

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

AND

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL APPEAL No.388 OF 2013

JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

The appellants herein are natural brothers. PW.10 is the wife of appellant No.2 and sister-in-law of appellant No.1.

2. PW.1 - complainant, Sri Bairaveni Shankaraiah, has two sons and three daughters. PW.10 - Akula Gangavva is the elder daughter of PW.1 and deceased -Bairaveni Venkatesh alias Swamy is his son.

3. Both the appellants since found to have killed the deceased, the learned II Additional Sessions Judge, Karimnagar at Jagtial, convicted them under Section 235 (2) of the Code of Criminal Procedure, 1973 (for short 'Code') for the charges under Sections 302 and 201 read with 34 of Indian Penal Code, 1860 (for short 'IPC'), and inflicted sentence of Imprisonment for Life and to pay fine of Rs.500/- each with default sentence of Simple Imprisonment for two months for the charge under Section 302 read with 34 IPC against accused Nos.1 and 2, and further inflicted Simple Imprisonment for three years and fine of Rs.200/- each with default sentence of Simple Imprisonment for one month for the charge under Section 201 read with 34 IPC, by judgment, dated 01.03.2013, in Sessions Case No.136

of 2012. However, appellant No.1 - accused No.1 was acquitted for the charge under Section 307 of IPC.

4. Questioning the aforesaid convictions and sentences of Imprisonment for Life and fine amounts, both the accused preferred the present Criminal Appeal under Section 374 (2) of the Code.

5. Heard Smt. D.S. Laxmi, learned Legal Aid Counsel appearing for the appellants, and the learned Public Prosecutor for the State of Telangana.

6. We would like to advert to the submissions made a little later having referred to the basic facts of the prosecution case projected in the charge sheet.

i) The complainant (PW.1) herein, who got two sons and three daughters, given his elder daughter, Akula Gangavva – PW.10, in marriage to accused No.2 about 20 years prior to the incident herein. A son and a daughter were born out of their wedlock. Accused No.2, a miser known to the villagers, used to harass her, both, physically and mentally, demanding additional dowry. In the said context, PW.1 earlier lodged a complaint, which was registered as Crime No.59 of 1999 for the offences punishable under Sections 498-A and 506 (ii) IPC and also Sections 3 and 4 of Dowry Prohibition Act, 1961, against accused No.2 at Dharmapuri Police Station on 21.05.1999.

Due to the intervention of elders, it ended in acquittal on 18.09.2003. Thereafter, for some time they lived together, but, however, there was no change in the attitude of accused No.2 and subjected her to unabated harassment, despite *panchayats* through elders were convened.

ii) While the things stood thus, next day of *Sankranthi* Festival of 2011 year, PW.10 unable to bear with the unabated harassment having got vexed with him, left the society of accused No.2 and started living at her parents' house, along with both children. Accused No.2 unable to bear with separation, used to insist PW.10 to return to his house whenever she was found either in the agricultural fields or in the village alone and even went to the extent of beating her. Accused No.2 felt that PW.1 and the deceased were instrumental in not allowing PW.10 to join his society, as they refused to send PW.10 to his house in the caste elders' *panchayats* held earlier.

iii) Turning to the incident herein, on 13.04.2011 in the afternoon, accused No.2 armed with an Axe, moved near the house of the deceased, and on seeing him, PW.1 and his family got frightened and conveyed it to the deceased. At about 7.30 P.M., the deceased along with PWs.2 to 4 and PW.10 went to accused No.2 and questioned him as to his harassing PW.10, that resulted in an altercation with them, and accused No.2 demanded them to send PW.10 to his house or to concede for divorce. The said altercation took place in front of the

house of PW.11. PW.11 mediated and separated them and then both parties left that place.

iv) Accused No.2, somehow, did not digest the humiliation said to have been meted out to him by the deceased and other members of the family in public view and, therefore, picked up a knife locally termed as “Uli” from his house and approached his brother, accused No.1, and informed him as to what had transpired and sought his help to avenge the deceased and his family. Accused No.1 enraged by the humiliation meted out to accused No.2, also picked up an ‘Uli’ from his house and both rushed towards the house of deceased.

v) One Akula Jyothi, cited as LW.15, having found accused Nos.1 and 2, requested them to get back to their houses, but at about 8.45 P.M., both of them with knives went to the house of the deceased, where PW.1 was relaxing on a cot in the open front yard of his house, while the deceased and family members were watching Television in the Verandah, both the accused went straight to PW.1 shouting at him as to why they were not sending PW.10 to Accused No.2’s house and slashed on his face with Uli. PW.1 managed to move aside and as a result, he sustained a simple injury over his face in the hands of accused No.2. When the deceased along with PWs.2 to 4 and 9 came out of Verandah and rushed towards both accused, the said Akula Jyothi on seeing it, pleaded them not to harm and leave her husband. Both the accused then attacked the deceased with knives.

The deceased, in fact, held the neck of accused No.1 by pushing aside Akula Jyothi, but accused No.1 stabbed him twice in his stomach and inflicted a cut injury on the right temple region, whereas accused No.2 standing behind accused No.1, when attacked the deceased with the knife since the deceased and accused No.2 struggling with each other, the knife in the hands of accused No.2 caused two cut injuries on the head of accused No.1. On hearing hue and cry of PW.1 and his family, neighbours collected there, amongst whom, two were examined as PWs.5 and 7 and witnessed the said incident under the street-light. On seeing them, accused No.1 ran towards them and threatened them, during which time, PW.8 requested PW.6 to bring his car so as to shift the injured to the Hospital, and when he brought his car, PWs.1 and 7 and another Bairaveni Ravi when started to shift the deceased to the hospital, both the accused with knives in their hands came across the car and did not allow the car move by standing in front of the car, and when PW.1 shouted at them that the police were about to reach the place, both the accused threatening them with knives, fled away from there. The said Bairaveni Venkatesh alias Swamy succumbed to injuries while he was being shifted at the outskirts of Dhammannapet village.

vi) PW.19, then Sub-Inspector of Police being the Station House Officer of Dharmapuri Police Station, when received information on phone to his mobile from Dandaveni Gangaramulu belonging to Dhammannapet village, rushed to Dhammannapet

village, by which time, the driver of the car could manage to make a way to Hospital, and when the car came back along with the body of the deceased, he reduced the statement of PW.1 in to writing at 10.00 P.M., that night and sent it to PW.20, who registered a crime and issued FIR for the offence punishable under Section 302 read with 34 IPC at 00:15 hours and forwarded the CD file to PW.19 again for further investigation. When the Inspector of Police was informed about the incident on 14.04.2011 at 7.30 A.M., he visited the scene of occurrence and took up investigation. He got the scene of occurrence *panchanama* conducted and photographed the dead body and drawn a rough sketch of scene of occurrence, got the inquest conducted over the body of the deceased between 8.00 A.M. and 10.00 A.M. and recorded the statements of all relevant witnesses and sent the body of the deceased to the Government Hospital, Jagtial for post-mortem examination and also PW.1, who received the cut injury. The Medical Officer, who treated PW.1, issued certificate and the other medical officers having conducted autopsy issued post-mortem examination report opining that the cause of death of the deceased was due to 'Shock due to Hemorrhage' (due to injury to vital organ).

vii) Later, PW.21 the Inspector of Police, on reliable information, went to the house of accused No.2 on 19.04.2011 at 08:00 hours and apprehended both the accused, who alleged to have confessed the commission of offence in the presence of mediators which were recorded and at their instance in consequence of their

confessional statements, the knives said to have used by them, were recovered from their possession under a separate *panchanamas*. Further, even a requisition was made to the learned Judicial Magistrate of First Class, Metpalli, to record the statements of PWs.1 to 5 and 7 under Section 164 of the Code and the same were recorded.

viii) On completion of investigation, charge sheet was laid alleging the offences punishable under Section 302 read with 34 IPC, 201 read with 34 IPC against both accused, besides the offence punishable under Section 307 IPC against accused No.1 for attempting to kill PW.1.

7. The learned legal aid counsel would submit that the direct witnesses examined by the prosecution to prove the charges against the appellants are all inter-related and, therefore, their evidence suffers from interested-ness and the learned trial Court was not right in accepting their evidence and recording conviction on the basis of interested evidence on record.

i) Her submission is that though, the independent witnesses were available, the prosecution did not examine them and thus, the best evidence is not produced and, therefore, to draw an adverse inference against the prosecution case.

ii) The next main submission has been that, the prosecution failed to explain the injuries sustained by accused No.1, and it is settled law that in case prosecution fails to explain the injuries sustained by the accused person, the accused are entitled to benefit of doubt and, therefore, the trial Court ought to have acquitted both the appellants.

8. Per contra, the learned Public Prosecutor would submit that the testimony of PW.1, an injured eye-witness, does not suffer from any blame and cannot be discredited as it is credit-worthy since nothing is brought out in the cross-examination to throw away the case of the prosecution.

i) His next submission is that Law is well-settled that merely because the witnesses are inter-related, their evidence cannot be scored out on the ground of interested-ness.

ii) Turning to the injuries sustained by accused No.1, his submission is that the prosecution sufficiently explained before the trial Court as could be seen from the charge sheet averments as to how accused No.1 sustained injury and, therefore, it is his submission that on that ground, it cannot be said that the appellants are entitled to benefit of doubt.

iii) It is also the submission of the learned Public Prosecutor that the relevant witnesses at the occurrence have been examined by the Investigating Agency and further they were examined in Court and, therefore, it cannot be said that the best evidence though available was withheld by the prosecution.

iv) The learned Public Prosecutor also would submit that the evidence of the medical officer would prove that the injuries sustained were ante mortem and, therefore, it is clear that it was a homicidal death and the evidence of other witnesses including recovery of material objects i.e., knives at the instance of both the accused, respectively, having been proved through the evidence of independent witnesses, accounts for corroborative piece of evidence corroborating the evidence of injured and eye-witnesses examined by the prosecution and, therefore, by any stretch of imagination, it cannot be said that the prosecution failed to prove the complicity of both accused for the charge under Section 302 read with Section 34 of IPC beyond all reasonable doubt.

9. The learned trial Judge under point No.1 referred to the sequence of main events that transpired since the date of marriage of PW.10 with accused No.2. the panchayat held reuniting both of them and PW.10 giving up the complaint lodged against him and again, till a daughter was born, both living happily and thenceforth, accused No.2 renewing the harassment demanding her to get additional dowry

and in fact, on *Sankranthi* Festival of 2011, since PW.10 was unable to bear with the ill-treatment meted out to her, subjecting her to abuses and beating, her joining her parents' house along with both children, leaving the house of accused No.2. Even then, accused No.2 threatening her by going to the parents-in-law's house armed with weapon and also whenever she was found attending to agricultural operations at their fields. Thus, the entire story till the date of taking place of actual incident on 13.04.2011, is directed to establish motive part. Then the learned trial Court discussed the evidence on record both, oral and documentary, in relation to overt-acts of both the accused in attacking PW.1 and the deceased, threatening others, who witnessed the incident including the members of the family of PW.1, to kill them in case, they intervene and the medical evidence, through the doctors examined as PWs.17 and 18, as to conducting post-mortem examination and submitting a report as in Ex.P-11 and treatment given to PW.1 and issuing wound certificate.

10. The learned trial Court also referred to the law declared by the Hon'ble Apex Court in **Babu Ram v. State of Punjab** [AIR 2008 SC 1260], that if the prosecution failed to explain the injuries on the persons of the accused, the omission assumes greater importance when the witnesses examined were either interested or inimical witnesses or whether the defence case version which competes in probability with that of the prosecution case and discussed the explanation offered by accused No.1 that on the day of alleged

incident when he was making shoes by cutting leather with '*rambi*', the deceased approached him, started abusing him for not supporting one Sohan Lal with whom he (accused No.1) had fallen in love which led to exchange of abuses between them and a quarrel resulted, during which time, wife of accused No.1 came there and the deceased, who had a '*kapa*' with him gave blows to him (accused No.1) and his wife with *kapa* from its sharp and blunt side and in order to defend him and his wife when he gave a blow with *rambi*, with the help of the police he was falsely implicated.

11. The learned trial Court observed that the accused did not plead self-defence and finally held that in the absence of credible defence evidence, the prosecution cannot be called upon to explain as to how accused No.1 had sustained the injuries. The learned trial court also referred to the overt-acts of accused No.2, when he (accused No.2) hurled a stone on the deceased, it accidentally landed on the head of accused No.1 that resulted in sustaining injuries by accused No.1. Having found that there is absolutely nothing in the cross-examination of prosecution witnesses, disbelieving the defence theory, and finding that the evidence through the prosecution witnesses is clinching to prove the guilt of the accused persons, recorded findings in favour of the prosecution holding that the prosecution could prove both the charges under Section 302 read with 34 IPC and Section 201 read with 34 IPC. In arriving at the opinion, that the charge under Section 201 read with 34 IPC was proved, the

learned trial Court opined that the obstruction by accused Nos.1 and 2 when deceased was shifted into the ambassador car brought by PW.6 to take him to hospital and threatening that they would not allow the deceased, who was then lying with injuries, till he dies, amounts to commission of offence under Section 201 read with 34 IPC and thereby, recorded conviction for the said charge.

12. The learned trial Judge, while holding that the evidence of PWs.1 to 5, 7, 9 and 10 is natural, but not artificial and inspires confidence to place reliance upon, even considered the recovery of weapons of offence used in the commission of offence by both the accused and believing the recovery as true, as the relevant portion is admissible under Section 27 of the Evidence Act corroborating ocular evidence of the prosecution witnesses, held that the prosecution proved the charges beyond all reasonable doubt.

13. In the backdrop of submissions made by the learned counsel for the accused and the learned Public Prosecutor and the evidence let in by the prosecution, we are called upon to answer the following points:

1. Whether the motive for murdering the deceased is proved?
2. Whether the overt-acts attributed to accused Nos.1 and 2 are proved and whether the said overt-acts were

in furtherance of common intention as alleged by the prosecution?

3. Whether the alleged recovery of weapons of offence is proved?
4. Whether the prosecution could explain the injuries on the person of accused No.1?
5. Whether the conviction recorded and sentences inflicted on both the accused can be sustained?
6. To what other relief, if any?

POINT No.1:

14. Initially, we incline to refer to the evidence of PWs.1 and 10, who are father-in-law and wife, respectively, of accused No.2. Their evidence stands on the same footing. Even the evidence of PWs.2 and 3, who are the son and the daughter-in-law of PW.1, would become relevant in the context of proving the motive for the accused to kill the deceased. In the said direction, we intend to refer to the sequence of events.

15. The marriage of accused No.2 with PW.10 took place, twenty years prior to the date of incident. Accused No.2 was known to be a miser in the village. That was asserted by his wife, who is examined as PW.10. A son was born to them four years after their

marriage and then accused No.2 started acting in inhuman manner abusing and beating PW.10 demanding her to get additional amount from her parents. When the ill-treatment reached such a degree, she was compelled to lodge a complaint with the Station House Officer, Dharmapuri Police Station. A crime was registered and even charge sheet was laid. However, due to intervention of elders, amongst whom, one of the elders was examined as PW.11 viz., M. Srinivas, the dispute was pacified and she joined the society of accused No.2. Later, till a daughter was born to them, no ill-treatment was alleged. But, soon after the daughter was born, he again started abusing and beating, demanding her to get the additional amount from her parents. When she was subjected to such unabated harassment, having got vexed with her husband, on *Sankranthi* Festival day of 2011 year, she left his society along with both children and went to her parents house and started staying there by attending to agricultural operations. Accused No.2 alleged to have gone to the house of PW.1 and there also started threatening them to send his wife and also threatening to kill her if she does not join him, even whenever she was found attending to agricultural operations at the fields. This went on for sometime. This was not only spoken to by PW.1, but PW.10, wife of accused No.2, as well. In the process of threatening PW.10, there was a threat imposed to kill either PW.10 or member of the family of PW.1. Thus, the motive was substantiated by the prosecution.

Point No.2:

16. Turning to the overt-acts, the evidence of PWs.1 to 5, 7, 9 and 10, assumes significance. PW.1 is the father of the deceased. PW.2 is another son of PW.1. PW.3 is the daughter-in-law of PW.1, who is the wife of the deceased. PW.4 is the wife of PW.1. PW.5 is PW.1's elder brother's son. All are eye-witnesses to the occurrence. PW.6 is a circumstantial witness, who brought the car on receipt of telephonic call from PW.8, and he is intended to speak to the obstruction caused by accused Nos.1 and 2 when the deceased was sought to be shifted to Hospital, not allowing the car to move. PW.7 is not an eye-witness, but, he is a circumstantial witness to speak to the acts of accused Nos.1 and 2 threatening the others not to intervene. PW.9 is another daughter of PW.1 and she is an eye-witness to the occurrence. PW.10 is the wife of accused No.2. In regard to motive, her evidence is already referred to in the above. PW.11 and other witnesses are photographer, panchayatdars, medical officers and investigating officers.

17. PW.1's evidence shows that in the evening hours, the deceased, PW.11, N. Chandraiah and Sudhakar went to the house of accused No.2 since he threatened to kill his wife-PW.10 and sister of the deceased, and asked him as to why he has threatened to kill PW.10 and requested him to take her back to his house, but, he refused stating that he would go for divorce and at the intervention of the persons present there and as per their advise that the said issue could

be discussed on the next day, the deceased and others came back. One hour thereafter, both accused, armed with knives (*ulis*), which is used to slash toddy trees for getting toddy, came to their (PW.1's) house and started abusing them in filthy language by standing in front of their house, while he (PW.1) was lying on a cot since he was suffering from fever. His evidence shows that accused No.1 armed with a knife (*uli*) approached him and stabbed on his left eyebrow with the knife (*uli*) and when he raised cries, the deceased who was inside the house, came out and since he came out, both accused armed with knives (*ulis*) attacked him. So far as the overt-act of accused No.1 is concerned, he asserts, accused No.1 armed with knife (*uli*) stabbed the deceased on his abdomen, while A-2 hit on the back of the head of the deceased by using the handle of the knife (*uli*). The said incident was witnessed by PWs.2 to 5, 7, 9, 10 and 11 according to him. When all of them tried to intervene, both the accused by showing the knives (*ulis*) threatened to kill them, and, so, out of fear, they did not interfere. Since the deceased was struggling for life because of the injuries, they sent for 'Ambulance -108 van', but, it did not come in time, and, in the meantime, at their request, one P. Tirupati - PW.6, brought his car and they shifted the deceased into car, but, both the accused obstructed passage of the car and, thus, there was delay in taking the deceased to the hospital. But, however, when they were taking the deceased to the hospital, he died on the way, when they reached the outskirts of the village, so, they brought the dead body back to their village. He also asserts that when accused

No.1 stabbed the deceased with knife (*uli*) on his abdomen, his intestines came out and accused No.1 splashed his body with the blood of the deceased and threatened others also to kill. His evidence further shows that when both the accused attacked his another son, Raju intervened and accused No.2 tried to hit him on his head, but mistakenly, the blow fell on the head of accused No.1 and so he sustained injury to his head.

18. When the Sub Inspector of Police of Dharmapuri came to the place of incident, he gave an oral statement, reduced it into writing as in Ex.P-1. This witness was cross-examined elaborately, but, nothing is elicited in his cross-examination useful to condemn or impeach the evidence of PW.1. No doubt, when he was suggested, he denied that there was failure of power supply, but, he volunteered that the power failure was only after the incident occurred. No doubt, this suggestion was consistently made to all eye-witnesses, but, all of them did answer that the power failure occurred only after the incident took place. An omission was elicited in his cross-examination that he did not state to police that accused No.1 beat the deceased with handle portion of the knife (*uli*) on the backside of the head and when confronted to the investigating officer, PW.19, he did admit as to the said omission, but, just by that omission itself, it cannot be said that it demolishes the substratum of the prosecution case, since none of the other witnesses did try to improve their version by stating what has

been asserted by PW.1 as to accused No.1 attacking the deceased on the backside of the head with handle portion of the knife (*uli*).

19. Turning to PW.2's evidence, in regard to the incident, he would assert on the same lines as that of PW.1 that the deceased along with others questioned the accused by visiting their house and at the advice of elders coming back, and one hour thereafter, taking place of the incident. In regard to the main incident, he asserts that accused Nos.1 and 2 tried to stab PW.1 with the knife (*uli*), but, he escaped. In the process, PW.1 sustained injury on his left eye-brow. He speaks to the presence of other eye-witnesses and running outside when PW.1 raised cries who was lying on a cot in the front-yard, whereas, they were watching television in the *varandah* inside the house and finding the deceased questioning accused No.1 as to why he was armed with the knife (*uli*), on which, accused No.2 pushing him and stabbing on the abdomen of the deceased and thereafter, accused Nos.1 and 2 dragging the deceased and when accused No.2 threw a stone on the deceased, which accidentally hit the head of accused No.1 and, thus, accused No.1 sustaining injuries. He would also assert obstruction caused by accused Nos.1 and 2 uttering that the deceased should die on the spot, but, however, at the intervention of the others, they could shift the deceased into car and thereafter, moved the car, during which time, the accused were threatening them showing knives (*ulis*), during which time, PW.10, Gangamallu, telephoned to the police and on coming to know that the police were coming, both of them fleeing

away and then only they could take their car with the deceased to proceed to hospital, but, on the way, the death of deceased taking place and, therefore, they brought him back to the village.

20. PW.3's evidence, in regard to overt-acts of accused Nos.1 and 2, supports what was spoken to by PWs.1 and 2 in attacking the deceased and also obstruction caused besides accused No.1 splashing his body with the blood that came out of the injuries caused to the deceased and threatening them at the point of knives (*ulis*) and Gangamallu telephoning to the police.

21. The evidence of PW.4 is also on the same lines as regards the overt-acts of accused Nos.1 and 2. PW.5, who is elder brother's son of PW.1, of course, did not completely support the case of the prosecution by stating that by the time he came out of the house, the accused had attacked the deceased and stabbed him and the deceased was lying with injuries on the ground. He even gives up the acts of accused persons obstructing the car and the threat imposed on them at the point of knives (*ulis*). He was, therefore, treated hostile by the learned Public Prosecutor and when he was cross-examined, he admitted that he stated before the police that on that day, accused Nos.1 and 2, each armed with knives (*ulis*), came to the house of PW.1 and accused No.1 attacked PW.1, who was lying in front of his house, and caused injury on his left eyebrow and when PW.1 raised cries, the deceased having heard the cries, came out of the house, and, accused No.1 stabbed him on his abdomen and thereafter, both the

accused dragged him and thereafter accused No.1 also stabbed the deceased and accused No.2 armed with the knife (*uli*) tried to stab the deceased from behind, but, accidentally that blow fell on the head of accused No.1 and accused No.1 sustained injury. Thus, what was tried to be omitted by this witness, turning hostile, was undone, when he was cross-examined by the learned Public Prosecutor and eliciting what all he has stated to police in his statement recorded under Section 161 of the Code. That was the reason, his statement was not marked as exhibit. He was, no doubt, cross-examined by the learned counsel for the accused, but, the suggestions, he made, were all bluntly denied by him. Thus, he supported the prosecution version as to the overt-acts of the accused in attacking and killing the deceased and also attacking PW.1 and causing injury.

22. PW.6 is a circumstantial witness, who has taken car on receipt of phone call from PW.8. He was treated hostile for the reason, he did not speak about both the accused obstructing the passage of car threatening at the point of knives and only giving way to the car by fleeing away on coming to know that the police were coming to the place of occurrence.

23. PW.7 speaks about obstruction caused to the car by both the accused threatening that the deceased should not be taken to the hospital and he should die there, at the point of knives and running away from the place of occurrence having heard that the police were coming. He supports the prosecution case asserting to these events.

In fact, he is an eye-witness to the occurrence and his evidence is so natural that while he was returning to his house having had a cup of tea, in a nearby hotel in their village and when he reached the house of PW.1, he found *galata* going on and he then found accused No.1 armed with knife (*uli*) stabbing the deceased on his abdomen and accused No.2 also armed with knife (*uli*) stabbed the deceased and threatened others at the point of knife (*uli*) and PW.8 calling PW.6 on phone to get the car to shift the deceased and subsequent obstruction and threat imposed by both the accused. Though, he was cross-examined by the learned counsel for the accused, there is nothing to discard his testimony.

24. PW.8 is also an eye-witness to the occurrence who witnessed both the accused armed with knives (*ulis*) and accused No.1 stabbing the deceased and threatening others not to approach them at the point of knife. PW.6 being asked to get the car and accused obstructing the passage, imposing threats and on hearing that the police were coming there, fleeing away from the spot and when the deceased succumbed to injuries when the car reached the outskirts of the village and the reason for attack being the marriage dispute between PW.1 and accused as PW.1 was not sending PW.10 to the house of accused No.2 and that that was the reason why both the accused attacked him and killed him.

25. PW.9 is the daughter of PW.1. She is also a direct witness to the entire incident. She speaks to the motive as well as the overt-acts of the accused and the entire incident that took place. According to her testimony, accused No.2 came in the morning to their house and threatened to kill PW.10 and because of the threat, she stayed inside the house without going outside on the date of incident. She then asserts what had taken place at 7.30 p.m., that both the accused armed with knives, attacking PW.1 initially, and then the deceased and causing obstruction by not giving way to the car to shift the deceased to hospital. Thus, she asserts to the material particulars of the whole incident.

26. PW.10 is the wife of accused No.2 and her evidence in regard to every aspect of the case is so natural. She being the victim in the hands of accused No.2 since the birth of the first issue being meted out to harassment with the demand to get additional dowry made by accused No.2 and all the material particulars of the prosecution case were asserted by her, more particularly, the constant threat in the hands of accused No.2 while she was at the house of her parents and even while she was at the fields attending to agricultural operations and what has transpired on the date of incident as to the attack of accused No.1 on the forehead of her father and then on the abdomen of the deceased when he intervened while accused No.2 held the deceased holding his collar and thereafter, accused No.2 stabbing the deceased on the abdomen and the presence of other witnesses,

who witnessed the overt-acts of accused Nos.1 and 2. Though, she was cross-examined and when it was suggested to her that the deceased armed with a stick, hit accused No.1 on his head and caused serious injury to him, it was bluntly denied by her and also denied that there was power supply failure and there was darkness at the time when the incident alleged to have taken place and that accused Nos.1 and 2 were falsely implicated, which were all denied by her.

27. Thus, the ocular evidence, let in by the prosecution through these witnesses, when scanned carefully, nothing is brought out in their cross-examination to show that they were all actuated with ill-will or false motive to implicate the accused. On the other hand, except the omission elicited in the cross-examination of PW.1 and minor discrepancies in their evidence, which do not affect the core issue, their evidence is clear, cogent and beyond reproach.

28. It is also well settled that unless the discrepancies are vital, they cannot affect the credibility of the witnesses as corroboration of evidence with mathematical niceties cannot be expected in criminal cases and trivial discrepancies ought not to obliterate an otherwise acceptable evidence as held in **Leela Ram (D) through Duli Chand v. State of Haryana**¹.

29. Therefore, we have no hesitation to hold that implicit reliance can be placed on the testimony of these witnesses in holding

¹ 2000 SAR (Crl.) 24

that the prosecution could prove the overt-acts of accused Nos.1 and 2 in attacking PW.1 and the deceased and causing death of the deceased in furtherance of their common intention. In the same context, the evidence of medical officer examined as PW.17 becomes relevant. He held post-mortem examination over the body of the deceased on 14.04.2011 at 12.30 noon and found the following injuries:

- “1) Abrasion the right side of fore head 2 cm in diameter
- 2) Incised wound in epigastium 1 ½ inches transverse, Omentum protruding from the wound.
- 3) Incised wound in the umbilical area 2 ½ inches transverse, Omentum found protruding from the wound.

All the above injuries are anti mortem in nature. The 1st injury might have been caused with rough object while other injuries with a sharp object

Internal injuries

1. In peritoneum cavity blood more than 2 liters present.
2. Large intestine (transverse colon) 2 cm tear present incised wound present.
3. Left lobe of the liver 1 ½ inches in long incised wound present.
4. Spleen 1 inch long incised wound present on the upper pole of the spleen.”

He opines that the cause of death was shock and haemorrhage due to injuries caused on vital organs and proximate time of death was 12 to

18 hours prior to his examination and he has issued Ex.P-11, the report. Thus, his evidence shows that injuries 1 to 3 mentioned by him which are external injuries were anti mortem and the first injury could have been caused by a rough object and injuries 2 and 3 by a sharp object. Thus, even the medical evidence would completely corroborate the ocular evidence as the description of external injuries 1 to 3 shown in Ex.P-11 is completely in accord with the injuries sustained by the deceased on his person in the hands of the accused as spoken to by the direct witnesses.

30. The evidence of PW.18, who treated PW.1 and issued wound certificate, also corroborates the evidence of PW.1. He treated PW.1, who sustained an abrasion over left eye-brow measuring 1 x 1/4th inch, blunt injury on the left shoulder, and issued Ex.P-12 wound certificate which injuries were spoken to by PW.1 in his evidence having sustained in the hands of accused No.1. It is well settled that the testimony of an injured witness gains more prominence compared to the testimony of an eyewitness and unless concrete material is brought out in his cross-examination condemning the very case of the prosecution, it solely constitutes basis for recording conviction.

POINT No.3:

31. The evidence of PW.15 is sufficient to prove recovery of weapons marked as MOs.7 and 8 under Exs.P-9 and P-10 respectively, at the instance of accused Nos.1 and 2 in consequence of

the confession they made. This witness, though, cross-examined, nothing is brought out to view that MOs.7 and 8 are planted and Exs.P-9 and P-10 were fabricated for the purpose of the case. Even the evidence of PW.21, who apprehended both the accused in the presence of PW.15, and another panchayatdar from the same village shows that MOs.7 and 8 were brought by them and handed over to the mediators. Therefore, even this point is held in favour of the prosecution.

POINT No.4:

32. So far as injuries sustained by accused No.1 are concerned, the very wound certificate issued by the medical officer who examined him, is marked as Ex.P-16 on consent. That was the reason why the prosecution did not resort to examine the medical officer who treated accused No.1 for the injuries he sustained. The question is whether the prosecution could explain the injuries sustained by accused No.1 on his person. The evidence of witnesses referred to above while discussing under point No.2, makes it abundantly clear that the blow that was to land on the deceased, landed on the head of accused No.1 and that that was the reason, accused No.1 sustained injury to his head. This aspect has been consistently asserted to by the direct witnesses and, therefore, in the presence of the evidence of direct witnesses, the explanation offered by accused No.1 in his examination under Section 313 of the Code referred to in the above in the context of what has been dealt with by the learned trial Court does

not gain precedence. Therefore, we have no hesitation to hold this point also in favour of the prosecution.

POINT No.5:

33. The findings recorded on point Nos.1 to 4 would drive us to hold that the prosecution could prove the charge under Section 302 read with Section 34 of IPC beyond all reasonable doubt. The learned trial Court did not deviate in appreciating the evidence on record, more particularly, the ocular evidence and the medical evidence corroborating the ocular evidence besides the reasoning adopted in examining whether the prosecution could explain the injuries on the person of accused No.1.

34. We do not find any infirmity, much less, legal infirmity in the findings recorded and the conclusion arrived at by the learned trial Court so far as the charge under Section 302 read with 34 of IPC is concerned.

POINT No.6:

35. On a holistic approach, we find that the charge under Section 201 read with Section 34 of IPC would not sustain. Mere obstruction of passage of car while shifting the deceased to the hospital, though, at the point of knives (*ulis*) by threatening the prosecution witnesses and not allowing the car to move and uttering that the deceased should die there itself and fleeing away on learning

that the police were coming over there, would not attract the essential ingredients of offence punishable under Section 201 read with Section 34 of IPC. Thus, we do not find any attempt on the part of the accused to screen the evidence as their acts do not constitute screening of evidence to attract the charge under Section 201 of IPC. Hence, we acquit both the accused for the charge under Section 201 read with Section 34 of IPC.

36. For the aforesaid reasons, the Criminal Appeal is allowed in part confirming the conviction recorded for the charge under Section 302 read with Section 34 IPC against both the accused and the sentence of Imprisonment for Life inflicted and fine with default sentence, while setting aside the conviction recorded and sentences inflicted on both the accused for the charge under Section 201 read with Section 34 IPC.

37. As a sequel thereto, Miscellaneous Applications, if any, pending in the present criminal appeal stand dismissed.

A. RAMALINGESWARA RAO, J

A. SHANKAR NARAYANA, J

March 24, 2018.

MD/YVL/MGR/PV

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

CRIMINAL APPEAL No.388 OF 2013

Between:

Aklula Chandraiah and another .. Appellants

AND

The State of Andhra Pradesh .. Respondent

DATE OF JUDGMENT PRONOUNCED: 24-03-2018

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes / No
 2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes / No
 3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment? Yes / No

A. RAMALINGESWARA RAO, J

A. SHANKAR NARAYANA, J