the police that she fell down

unconscious, after the attack. However, the other suggestions given to her with regard to breaking of the doors, sustaining injuries in the hands of the accused were all denied. From the evidence of this witness, it is clear that there were disputes between them and Manemma and suits were filed not only by Manemma but also by the deceased and A-5.

18) Further, the deceased is said to have deposed as a witness in the suit filed by him. She further admits that there were grudges between their family and the family of Manemma. Her evidence corroborates the evidence of P.W.1 with regard to panchayat being held on that day when the family of the accused refused to part with a share in favour of the deceased, in respect of the property which they got from the ancestors. However, no decision could be arrived at the panchayat and the matter was adjourned to the next day.

19) From the above, it is clear that dispute exist between the family of Manemma, accused and the prosecution party. Not only civil cases but also criminal cases came to be initiated by Manemma against the deceased and A-5. Apart from that, the evidence of P.W.2 is inconsistent with the evidence of P.W.1 with regard to attack on P.W.1. P.W.1 in his evidence deposed about A-2 and A-4 attacking on him, but P.W.2 refers to the name of only A-4, while P.W.1 does not refer to the place where the injuries were caused, while P.W.2 is specific as to the place where the blow landed on P.W.1. Further, P.W.1 in his evidence deposed about A-1, A-5 and A-6 attacking the

deceased, but P.W.2 excludes the name of A-6. Similarly, P.W.1 in his evidence deposed about A-7 and A-8 attacking P.W.2 while P.W.2 speaks about A-2, A-4, A-7 and A-8 attacking her with sticks. Though there is some commonality in participation of some of the accused in the attack on P.Ws.1, 2 and the deceased, but the trial court disbelieved the evidence of these witnesses with regard to attack on the witnesses because of the variation in the weapons said to have been used in the commission of the offence. Apart from that two things also requires to be considered here i.e., with regard to lodging of the report by P.W.1; and also enmity between both the groups, which we will discuss later.

20) P.W.3 is the father of P.W.2, who is aged about 70 years. His evidence is to the effect that the deceased was brought as an illatam son-in-law to his house after the marriage of P.W.2 with him. Later the brothers of the deceased partitioned their properties and set-up separate families. As no finality was reached, with regard to division of properties, a Panchayat was held on the date of incident, which was adjourned to the next day morning. Pursuant thereto all of them went to their houses. His evidence is to the effect that A-1, A-2, A-4 and A-8 along with the son of Balaih attacked the prosecution party and caused the death of the deceased. His evidence is to the effect that while the incident was going on, the younger son of P.W.2 called the Ambulance after escaping from the hands of the accused and then himself, his wife and P.W.2 shifted the deceased to the Government

Hospital at Vikarabad. His evidence further shows that he is not an eyewitness to the incident. However, in the cross-examination he admits that he was examined by the police at Hospitals of Vikarabad and Hyderabad. He further admits that it was P.W1., who informed him about the accused beating them. He also admits about his acquaintance with one Manemma, who is her relative and who filed case against the deceased and A-5. He also admits that the deceased and A-5 filed a suit against Manemma for cancellation of her sale deed as the said lands stood in the name of the father of Ganesh and A-5. He also admits that there are disputes and grudges between the accused, deceased and Manemma. He further admits that he did not tell the police about the panchayat being held at Gram Panchayat office. He further admits that when he reached the scene, P.W.1 and deceased were unconscious and no-one gathered even when the Ambulance reached the place of offence.

21) From the evidence of P.W.3, it is clear that he is not an eyewitness to the incident. He was informed about the incident by P.W.1 and his statement was recorded by the police at Vikarabad and also at Hyderabad. Apart from that he also speaks about the suits filed by Manemma against the deceased and A-5; and by A-5 and the deceased against Manemma. In his evidence he categorically states about the grudges between the family of the accused and Manemma.

22) PW.4 is Sarpanch of the village, who was examined to speak about the disputes between Manemma and deceased. In his evidence

in chief he categorically states that about a week prior to the incident, a panchayat was held with regard to land in dispute between Manemma, accused and the deceased. His version is to the effect that the accused occupied the lands of Manemma. On the date of offence, the accused and deceased together approached him seeking him to hold a panchayat against Manemma, but he did not do it on that day as it was night by then and sent them away. Later he came to know that the accused and deceased quarrelled among themselves and the deceased was shifted to hospital. In the cross-examination, he admits that he does not know who beat whom in the incident and that he does not know who informed him about the incident. He admits that Manemma is his relative and she purchased the land in question. He further admits that none of the villagers informed him about the quarrel between the accused and the deceased. He further admits that Manemma has grudges against the accused and deceased as such she filed a criminal case, which is pending. Therefore, his evidence amply establish that Manemma had grudges against the accused and deceased and a criminal case was filed by Manemma against them is pending.

23) P.W.8 is only other witness who speaks about the incident. His evidence is to the effect that P.W.1 is his brother, P.W.2 is his mother, P.W.3 is his maternal grandfather while the deceased is his father. In his evidence he categorically deposed that on the date of offence, himself and P.Ws.1, 2 and his deceased father were in their

house. He stated that on 30.07.2009 a panchayat was held at the house of one Srisailam, with regard to the land in dispute between the accused and themselves and the said panchayat was held by the Sarpanch. When they went to the place of Panchayat, the Sarpanch told the panchayat would be held on the next day morning as it already late and as such they all returned home. He further deposed that on the same day at about 11.00 p.m., the accused came to their house along with one Murali and knocked the door. When he opened the door, A-1 entered into the house and beat him with stick, as such he ran and hide himself behind his parents. Then A-1, A-5 and A-6 hit his father with axes, whereas A-2, A-4 and one Murali beat his brother P.W.1 with knives and axes. He further stated that when his mother started weeping, A-7 and A-8 caused injuries to his mother with hunting sickle on her hands. Then he ran away and called his relatives apart from calling 108 Ambulance. He further states that when he brought P.W.3 and L.W.5 to the place of offence, his father was lying unconscious on the ground with bleeding head injury and a chopped little finger. Then claimed to have shifted the deceased to the Government Hospital at Vikarabad along with P.Ws.1 and 2 in 108 Ambulance, where P.Ws.1 and 2 were also treated and on the advise of the Doctors, his father was shifted to Osmania Hospital, where his father died on the next day while undergoing treatment. He also deposed that P.W.6 along with P.W.1 went to the Nawabpet police station where P.W.1 lodged the report. In the cross-examination,

P.W.8 admits that the deceased was adopted into Bandaru family and land disputes exist between Bandaru Manemma on one side and his father and A-5 on other side. However, he pleaded ignorance about the deceased and A-5 filing an application for cancellation of title in the name of Manemma before the Revenue Divisional Officer.

24) With regard to the act of opening the door and attack by the accused, P.W.8 did not state anything about the attack made by the accused on him in his earlier statement. P.W.15 in his cross-examination states that "P.W.8 did not state before him that A-1 knocked on the door, as such he opened the same and at that time A-1 hit him with a stick. P.W.8 did not state before him that A-1, A-5 and A-6 hit his father with axes, A-2, A-4 and juvenile accused beat P.W.2 with axes and knife and further A-7 and A-8 beat P.W.2 with hunting sickles on her hands." Therefore, what this witness deposed now in the court, appears to be an improvement from what he has stated in his earlier statement. If really he was present in the house at that time and witnessed the incident, definitely there could not have been any omissions in the said statement. Apart from that, the evidence of P.Ws.1, 2 and 3 show that P.W.8 went out the house and thereafter entered into the house after the incident was over, and switched on the electricity supply. Therefore, his evidence with regard to the attack by the accused on P.Ws.1, 2 and deceased cannot be accepted.

25) From the evidence of the witnesses which we just now referred to above, it is clear that the disputes between the parties is a

triangular one. The accused developed a grudge against the deceased as he demanded a share in the ancestral property as he was brought as an illatam son-in-law. Disputes between the accused and Manemma exist in respect of property and also disputes between the deceased, A-5 on one hand and Manemma on the other hand in respect of suits filed for cancellation of sale deeds executed in favour of Manemma and also for declaration of title filed by Manemma against A-5 and the deceased.

26) Further, from the evidence of all the witnesses referred to above viz., P.Ws.1, 2, 3, 4 and 8, it is clear that there exists a motive for implication of the accused in the case, at the instance of Manemma. As stated earlier, all the witnesses in their cross-examination admits that the deceased went as an illatam into the family of "Bandaru" to which the said Manemma also belongs. The accused are relatives of Manemma. After the deceased was taken as illatam, he demanded a share in their ancestral property, which was denied by the accused. Therefore, there were some grudges between both the families which lead to convening a panchayat for settlement of dispute between the accused, deceased and Manemma on that day. But the matter could not be finalized, and it was postponed to the next day. Definitely this could not have been the provocation for the accused to come and attack P.Ws.1 to 8 and the deceased since the matter is still pending adjudication before the Sarpanch, who asked them to assemble on the next day morning. But, it is also to be noted

that the disputes between Manemma and the deceased are long standing, suits came to be filed by Bandaru Manemma against A-5 and deceased while deceased and A-5 also filed suits against Manemma with regard to cancellation of deed registered in the name of Manemma and for declaration of title over the property by Manemma. Criminal cases were also filed by Manemma against the deceased and A-5. Therefore, possibility of false implication cannot be ruled out, for the reasons that the dispute between the deceased and accused and the panchayat would be the upper most in their mind, for taking advantage to implicate the accused in this case. This motive is of course is a double edged weapon and the possibility of implicating the accused in this case gets support from the manner in which the First Information Report came to be lodged. When lodging of the First Information Report itself is to be viewed with suspicion in view of the discussion made earlier, we feel that the fabric of the case, having regard to all the circumstances stated above, gets collapsed.

27) At this stage, the learned Public Prosecutor would contend that when P.Ws.1 and 2 are the injured witnesses there is no reason to disbelieve their presence. According to him, merely because the trial court disbelieved the role of A-2, A-4, A-7 and A-8 in attacking P.Ws.1 and 2 that by itself does not establish that they were not present in the house at that time.

28) At first blush, we found that the argument of the Public Prosecutor quite appealing. But a perusal of the record proved to be

otherwise. P.W.13 is the Doctor, who was examined by the prosecution to prove the two injury certificates issued in favour of P.Ws.1 and 2. In his evidence in chief. P.W.13 categorically stated that the two injury certificates, which are sought to be placed on record as Exs.P-52 and P-53, were never issued by him and that he cannot say who treated the patients under the said medical certificates. He also admits that he cannot identify the signatures of the medical officer who issued the same. Therefore, the two certificates, which are sought to be used by the prosecution to prove the injuries on the witnesses and their presence at the scene were not issued by P.W.13. An explanation is now sought to be given saying that by mistake they examined wrong Doctor and that the two certificates Exs.P-52 and P-53, which are now placed on record were issued by one Dr. Rajasekhar, who endorsed on the said certificates on 16.04.2010 stating that the said certificates were issued by him about 8 months old. We feel that everything is not fine and correct with regard to the manner in which these two certificates are now sought to be explained by the prosecution. Atleast there would have been some meaning if P.W.13 was examined to speak about the said certificates by identifying the said signatures thereon as that of Dr.Rajasekhar. The version which is put forward by the prosecution that it was P.W.13 who was examined P.Ws.1 and 2 was found to be totally false. Without commenting further on this aspect, we feel that this circumstance throws any element of doubt with regard to the injuries

sustained by the injured at the time of the incident and the treatment, if any, given to them at Government Hospital, Vikarabad. Though these two witnesses are injured witnesses, but having regard to the circumstances explained above, we feel that it is not safe to fix their presence at the scene or treat them as eye-witnesses.

29) One other circumstance, which throws any amount of doubt with regard to the manner in which the incident happened, is the evidence of P.W.2, who states that while the incident was going on in her house, she claims to have gone to the house of the Sarpanch and informed him about the incident. On that the Sarpanch is said to have asked her to do whatever she wants, as such she claims to have returned to home and received blows in the hands of A-7 and A-8. But the Sarpanch, who was examined as P.W.4, never spoke about the visit of P.W.2 to his house on that night. Even otherwise having left the house while the assault was going on, no prudent person will return back to the house to receive assaults. Instead one would take the help of the neighbours, whose houses are around their house and then try to apprehend the accused or see that the accused would not flee from the said place. No such effort was done by P.W.2. It is very strange to note that when the Sarpanch refused to accede her request, she claims to have returned home and then received blows from the accused. Therefore, this conduct of P.W.2 in our view throws some kind of suspicion over the manner in which the incident took place.

30) It is also to be noted here that the evidence of P.Ws.1, 2 and 8 is inconsistent with regard to the role of each of the accused in attacking P.Ws.1, 2 and deceased. The evidence of P.W.1 shows that A-1, A-5 and A-6 are said to have attacked the deceased, while the evidence of P.W.2 is to the effect that A-1 and A-5 only attacked the deceased. Even assuming that A-1 and A-5 have assaulted the deceased, it is not the case of prosecution that these two accused have repeatedly caused injuries to the deceased. Their version runs contra to the opinion of the Post-Mortem doctor, who noticed about 14 lacerated injuries on the body of the deceased, which definitely could not have happened unless these two accused have repeatedly attacked the deceased. More so, when the evidence of P.W.1 is to the effect that A-1 was armed with a stick and A-5 with an axe, while the evidence of P.W.2 is that A-1 only hit on the head while A-5 hit the deceased with a stick.

31) Having regard to all the circumstances referred to above, we feel that the evidence of P.Ws.1 to 3 and 8 cannot be believed as their version does not appear to be cogent and convincing. Hence, we are inclined to acquit the accused, by extending the benefit of doubt.

32) In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused in the judgment, dated 15.05.2014 passed in S.C.No.79 of 2011 on the file of the Additional District and Sessions Judge at Vikarabad, Ranga Reddy District for the offences punishable under Sections 147, 148, 452,

302 read with 149 IPC are set aside. Consequently, the accused shall be set at liberty forthwith, if they are not required in any other case or crime.

JUSTICE C.PRAVEEN KUMAR

JUSTICE K. VIJAYA LAKSHMI

Dt: 13.07.2018
GM

