

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

\* \* \* \*

CRIMINAL APPEAL NO.1074 OF 2013

Between:

Boya Sreenivasulu @ Seena ... Appellant

and

The State of A.P. rep. by its  
Public Prosecutor ... Respondent

Date of Judgment Pronouncement: 30<sup>th</sup> NOVEMBER, 2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
  2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
  3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

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SANJAY KUMAR, J

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ABHINAND KUMAR SHAVILI, J

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> Head Note:

! Counsel for Appellant

: Ms. Hema Jaiswal, Legal Aid Counsel

^ Counsel for Respondent

: Public Prosecutor (AP)

? CASES REFERRED:

1. AIR 1957 SC 614
2. (1973) 2 SCC 793
3. (1993) 3 SCC 282
4. (1996) 1 SCC 614
5. (2006) 11 SCC 323
6. (2008) 10 SCC 615
7. (2014) 12 SCC 389

THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CRIMINAL APPEAL No.1074 OF 2013

J U D G M E N T

(per Hon'ble Sri Justice Sanjay Kumar)

Meti Manjunatha @ Manju was killed on the night of 08.04.2008 at Dodagatta Village, D.Hirehal Mandal, Anantapur District. Boya Sreenivasulu @ Seena was charged with his murder in S.C.No.129 of 2009 on the file of the learned III Additional District and Sessions Judge (Fast Track Court), Anantapur. By judgment dated 31.05.2012, the learned III Additional Sessions Judge held him guilty of the charge punishable under Section 302 IPC and sentenced him to life imprisonment apart from payment of a fine of Rs.1,000/-, in default of which he was to suffer simple imprisonment for one month. Aggrieved thereby, Boya Sreenivasulu @ Seena is in appeal under Section 374(2) CrPC.

By order dated 18.07.2017 passed in CrI.A.M.P.No.1483 of 2017 filed in this appeal, this Court granted conditional bail to the appellant. He remained present in person during the hearing of this appeal.

The case of the prosecution was as follows: The Sub-Inspector of Police, D.Hirehal Police Station (P.W.8), received Ex.P1 written report from P.W.1 at 11.45 PM on 08.04.2008 at the police station and registered Crime No.25 of 2008 under Section 302 IPC against the accused. He forwarded the express FIR to the Court and all concerned. Ex.P7 is the printed FIR. The In-charge Sub-Inspector of Police of Rayadurg Circle (P.W.7) commenced investigation after receiving the express FIR (Ex.P7) on 09.04.2008 at 6.00 AM. He went to the Government Hospital, Rayadurg, where he found P.W.8 along with mediators, blood-relatives and eye-witnesses. He examined P.W.1, P.W.2, P.W.3, P.W.6, Meti

Neelamma (L.W.2) and Meti Eswar (L.W.3) and recorded their statements. He conducted an inquest over the dead body between 7.00 AM and 10.00 AM. P.W.4 and Varikooti Hampa Reddy (L.W.8) acted as mediators and attested the inquest mahazar (Ex.P2). He visited the scene of the offence along with P.W.8 and the mediators - P.W.4 and Varikooti Hampa Reddy (L.W.8). The scene of the offence was in front of the house of P.W.3 at Dodagatta Village. He inspected the scene of the offence and prepared a rough sketch (Ex.P8). He seized blood-stained earth and controlled earth under cover of a mahazar (Ex.P3). M.O.6 is the blood-stained earth and M.O.7 is the controlled earth. On information, he went along with his staff and mediators – P.W.4 and one Ramachandra Reddy, Village Revenue Officer of Rayadurg, at 4.30 PM on 11.04.2008 and reached Kalyam Village Bus Stop, where he apprehended the accused. He recorded the confessional statement of the accused, wherein he admitted to commission of the offence and told them that he would show the axe which was used by him. He arrested the accused under cover of a mahazar (Ex.P3). At about 5.40 PM, the accused led them towards the south of Dodagatta Village to thorny bushes at the tank, where he showed the axe used for commission of the offence. M.O.1 is the axe produced by the accused. The same was seized under cover of a mahazar (Ex.P5). The same was attested by P.W.4 and Ramachandra Reddy, Village Revenue Officer of Rayadurg. The accused also signed on the mahazar. They returned to the police station and the accused was sent to judicial remand. M.Os.1 to 7 were sent to the Forensic Science Laboratory at Tirupathi for analysis. Upon receipt of the FSL report (Ex.P11), J.P.Yerikalaiah, Inspector of Police, Rayadurg (L.W.13), the successor-in-office of P.W.7, filed the charge sheet.

As per the charge sheet, the case of the prosecution was as follows: The deceased used to run an auto-rickshaw and was living with his father in a joint family. On 08.04.2008, the deceased went to Gudesalapalli Village in his auto-rickshaw along with passengers. The accused also travelled in the same auto-rickshaw. The deceased returned to Dodagatta Village at 6.30 PM in his auto-rickshaw but did not choose to bring back the accused as the accused had sprinkled coloured water on the clothes of the deceased. The accused did not listen to the deceased when he pleaded not to sprinkle colours as it would spoil his clothes. The deceased therefore came back to his village in his auto-rickshaw without allowing the accused to board it. After some time, the accused came to the house of the deceased and threatened him for not allowing him to come in his auto-rickshaw and went away. Later, the deceased went to the shop of P.W.3 where he talked to his friends, P.Ws.2 and 6. At that time, the accused came there and picked up a quarrel with the deceased. The accused took out the axe (M.O.1), hidden in his shirt, and hacked the deceased on his head and hands at about 7.30 PM and escaped. The deceased was taken to the Government Hospital, Rayadurg, but was declared 'brought dead'. Basing on the report of the father of the deceased (P.W.1), Crime No.25 of 2008 under Section 302 IPC was registered on the file of D.Hirehal Police Station against the accused.

Thereupon, the learned Sessions Judge framed the following charge against the accused:

'That you on or about the 8<sup>th</sup> day of April, 2008 at about 7.30 p.m. at the threshold of the shop of Manikyam shetty at Dodagatta village, committed murder intentionally causing the death of Meti Manjunatha @ Manju by hacking him with an axe and thereby committed an offence punishable u/s 302 of I.P.C. and within my cognizance.'

The accused however denied the charge and claimed to be tried.

During the trial, the prosecution examined eight witnesses and adduced eleven exhibits in evidence. Material Objects 1 to 7 were also marked by the prosecution. Exs.D1 to D3 were marked by the defence but no oral evidence was adduced on behalf of the accused.

Having considered the oral and documentary evidence, the learned Sessions Judge held the accused guilty and sentenced him accordingly, leading to the present appeal.

As per the prosecution, the commission of the offence by the accused was witnessed by P.Ws.1, 2, 3 and 6. It is well settled that a conviction can be based on eye-witness testimony if the Court finds it to be cogent and reliable. The question that would arise is as to whether the eye-witnesses' testimony in this case would pass that test.

P.W.1, the father of the deceased, stated as follows in his deposition: He was a resident of Dodagatta Village. Meti Neelamma (L.W.2) was his wife and Meti Eswar (L.W.3) was his eldest son. P.Ws.2, 3 and 6 were also residents of his village. The deceased was his last (third) son. On 08.04.2008, when he was at his house at 6.45 PM, the deceased came there and told him that on the same day at 5.00 PM, he had gone to Gudesalapalli in the auto-rickshaw along with the accused and after reaching the village, the accused tried to sprinkle coloured water on the occasion of Ugadi festival, which was on the next day, as a part of a ritual. He stated that his son had requested the deceased not to sprinkle coloured water as his clothes would get spoiled but he did so. When his son was returning to Dodagatta Village in the auto-rickshaw, the accused requested him to allow him to come but his son refused saying that in spite of his objection, he had sprinkled colour water on him. Thereupon,

the accused threatened his son saying 'nee anthu choosthanu pora (I will see your end)'. His son then returned to the village. P.W.1 further stated that on the same day at about 7.00 PM, the accused came to their house and threatened his son saying that 'in spite of my request you refused to allow me in the auto'. P.W.1 said that he was present at that time and that the accused went away. After taking a bath, his son went to the house of P.W.3. P.W.1 said that he waited up to 7.20 PM but his son did not return. He then went to the house of P.W.3. He saw P.W.2, P.W.6 and his son talking to each other. The accused was also present there and he was quarrelling with his son about the incident that took place at Gudesalapalli. P.W.1 stated that while he was proceeding to the spot, he was questioning his son as to what was happening and why they were quarrelling. Meanwhile, the accused suddenly took out an axe from the back, from inside his shirt, and hacked his son three times – on the left side of his ear, on the right forehead and on the right thumb, i.e., on the back of the right palm, when his son raised his hand to avert the blow on the head, and he sustained bleeding injuries. The accused ran away from the spot along with the axe and P.W.1 stated that he followed him, so as to catch hold of him, but he escaped. He then returned back to the spot and saw his son lying on the ground in a pool of blood and he was struggling. His body was lying at the entrance of P.W.3's house. His other son, Meti Eswar (L.W.3) also came there. Then, P.W.1 went to his house and brought the auto-rickshaw. He, his son-Meti Eswar (L.W.3), P.W.2 and P.W.6 shifted his injured son into the auto-rickshaw. P.W.3 was also present at that time. He requested P.W.3 to telephone to 108 ambulance service. They proceeded in the auto-rickshaw to reach Rayadurg but midway, the 108 ambulance came and they shifted the injured into the

ambulance and reached the Government Hospital, Rayadurg. They admitted the injured in the hospital but the doctor informed them, after examination, that he was dead. It was at about 9.00 PM. P.W.1 then got a written report drafted by some person who was present near the hospital and presented the written report at D.Hirehal Police Station at 11.45 PM. The report is Ex.P1. He then returned to the Government Hospital, Rayadurg. On the next day morning at about 6.00 or 6.30 AM, the police came to the hospital and held an inquest over the body of the deceased. The police examined him and others. During the inquest, the police seized the blood-stained clothes from the dead body. P.W.1 identified M.O.1 as the axe used by the accused and M.Os.2 to 5 as the blood-stained clothes of his deceased son.

In his cross-examination, P.W.1 stated as follows: They reached Rayadurg Government Hospital at 9.00 PM. The duty doctor did not give any intimation to the police about the admission of the injured. After reaching the Government Hospital by ambulance, P.W.1 accompanied the injured into the hospital while the other persons who accompanied them stayed outside the hospital. The doctor did not obtain any signature from him after declaring that his son was brought dead. He alone went to the police station by leaving the dead body at the hospital. He admitted that there was a Circle Office Police Station abutting the Government Hospital. He stated that he got Ex.P1 drafted through an unknown person who was not a resident of his village. He studied up to fourth class but could not read and write but could sign. Meti Eswar (L.W.3) is also an illiterate. P.W.6 is a literate. P.W.1 was alone present when Ex.P1 was drafted. After preparing Ex.P1, he did not visit the Circle Office or the Police Station at Rayadurg to inform them about the incident but went to

D.Hirehal Police Station and presented the report there. He said that he went to D.Hirehal Police Station on his own TVS 50 Moped from the hospital. It took about one hour time to reach D.Hirehal. He stayed in the police station for about twenty minutes. The police did not accompany him back to the Government Hospital, Rayadurg. He stayed in the hospital on that night. The police did not visit the hospital on that night. Meti Eswar (L.W.3), P.Ws.2, 3 and 6 also stayed at the Government Hospital, Rayadurg, throughout the night. He did not inform Meti Eswar (L.W.3), P.Ws.2, 3 and 6 about getting the report prepared and about his visit to D.Hirehal Police Station. The distance between Dodagatta and Gudesalapalli is about four kilometres. The house of P.W.3 is at a distance of 100 feet from his house, i.e., after five or six houses towards the South. The house of P.W.2 is situated near the house of P.W.3 and was separated by a road, i.e., adjacent to the road on the South. The house of P.W.6 is situated at a distance of half a kilometre on the road leading to Gudesalapalli. On the eastern side, in the house of P.W.3, there was a petty shop. There was another entrance on the South to the house of P.W.3. P.W. 3 and his wife both looked after the petty shop. For the house where the shop was there, there were two door ways. The shop was located at the front yard of the house on the East and would be kept open from morning to evening till 7.00 PM. In front of the shop and the house, there were no pials. P.W.1 stated that he did not know for what purpose the deceased went to Gudesalapalli. He said that the auto-rickshaw was standing in his name but he had not given any record to the police showing its ownership. He said that he did not know whether the deceased had a driving licence to drive the auto-rickshaw. After returning from Gudesalapalli, he said that his son narrated the incident to

him for about 15 minutes and 20 to 25 minutes thereafter, the accused came to their house. There was no wordy quarrel between the accused and the deceased or himself. The accused stayed at their house for about ten minutes. Prior to the visit of the accused to their house, the deceased had already finished his bath. P.W.1 again said that the deceased took his bath after the accused went away from their house. He said that the deceased completed his bath and dressed within ten minutes. The deceased did not take any food or drink, like water or any other liquid. The deceased took his food and left the house at 5.00 PM. The deceased returned to the house and his dress was with colours and the auto-rickshaw was also stained with colours. He said that he did not show the clothes which were stained with colours but showed the auto-rickshaw to the police. Dodagatta Village was a bigger village than Gudesalapalli. He said that he did not observe whether the villagers of Dodagatta engaged in sprinkling of water on the next day of Ugadi. He denied the suggestion that coloured water sprinkling was only on Holi festival and not on Ugadi festival. He said that he did not warn the deceased not to leave the house after the accused threatened him, thinking that nothing would happen. He said that he went to the shop of P.W.3 thinking that the deceased would be available there. Generally, in the evenings the deceased used to sit at the shop of P.W.3 and chitchat with his friends. The first time, when he saw the deceased at the shop of P.W.3, he was sitting in front of the steps of the southern door. When he was at a distance of ten feet, he found a wordy quarrel going on between the deceased and the accused. P.Ws.2 and 6 were simply watching. They did not interfere. P.Ws.2 and 6 were the friends of the deceased. P.W.1 said that he did not indulge in a quarrel with the accused. He said that when

he was coming towards the deceased and was at a distance within ten feet, the accused hacked the deceased. He said that he was coming from the western direction when the deceased was hacked. After hacking the deceased, the accused ran towards the eastern side. He did not run in the opposite direction of P.W.1. After hacking of the deceased, P.W.1 said that he did not observe as to where the deceased fell down because he ran behind the accused. There was bleeding even when he returned back to the deceased but he was alive. Even at the time of shifting him into the auto-rickshaw, there was profuse bleeding. He and his son, Meti Eswar (L.W.3), got blood-stains on their clothes. They travelled about ten kilometres by auto-rickshaw from the village. He drove the auto-rickshaw while the others were sitting in the back seat. A lot of blood had fallen on the back seat and at the foot space. He showed the blood stains in the auto-rickshaw to the police. He was facing towards the North when his son was hacked. Rayadurg is at a distance of 20 kilometres from their village. From the beginning, he knew that their village was in the limits of D.Hirehal Police Station. He did not know whether there was a Government Hospital in D.Hirehal. He did not know whether persons, by name, Boya Mallikarjuna and Boya Eswaraiah, were residing in their village and stated that he did not know them. He denied the suggestion that the deceased had enmity with the said two persons and there was a quarrel between them about ten days prior to the incident. He said that he reached the police station and after giving the report, he reached the hospital in one hour. He travelled on his moped from the police station to the hospital for about one hour. He denied the suggestion that the deceased did not sustain injuries at the house of P.W.3 and that he gave a false compliant and was deposing falsely to extract money from the

accused. He said that he did not note any special features of the axe at the time of the incident and admitted that such type of axes were available in every agricultural family. After giving Ex.P1-report, he did not see M.O.1-axe. He said that the police recovered M.Os.2 to 5 from the body of the deceased at the mortuary but did not obtain his signature. He denied the suggestion that M.Os.2 to 5 did not belong to his son.

P.W.1 was recalled for further cross-examination on 24.02.2012. He denied the suggestion that he had not mentioned either in Ex.P1 or in his Section 161 CrPC Statement that P.W.3 came to the hospital and had accompanied them. He said that he reported the matter to the police officials who received his complaint in D.Hirehal Police Station. After giving the report, he said that the police asked him as to how the incident happened and he explained to them about the incident but it was not reduced into writing. He said that he was not examined by the police till the next day at 6.30 AM. He said that the police did not reduce his statement into writing in his presence. He denied the suggestion that in Dodagatta Village, there would be a power cut from 6.00 to 8.00 PM in the months of March to May.

P.W.2, another eye-witness, stated that he was a resident of Dodagatta Village and knew P.W.1, his wife-Meti Neelamma (L.W.2), his son-Meti Eswar (L.W.3), P.W.3 and P.W.6. He said that he knew the deceased, who was the son of P.W.1, and also the accused. On 08.04.2008 at about 7.00 PM, he said that he and P.W.6 were talking at the house of P.W.3 and the deceased came there and told them that at 5.00 PM, he went to Gudesalapalli Village in his auto-rickshaw along with the accused and there, the accused tried to sprinkle coloured water on him and he warned him not to do so but, in spite of the same,

the accused sprinkled water and therefore, he did not allow the accused to travel in his auto-rickshaw and the accused threatened him, saying 'Nee anthu choosthanu'. The deceased further told them that he returned back to the village, took a bath and the accused came there and threatened him in the presence of his parents. P.W.2 stated that while the deceased was telling them about the incident, the accused came there and it was about 7.30 PM. The accused again questioned the deceased for not allowing him in his auto-rickshaw and saying so, the accused took out an axe from the back, from inside his shirt, and hacked on the left side of the head, on the right side of the head and on the right palm of the deceased (thumb area). At that time, they were sitting and they tried to catch hold of the accused but he escaped and ran towards the tank. P.W.2 said that P.W.1, P.W.6 and he tried to catch hold of him but he escaped. The deceased fell back on the entrance door of P.W.3 on the steps. Then, he sent P.W.1 to get his auto-rickshaw and P.W.1 brought it and he, P.W.1, Meti Eswar (L.W.3) and P.W.6 shifted the injured into the auto-rickshaw and they proceeded towards Rayadurg, but midway the ambulance came and they shifted the injured into the ambulance and reached the Government Hospital, Rayadurg. The injured was taken inside the hospital by the doctors. P.W.1 and Meti Eswar (L.W.3) went inside the hospital along with the injured but they stayed outside. Then, after 10 or 15 minutes, P.W.1 came and informed them that the injured was no more. On the next day morning at about 6.30 or 7.00 AM, the police came to the hospital and examined them.

In his cross-examination, P.W.2 stated as follows: The police examined them even before conducting an inquest over the dead body. He was examined by the police thirty minutes before the inquest. He was

not examined by the police on 08.04.2008 and he did not even see the police on that day. P.W.1, Meti Eswar (L.W.3), P.W.3, the injured and he went in the auto-rickshaw. They reached Rayadurg Hospital at about 8.00 PM. After reaching the hospital, the deceased died, as per the version of the doctor. Twenty minutes after taking the deceased inside the hospital, P.W.1 came and informed them of his death. He did not visit the Circle Office at Rayadurg to inform the incident. He did not know whether P.W.1 went to the Circle Office at Rayadurg. P.W.1 did not inform him about going to D.Hirehal Police Station for giving a report. P.W.1 returned to the hospital at about 1.00 or 1.30 AM in the night. He was present in the hospital throughout the night. They did not try to inform the police at Rayadurg after coming to know of the death of Manjunath. He denied the suggestion that he had not stated before the police that he had accompanied the deceased in the auto-rickshaw to the hospital and that P.W.1 and his son went inside the hospital along with the deceased and that after twenty minutes, P.W.1 informed them of the death and that he stayed in the hospital throughout the night. He denied having stated before the police as in Ex.D1 portion in his Section 161 CrPC statement.

P.W.2 was recalled for continuation of the cross-examination on 21.02.2012. He stated that he and the deceased were close friends. The house of the deceased was at a distance of 200 feet from the tank bund, which was situated on the South of their village. The house of P.W.3 was at a distance of 50 to 60 feet from the tank bund. The house of the accused was situated at a distance of one furlong from the house of P.W.3. The house of the accused was located at the northern end of the village whereas the house of P.W.3 was at the southern end of the village. In between, there were more than 50 houses. P.W.6, the deceased and

he used to visit the shop of P.W.3 everyday between 6.00 to 8.00 PM and stay there till 9.00 PM. On the day of the incident also, the three of them stayed at the shop of P.W.3. The accused came there on that day and the galata took place at the same venue. The hacking also took place there. At the time when the accused hacked the deceased, he and P.W.6 were by the side of the deceased and were sitting. When the accused hacked the deceased with the axe, the blood sprinkled and fell on his clothes and on the clothes of P.W.6. The blood also fell at the place where they were sitting. They did not show their blood-stained clothes to the police. They did not show the blood-stained earth to the police. He denied the suggestion that he had not stated before the police that the deceased fell on his back at the entrance of the house of P.W.3. At the time of the incident, the shop of P.W.3 was open and customers were also present in the shop. At the time of the incident, the wife of P.W.3 was present in the shop and selling goods. He said that he informed the police that at the time of the incident, electricity supply was there and the light was burning. He denied the suggestion that, generally, in the months of March and April, there would be power cut between 6.00 PM and 9.00 PM. He denied the suggestion that in the month of April, 2008, there was a power cut between 6.00 PM and 9.00 PM. He denied the suggestion that no incident had taken place as stated by him and that he was deposing falsely at the instance of the police. He said that Boya Eshwaraiah and Mallikarjuna were available in their village but he did not know whether any galata took place between the deceased and the said persons.

P.W.3, the next eye-witness, stated as follows: He was a resident of Dodagatta Village and was running a petty shop to eke out his livelihood. He knew P.W.1, P.W.2, Meti Neelamma (L.W.2), Meti Eswar

(L.W.3) and P.W.6. He also knew the accused and the deceased, the son of P.W.1. On 08.04.2008, when he was in his house at about 7.00 PM, P.Ws.2 and 6 were sitting on the steps in front of his southern side entrance and talking. Meanwhile, the deceased came there and sat with them and was chitchatting. The deceased was telling them that at about 5.00 PM on that day, he went to Gudesalapalli along with the accused and some other passengers in his auto-rickshaw and there, the accused tried to pour coloured water on him but he requested the accused not to do so and spoil his clothes but in spite of the same, the accused poured coloured water on his clothes, then after some time, the deceased was returning back to the village and the accused tried to enter into the auto-rickshaw but he warned him not to do so as he had poured coloured water on him. Then, the accused threatened the deceased saying that he would see his end. The deceased then returned in his auto-rickshaw to the village and went to his house and after some time, the accused came to his house and again threatened him in the presence of his parents. Thereafter, he had a bath and came there. P.W.3 said that he heard their conversation and ten minutes after the deceased came there, the accused also came and picked up a quarrel with the deceased for leaving him in the village. The accused suddenly took out an axe from his back, i.e., from inside his shirt, and hacked the deceased on the left side of the head near the left ear and also hacked on the right side of the head and he again tried to hack him on his head but the deceased raised his right hand to avert the blow and sustained an injury on the right thumb and backside of the right palm. It was about 7.30 PM. Meanwhile, P.W.1 came there and then P.Ws.1, 2 and 6 tried to catch hold of the accused but the accused ran away from the spot. He went towards the tank bund. The

deceased fell back due to his injuries at the entrance door of his house. He was struggling due to the injuries. P.Ws.1, 2 and 6 returned and P.W.1 went to his house and brought his auto-rickshaw. P.W.3 said that P.Ws.1, 2, 6 and Meti Eswar (L.W.3) shifted the deceased into it. They asked him to telephone to 108 and then went up to the house of the deceased. He telephoned to 108 and rushed up to the house of the deceased and got into the auto-rickshaw and they proceeded towards Rayadurg Hospital. Midway, the 108 vehicle came and they shifted the deceased into it and reached the Government Hospital, Rayadurg. The doctor took the deceased inside the hospital. P.W.1 and Meti Eswar (L.W.3) accompanied the doctor. They stayed outside the hospital. After 25 or 30 minutes, P.W.1 came out and informed them that his son died. On the next day, i.e., 09.04.2008 at about 6.30 or 7.00 AM, the police came to the hospital and examined them during the inquest.

In his cross-examination, P.W.3 stated as follows: His house consists of two joint portions (antu-middel). There were four doorways on the eastern side of his house. The inner measurement of his shop room was east-west five and a half feet. Adjacent to the West of the shop room, there was a bathroom. A person standing in front of his house cannot see the southern door of his house and what is happening there. He and his wife looked after the shop business. They closed the shop doors at 8.00 PM but kept open the main door entrance of their house. They kept open the southern door as their daughter used to sit facing that door to read. Their daughter was aged 12 years. At the time of the incident, his wife and his daughter were in the shop. He was in the hall in the house, sitting idle. The deceased, P.W.2 and P.W.6 were sitting side by side and talking. The accused came there and hacked the deceased

while the three of them were sitting. He was in the hall at that time. The three persons were sitting in front of his house. When the accused hacked a blow on the head of the deceased, the deceased leaned towards the right side on P.W.6. P.W.6 did not hold the deceased. He said that P.W.6 and P.W.2 did not try to catch hold of the accused. P.W.1 came there two minutes after the hacking. He came running. By the time P.W.1 came there, the deceased had fallen on the house door entrance, i.e., head and body portion inside the house with the lower limbs outside. P.W.1 did not touch the deceased to ascertain whether he was dead or alive. P.W.3 said that he caught hold of the head to verify whether the deceased was alive or dead while P.W.2 and the others ran behind the accused. There was bleeding through the injuries on the head. P.W.3 stated that his clothes were not stained with blood but his hands were stained with blood. He said that he did not show his hands to the police. He further stated that the clothes of P.Ws.1, 2 and 6 were stained with blood. There were blood stains inside the auto-rickshaw. Blood had fallen at the place where the deceased was hacked. He said that he did not show the blood stains to the police. He denied the suggestion that he did not inform the police that the deceased, P.W.2 and P.W.6 were talking together at the southern door entrance; that the incident occurred there and that the deceased fell back into his house at that door and was struggling. P.W.1 came from the western side whereas the accused ran towards the eastern side. P.W.1 was running from the southern side of his house when P.W.3 first saw him and P.W.1 was at a distance of eight feet. P.W.3 stated that he was in the hall of his house when the deceased was hacked and he reached the deceased after he fell into his house. He said that till the body of the deceased was removed from the house, he stayed in the house. He said

that his wife and his daughter stayed in the shop and they did not come to the spot after the incident. He said that he saw P.W.2 and P.W.6 even prior to shifting of the injured from his house. He said that he did not state before the police that P.W.1 brought the auto-rickshaw from his house. The auto-rickshaw stopped near the house of P.W.1 on the road for five minutes and P.W.3 stated that he washed his hands and caught it. He said that he did not say before the police that the auto-rickshaw was stopped near P.W.1's house and that he washed his hands and caught it. He said that no other villagers were present near his house or in his house. The distance between Rayadurg and Dodagatta is about 20 kilometres. There is a Government Hospital at D.Hirehal. They knew that their village was within the limits of D.Hirehal Police Station. The injured was alive till they reached the hospital. P.W.1 did not inform them about his going to D.Hirehal Police Station for giving a report. He, P.Ws.2 and 6 did not go inside the hospital to see the dead body after information was given by P.W.1. They saw the dead body in the hospital in between 9.00 and 9.30 PM. At that time, the police were not present near the dead body. They did not inform the doctor about the incident or their identity. The Circle Office and the police station were far away from the hospital. They knew that Dodagatta Police Circle is at Rayadurg. He, P.W.2, P.W.6 and P.W.1 did not try to report the matter in the Police Circle Office at Rayadurg. P.W.3 stated that they did not advise P.W.1 to give a report at the Circle Office, Rayadurg. He said that throughout the night they stayed at the hospital in grief. He said that generally in the months of March to May in every year, there would be a power cut in the village. He denied the suggestion that power cut would be more in the month of April. He also denied the suggestion that there would be a power cut from 6.00 PM

to 9.00 PM in Dodagatta Village. He denied the suggestion that he had not stated before the police that the accused had hacked on the right and left side of the head and on the right thumb and palm of the deceased. He denied the suggestion that he had not stated before the police that he went to the hospital along with the deceased. He denied the suggestion that he had stated before the police as in Ex.D2 portion of his Section 161 CrPC Statement. He said that the Sub-Inspector of Police or Circle Inspector of Police did not visit the hospital and did not examine them. On 08.04.2008, no police examined him. P.W.1 was his close friend. He denied the suggestion that no incident took place near his house and that he was deposing falsehoods at the instance of P.W.1.

P.W.4, the In-charge Village Revenue Officer of Dodagatta, was a witness at the inquest held over the body of the deceased at the Government Hospital, Rayadurg. He stated that the inquest commenced at about 7.00 AM and was completed at 10.00 AM. During the inquest, the blood-relations of the deceased were examined by the police. He along with Varikooti Hampa Reddy (L.W.8), Sarpanch of Dodagatta, acted as mediators. He identified Ex.P2 as the inquest mahazar. On the same day, he and Varikooti Hampa Reddy (L.W.8) accompanied the police and reached the house of P.W.3 at Dodagatta Village at about 11.30 AM. The police examined the scene of the offence and seized blood-stained earth and controlled earth under cover of a panchanama. Ex.P3 is the observation mahazar. On 11.04.2008 at 4.30 PM, he and Varikooti Hampa Reddy (L.W.8) accompanied the police to Kalyam Bus Stop where the police arrested the accused. He confessed in their presence to the commission of the offence. The police prepared a statement and obtained their signatures therein. Ex.P4 is the arrest mahazar. From there, they

returned back to Rayadurg. The police did not seize any weapons in their presence. At this stage, the witness was declared hostile and was cross-examined by the prosecution. He thereupon stated that the signature shown to him in the seizure mahazar (Ex.P5) dated 11.04.2008 was his own. The contents of the mahazar were admitted to be true by him and he stated that the accused led them to Dodagatta village tank situated on the South and showed the axe kept in thorny bushes. The police seized the axe under the cover of a mahazar and they attested the same. He identified M.O.1 as the axe seized by the police.

In his cross-examination by the defence, P.W.4 stated that after recovery of the axe, no paper was attached to it and no slip was affixed on it. No signatures were obtained on any such paper or slip. He said that because it was a blunt axe, he was able to identify it. He admitted that on the slip affixed to M.O.1 axe, Crime No.105/11 of Tadimarri P.S. dated 1-3-2011 and C.P.R.26/11 were mentioned. He said that the axe that was seized on that day was similar but he could not definitely say whether it was the axe seized by the police on that day. He again stated that the police did not paste any slip on the axe. Upon a question being put to the witness by the Court as to whether he could identify the axe shown to him (M.O.1), he answered that it was not the axe seized by the police in their presence and that he could not identify it. Upon a further question from the Court, he stated that the axe was seized from thorny bushes. He stated that at the time of the inquest, the Government doctor was present there but did not know whether the doctor signed in the mahazar or not. He denied the suggestion that he was not present at the time of the inquest and that he did not accompany the police to Dodagatta Village. He further stated that in the months of April and May, 2008, in Dodagatta

Village, there would be a power cut for one week alternatively. He volunteered that at night time there would be a power cut. He stated that in the months of March, April and May, 2008, there was a power cut but he could not say the specific times of the power cut in those months. He denied that he was deposing falsely at the instance of the police.

P.W.5, the Deputy Civil Surgeon, Community Health Centre, Rayadurg, conducted the post-mortem examination of the body of the deceased. He spoke of the three external injuries found by him:

- ‘1. An insized wound over the left middle of the ear to left temporal area of the skull vertical in direction starting from the near left lobule of the ear to left temporal area of the skull. Clean cut edges size about 12 x 4 cms, brain deep. Left hemisphere of the brain is exposed to outside. The temporal bone of the left is clean cut and fractured.
2. An insized wound over the right parietal area of the skull size about 4 x 1 cm vertical in direction, bone deep.
3. An insized wound over the right thumb proximal portion of the right proximal phalange and right dorsum of the hand transverse in direction size about 6 x 2 cm, the proximal phalange of the right thumb bone is clean cut and detached from the first meta carpal bone of the right hand.’

P.W.5 opined that the deceased died due to shock and haemorrhage and the time of death would be 14 to 15 hours prior to the post-mortem examination. He identified Ex.P6 as his post-mortem examination certificate. He said that injuries 1 and 2 were fatal in nature and could cause death.

In his cross-examination, P.W.5 stated that the injured was brought to the hospital by 7.30 to 8.00 p.m. on 08.04.2018. He examined the patient and found that he had already died. He stated that he intimated the same to Rayadurg police and the police came and took custody of the dead body and kept it in the mortuary room. He said that the deceased must have died about one hour prior to his being brought to the hospital.

He said that he also noted in the hospital record that the patient was brought dead and that he died 30 minutes to one hour prior to his being brought to the hospital. To a specific question put by the Court as to whether the injuries 1 and 2 were possible with M.O.1-axe, he stated that the injuries were possible with M.O.1. He further stated that the length of the blade of M.O.1 was about 6 cms and it reduced downwards towards the stick portion. He admitted that M.O.1 blade was not very sharp. He stated that the edges of the blade were not sharp but somewhat blunt. He denied the suggestion that the injuries in Ex.P6 certificate were not possible with M.O.1-axe.

P.W.6, the last eye-witness, stated as follows: He was a Computer Operator in ZP High School, Somalapuram, on contract basis and was a resident of Dodagatta Village. He knew the deceased and the accused. On 08.04.2008 in the evening at 7.00 PM, P.W.2, the deceased and he were talking to each other sitting on the steps in front of the house of P.W.3. He added that he and P.W.2 were sitting on the steps in front of P.W.3's house when the deceased came there and told them that at about 5.00 PM, he took passengers in his auto-rickshaw to Gudesalapalli and the accused also came with him in the same auto-rickshaw. After reaching Gudesalapalli, the accused tried to pour coloured water on the deceased and he objected as his clothes would get spoiled but, in spite of the same, the accused poured coloured water on him. When the deceased was returning to the village in the auto-rickshaw, the accused also tried to enter it but the deceased objected saying that he had poured coloured water on him in spite of his objections and left the accused there and returned to the village. After some time, the accused returned to the village and went to the house of the deceased and threatened him in the

presence of his parents for not allowing him to enter into the auto-rickshaw. The accused threatened the deceased by saying that he will see his end. While the deceased was telling them this version, the accused came there and picked up a quarrel with the deceased. It was about 7.30 PM. The accused took an axe from his back, having kept it inside his shirt, and hacked the deceased causing injuries on the left side of the head, on the right side of the head and on the right hand thumb. While the accused was hacking the deceased, P.W.1 came there and he was at a distance of 10 feet. P.W.6 stated that P.W.2, P.W.1 and he tried to catch hold of the accused but the accused ran away towards the tank with the axe. The deceased fell on his back at the entrance door of P.W.3. P.W.6 stated that he and P.W.2 asked P.W.1 to get his auto-rickshaw and he did so. Then P.W.6 stated that P.W.1, P.W.2, P.W.3, Meti Eswar (L.W.3) and he shifted the deceased into the auto-rickshaw. P.W.3 telephoned to 108 ambulance and when they were proceeding to the Government Hospital, Rayadurg, and reached half the distance, the 108 ambulance came from the opposite direction. They shifted the deceased into the ambulance and reached the Government Hospital, Rayadurg. P.W.1 and Meti Eswar (L.W.3) shifted the deceased into the hospital. After some time, P.W.1 came out from the hospital and informed him that Manjunath died. On the next day morning, between 6.30 and 7.00 AM, the police came and examined him near the hospital.

In his cross-examination, P.W.6 stated as under: The distance between his house and the house of P.W.3 is about half a kilometre on the same road towards the East. The house of P.W.1 was situated to the North of P.W.3's house. P.W.3's house is at a distance of 200 feet. The shop of P.W.3 was located on the front side of his house. Adjacent to the

shop, there was another door on the front side. The shop and adjacent door were the front portions of the house. P.W.1 was close to him. P.W.3 was also close to him. Generally, they used to go there everyday. When he and P.W.2 were talking, the wife of P.W.3 was present in the shop. She was transacting business at that time when the deceased came there and was talking to them. The customers were coming and going to the shop. When the hacking took place, the wife of P.W.3 was doing business in the shop. Customers were also present in the shop. P.W.3 has no children. P.W.6 said that he did not know whether there was a big galata in connection with an incident involving Meti Eswar (L.W.3), who allegedly outraged the modesty of a girl by name Nagamani, daughter of Mallikarjuna, and in this connection, a galata took place between the deceased and the said Mallikarjuna. P.W.6 stated that when the accused came, P.W.2, the deceased and he were talking to each other by sitting side by side with a gap of half foot. The accused came to the spot in the usual way but not holding his arms at the back. There was a wordy quarrel between the deceased and the accused for about two minutes. P.W.6 stated that he and P.W.2 never tried to interfere and separate the accused and the deceased. When the accused hacked for the first time, they immediately got up. He said that they tried to catch hold of the accused but did not try to push him aside. When the accused hacked for the first time, the deceased was sitting. P.W.6 said that he tried to catch hold of the accused from the side but did not go in between. When the accused hacked for the first time, P.W.6 stated that he and P.W.2 were at a distance of 3 feet from the accused. He said that the accused was at an arm's distance but they did not try to catch him as he was having an axe in his hand. When the deceased received the second injury, the accused

was at a distance of 3 feet from them. The deceased was sitting even when he was hacked the third time. He and P.W.2 were in standing position. He and P.W.2 stood up when the accused hacked the deceased the first time. He said that they did not observe the axe carried by the accused. He said that blood had fallen on their clothes. He said that when they first saw P.W.1, they were sitting. When they first saw P.W.1, the deceased had received injuries. He said that P.W.1 came to the spot from the opposite direction of the accused. By the time they saw P.W.3, the accused ran away. P.W.1 did not try to rescue the deceased. P.W.6 however stated that he had informed the police that P.W.1 tried to rescue the deceased. Small blood drops had fallen at the place where the deceased was sitting. He denied the suggestion that he had not stated before the police that they were sitting on the steps in front of the shop. The deceased fell to his back and the head portion was at a distance of one and half feet from where he was sitting. They reached the hospital between 8.00 and 8.30 PM. Rayadurg is at a distance of 20 KMs. from Dodagatta Village. At about 7.45 PM, they shifted the deceased from the auto-rickshaw into the ambulance. It took them five minutes to shift him into the auto-rickshaw at the scene of the offence. From the scene of the offence, they reached P.W.1's house and stopped there for about two minutes. Thereafter, they did not stop the auto-rickshaw anywhere till the ambulance came. They travelled by auto-rickshaw for about 9 KMs. From the spot where they shifted the deceased into the ambulance, there was a road to reach D.Hirehal. He knew that their village was in the limits of the D.Hirehal Police Station. He knew that there was a Government Hospital in D.Hirehal. They did not telephone to D.Hirehal police from the scene of offence or from the place where the deceased was shifted into the

ambulance. He stated that he could not say whether the deceased was alive or dead till he was admitted in the hospital. He admitted that he and P.W.3 were literate. He said that he did not know whether P.W.2 was literate or not because he studied up to fifth class only. He said that he did not advise P.W.1 to give a report in the Circle Office at Rayadurg when he informed him that the deceased died. He said that at about 8.20 PM, P.W.1 informed them that the deceased died. He said that P.W.2 and he did not try to give information to the police after the incident. He said that the police came to the hospital on the next day and they did not inform to anybody about the incident. He said that he did not know at what time P.W.1 went to the police station and whether he went to the police station or not. He said that till the police came to the hospital on the next day, he did not know where P.W.1 had gone and what happened to the dead body, but it was in the hospital. After being informed of the death of the deceased by P.W.1, he said that he went into the hospital and saw the dead body and returned back. He said that throughout that night, P.W.2, P.W.3 and he stayed outside the hospital, i.e., in the veranda. During that time, no police visited the hospital to see the dead body. He saw P.W.1 during that night at about 1.30 AM at the hospital. He did not advise P.W.1 to give a report in the Circle Office or in the Police Station at Rayadurg. P.W.2 and P.W.3 also did not advise him. P.W.1 did not inform them that he gave a report to the police. From Kalyam Circle, D.Hirehal is situated at a distance of 26 to 30 kilometres. D.Hirehal Police came and recorded his statement in writing. They also examined P.Ws.1 to 3 and recorded their statements. He said that he did not know whether the police obtained their signatures or not, but again added that the police took their signatures. He denied that he had stated

before the police that he came to know through P.W.1 about shifting of the deceased into an ambulance and that the doctor declared him dead whereupon P.W.1 gave a report in D.Hirehal Police Station, as set out in Ex.D3 portion of his Section 161 CrPC statement. He denied the suggestion that no incident occurred at the house of P.W.3 and that the accused had no connection with the death of the deceased and that he was deposing falsehoods at the instance of P.W.1 and P.W.3.

P.W.7, the Investigating Officer, spoke of the various steps taken by him during his investigation.

In his cross-examination, he admitted that generally after presentation of a complaint in the police station, they would examine and record the statement of the complainant. He further stated that till he received the express FIR from D.Hirehal Police, he had no information or knowledge about the commission of the offence. He said that prior to his visit to the Government Hospital, Rayadurg, he had not seen P.W.1, P.W.3, P.W.6, Meti Neelamma (L.W.2) and Meti Eswar (L.W.3). He had put the date in the Section 161 CrPC statements as if they were recorded on 08.04.2008. He said that by oversight they had mentioned the date as such. He admitted that the Section 161 CrPC statements produced before the Court were in his handwriting. He denied the suggestion that the statements recorded on 09.04.2008 were suppressed by him deliberately. He said that he did not know whether the Sub-Inspector of Police, D.Hirehal, examined the complainant and other witnesses at the scene of the offence. He admitted that he did not examine the neighbours at the scene of the offence. He stated that P.W.1 did not state either in Ex.P1 or in his Section 161 CrPC statement that P.W.3 had accompanied them in the auto-rickshaw and in the 108 ambulance to the hospital. He stated

that P.W.2 did not state in his Section 161 CrPC statement that the deceased fell on his back at the entrance of the house of P.W.3 or that the electric bulb was burning at that time. He also did not state that he accompanied the deceased to the hospital. P.W.7 asserted that P.W.2 stated before him as in Ex.D2. He also asserted that P.W.6 stated before him as in Ex.D3. He admitted that he did not collect the information regarding the power cut schedule in the village in those days but denied the suggestion that the entire record was fabricated and that he was deposing falsely.

P.W.8, the Sub-Inspector of D.Hirehal Police Station, stated that on 08.04.2008 at 11.45 PM, while he was present in the station, P.W.1 came there and presented a written report. He thereupon registered Crime No.25 of 2008 under Section 302 IPC and forwarded the express FIR to the Court and all concerned. He identified Ex.P1 as the written report and Ex.P7 as the printed FIR.

In his cross-examination, he stated that the express FIR would have reached the Inspector of Police within one hour or one and half hour after it was registered. He said that he could not say the exact time when the Inspector received the FIR and took up the investigation, but asserted that he despatched the FIR immediately on the same night. He said that he did not examine or record the statement of P.W.1 after registering the case. He also admitted that he did not try to contact his higher officers whether he could proceed to take up investigation in the case. He however stated that soon after registering the case, he immediately informed the same to the Circle Inspector (P.W.7) about the case facts. According to him, P.W.7 also did not direct him not to take up the investigation. He said that he did not ascertain from the Constables as to

the time he delivered the FIR to P.W.7. He denied the suggestion that Ex.P1 was ante-timed.

The case of the prosecution, emerging from the aforestated evidence and more particularly, the testimony of the purported eye-witnesses, is fraught with discrepancies galore and fatal flaws. Coming to the eye-witness testimony, it may be noted that P.W.2 stated that it was customary for P.W.6, the deceased and himself to visit the shop of P.W.3 every day between 6.00 PM and 8.00 PM and stay there till 9.00 PM. If so, the claim of P.W.1 that as the deceased did not return till 7.20 PM, he went to the house of P.W.3 appears doubtful. If it was the usual practice of the deceased to remain with P.W.2 and P.W.6 at the house of P.W.3 till 9.00 PM, there was no reason as to why P.W.1 should feel any sense of worry or impatience at 7.20 PM itself. Further, according to P.W.1, he was within earshot by the time the accused took out an axe from inside his shirt and hacked his son, as he claimed that he was questioning his son as to what was happening and why they were quarrelling. As to whether it would be the normal course of conduct for a father to not rush to the aid of his injured son but to run after the accused so as to catch hold of him is one aspect but there are other discrepancies shrouding this claim. P.W.1 stated that he followed the accused to catch hold of him but he escaped. He however did not say that P.W.2 and P.W.6 also tried to catch hold of the accused or ran after him. P.W.2 however stated that P.W.6, P.W.1 and he tried to catch hold of the accused but he escaped. P.W.6 also claimed likewise. As to why P.W.1 failed to mention that P.W.2 and P.W.6 also chased the accused along with him is not explained.

Further, the details of the attack by the accused upon the deceased as emanating from the versions of the so called eye-witnesses are equally uninspiring of confidence. P.W.1 claimed that his deceased son was lying on the ground in a pool of blood at the door entrance of P.W.3. P.W.2 stated that at the time of the attack, they were all sitting and the deceased fell back on the entrance door of P.W.3 onto the steps. In his cross-examination, he stated that when the accused hacked the deceased, he and P.W.6 were by the side of the deceased and they were sitting. P.W.3 stated that the deceased fell to his back at the entrance door of his house. According to P.W.3, by the time P.W.1 came there, the deceased had fallen on his door entrance, i.e., his head and body portion were inside the house while the lower limbs were outside. He stated that P.W.1 came there two minutes after the hacking. He also stated that P.W.1 did not touch the deceased to ascertain whether he was alive or dead and it was he (P.W.3) who caught hold of his head to verify whether he was alive. He also stated that P.W.2 and others ran behind the accused. According to him, the clothes of P.W.1, P.W.2 and P.W.6 were stained with blood. It may be noted that there is no consistency in the versions of these witnesses as to where the deceased fell. All of them but for P.W.1 stated that he fell on the steps at the entrance of P.W.3's house. There is no evidence that the steps were earthen steps. If so, the question of collecting any blood-stained or controlled earth at the actual scene would not even arise. At best, the blood that may have fallen on the ground while the deceased was being shifted into the auto-rickshaw may account for these material objects, but that is not how it is projected.

P.W.6's evidence is even more damaging to the case of the prosecution. According to him, when the accused hacked the deceased,

P.W.1 was at a distance of 10 feet. At that stage, he said that P.W.1, P.W.2 and he tried to catch hold of the accused but he ran towards the tank of the village with the axe. The deceased, according to him, fell on his back at the door entrance of P.W.3. In his cross-examination, he said that when the accused came, P.W.2, the deceased and he were talking to each other sitting side by side with a gap of half foot. He stated that while there was an altercation between the accused and the deceased for about two minutes, neither he nor P.W.2 tried to interfere or separate the accused and the deceased. When the accused hacked the deceased the first time, he claimed that he immediately got up. He further stated that the deceased was sitting when the accused hacked him the first time. He further claimed that the deceased was still sitting till he was hacked the third time while he and P.W.2 were in a standing position. Significantly, neither P.W.1 nor P.W.3 stated so. He also admitted that blood fell on all their clothes. He then contradicted himself by saying that when they first saw P.W.1 they were sitting, but by that time itself the deceased had received injuries. If they stood up as soon as the accused hacked the deceased the first time, there is no explanation as to how they could be sitting when they saw P.W.1. According to him, P.W.1 came to the spot from the opposite direction of the accused. Further, P.W.6 claimed that P.W.3 was close to him but he did not even know that P.W.3 had a daughter and claimed that he had no children.

That apart, according to P.W.2 and P.W.6, the shop of P.W.3 was still open at the time the incident took place and there were customers there. However, none of the customers are stated to have come to the spot and none of them were examined. There is no explanation forthcoming as to this lapse on the part of the prosecution.

Significantly, there is no consistency in who exactly accompanied the deceased to the hospital. The claim of the so called eye-witnesses was that P.W.1 brought his auto-rickshaw and they took the injured therein to the Government Hospital at Rayadurg and they were met half way by the 108 ambulance. P.W.1 claimed that Meti Eswar (L.W.3), P.W.2, P.W.6 and he shifted his injured son into the auto-rickshaw and P.W.3 was also present at that time. He claimed that he requested P.W.3 to telephone to 108 ambulance service and they proceeded in the auto-rickshaw. He did not mention P.W.3 accompanying them. In his cross-examination also, he stated that he did not inform the police about the presence of P.W.3 at the Government Hospital. P.W.2 stated that when P.W.1 brought the auto-rickshaw, P.W.1, Meti Eswar (L.W.3), P.W.3, P.W.6 and he shifted the injured into the auto-rickshaw and they proceeded towards Rayadurg. P.W.3 also claimed likewise. He stated that P.W.1 brought the auto-rickshaw and then he along with P.W.1, P.W.2, P.W.6 and Meti Eswar (L.W.3) shifted the deceased into the auto-rickshaw and they asked him to telephone to 108 and went up to the house of the deceased. He telephoned to 108 and rushed up to the house of the deceased and got into the auto-rickshaw. P.W.6 stated that P.W.2 and he asked P.W.1 to get the auto-rickshaw and after he did so, P.W.1, P.W.2, P.W.3, Meti Eswar (L.W.3) and he shifted the deceased into the auto-rickshaw. He stated that P.W.3 telephoned to 108 ambulance and they then proceeded to the Government Hospital, Rayadurg. Further, the time taken for P.W.1 to report the death to the others is equally dubious. Each of the witnesses mentioned a different time frame in this regard. That apart, P.W.5, the doctor, categorically stated that the deceased would have died at least 30 minutes before he was brought to the hospital but P.W.2 and P.W.3 said

that he was still alive when they reached the hospital. Further, if the deceased was already dead by the time he was taken to the hospital, the time taken by P.W.1 inside the hospital, ranging from 10 to 30 minutes, before he came to inform the others of the fact remains unexplained.

The presentation of Ex.P1 written report by P.W.1 to P.W.8 is also clouded in suspicious circumstances. Admittedly, P.W.1 went to the Government Hospital at Rayadurg along with P.W.6, who was a good friend of his deceased son. He also knew that P.W.6 was literate as he admitted this fact during his cross-examination. Despite the same, his claim is that he got Ex.P1 drafted by some unknown person who was present near the hospital, who was not even a resident of his village. He further admitted that abutting the Government Hospital, the Circle office police station was there, but he claimed that he went to D.Hirehal police station on his own TVS 50 moped from the Hospital. There is no explanation forthcoming as to how his own TVS 50 moped came to be at the hospital at Rayadurg when he himself drove the auto-rickshaw half way to Rayadurg and then shifted his deceased son into the 108 ambulance. He admitted that he took an hour to reach the hospital from the police station. The claim of P.W.1 that he went to some unknown stranger near the hospital to get Ex.P1 drafted when he very well knew that P.W.6, his deceased son's friend, was literate and was available at the hospital is difficult to believe. It may also be noted that P.W.3 was also literate and was close to P.W.1, as per P.W.3's own admission, but he did not ask him either to draft Ex.P1 written report. Further, as already pointed out *supra*, the sudden appearance of P.W.1's own TVS 50 moped at the Government Hospital, Rayadurg, which was admittedly 20 kms. away from his home at Dodagatta village, is equally puzzling.

P.W.8, who registered the crime upon receiving Ex.P1 report from P.W.1, admitted that he did not even examine and record the statement of P.W.1 and P.W.7 conceded that this was not in keeping with the due procedure. P.W.8 specifically stated in his evidence that soon after registering the case, he informed P.W.7 about the case facts. P.W.7, the Investigating Officer, on the other hand, claimed that he had no information till he received the express FIR (Ex.P7) at 6.00 AM on 09.04.2008. However, he conceded that all the Section 161 CrPC statements recorded by him, being the statements of P.W.2, P.W.3, P.W.6, Meti Neelamma (L.W.2) and Meti Eswar (L.W.3), bore the date 08.04.2008.

To compound matters further, P.W.5, the doctor who examined the deceased when he was brought to the Government Hospital, Rayadurg, stated that, as soon as the deceased was brought to the hospital between 7.30 and 8.00 PM on 08.04.2008, he found that the patient had died and intimated the same to the Rayadurg police. According to him, the police immediately came there and took custody of the dead body and kept it in the mortuary room. However, the other so called eye-witnesses stated that the police never came to the hospital during the night of 08.04.2008.

Another fatal flaw in the case of the prosecution is that according to the eye-witnesses, the clothes of P.W.1, P.W.2, Meti Eswar (L.W.3) and P.W.6 were blood-stained as the blood of the deceased had fallen upon them. P.W.2 and P.W.6 were next to the deceased when he suffered the alleged attack and they claimed that the blood sprinkled upon their clothes. The clothes of Meti Eswar (L.W.3) and P.W.1 must have been stained with blood when they shifted the deceased. It is the consistent case of all the so called eye-witnesses that they all remained at the

hospital at Rayadurg throughout the night and were examined by the police early in the morning on 09.04.2008. If that is so, there is no explanation forthcoming as to why none of the blood-stained clothes of these witnesses were seized by the police and produced in evidence.

More fatal to the case of the prosecution is the fact that the alleged weapon, M.O.1 axe, which was recovered based on the confessional statement of the accused, was clearly demonstrated to be not pertaining to this case at all. P.W.4, the inquest witness, admitted to the fact that the slip attached to M.O.1 axe showed that it pertained to Crime No.105/2011 on the file of Tadimarri Police Station and not to Crime No.25/2008 on the file of D.Hirehal Police Station. Therefore, this was obviously not the murder weapon. That apart, there is no explanation forthcoming as to how the axe was secreted by the accused inside his shirt on the back. As per Ex.P.11 FSL report, the axe is 73 cms. in length with a 9½ x 7 cms. blade. According to P.W.4, though M.O.1 axe was not the axe seized based on the confession of the accused, it was similar. Even if that is accepted, there is no explanation forthcoming as to how an axe with a handle of nearly 2½ feet could be concealed inside the shirt on the back. No evidence was let in as to whether the accused was wearing trousers or a lungi/dhoti at that time. If he was in the latter attire, the version that he carried the weapon on his back, without even holding it in place, is hard to swallow.

Further, even if the so called motive attributed to the accused is taken into consideration, there is no evidence to support the same. According to the prosecution, the accused and the deceased went to Gudesalapalli in the auto-rickshaw and there, the accused sprinkled coloured water on the clothes of the deceased which led to differences

between them. According to P.W.1, the deceased returned with these colour-stained clothes and then took a bath and went to the house of P.W.3. However, these colour-stained clothes were not produced in evidence. That apart, it is the case of P.W.1, P.W.2 and P.W.6 that the deceased went to Gudesalapalli village in the auto-rickshaw with passengers. However, no efforts seem to have been made to ascertain who these passengers were so as to examine them in the context of the accused accompanying the deceased in the auto-rickshaw to Gudesalapalli. More fatal is the failure of the prosecution to produce the colour-stained clothes. As to whether mere failure on the part of the deceased to bring back the accused in his auto-rickshaw over a short distance of 4 kms. from Gudesalapalli to Dodagatta would constitute sufficient motive for him to resort to the brutal attack resulting in the death of the deceased is another question. It is surprising to note that the Investigating Officer did not even get the photographs of the deceased taken. Added to that, the discrepancy as to when exactly the police arrived to the hospital at Rayadurg complicates the matter further.

The first information report (Ex.P7) shows that the information was received by P.W.8 at D.Hirehal Police Station at 11.45 PM and that the place of occurrence was 25 kms. away. Unfortunately, the receipt of this FIR by the Court is not spelt in clear terms as there is an endorsement to the effect that it was received by some Judicial Officer at Rayadurg on 09.04.2008, but the time has not been mentioned by the Judicial Officer. At the top, the endorsement to the effect that it was received at 6.00 AM through PC 2170 of D.Hirehal PS is obviously attributable to P.W.7, who stated so during his evidence.

Given the aforesaid inconsistencies and contradictions and more particularly, the failure on the part of the police to seize the blood-stained clothes of the so called eye-witnesses renders their very presence during the commission of the offence highly doubtful. That apart, Exs.D1, D2 and D3, being the portions of the Section 161 CrPC statements of P.W.2, P.W.3 and P.W.6, further dilute the claim of the prosecution. These exhibits demonstrate in no uncertain terms that all the three witnesses were aware of the fact that P.W.1 had submitted a written complaint to the police. That apart, as to whether P.W.2 and P.W.6, the friends of the deceased, and P.W.3 who stated that he was close to P.W.1 would have allowed P.W.1 to travel one hour upon his TVS 50 moped after the sudden death of his son so as to submit a written complaint at the D.Hirehal Police Station is equally doubtful.

Be it noted that the so called claim made by the eye-witnesses in this case does not jell with what is expected as normal human conduct in such circumstances. A father who does not rush to the son's rescue but chooses to chase the accused and who does not even try to check whether his son is alive or dead is one such instance. The conduct of the father in seeking assistance of a total stranger near the hospital to draft the written complaint when he was well aware that P.W..6, his deceased son's close friend, and P.W.3, his own friend, both of whom were literate, were very much available at the hospital is another instance. The conduct of the witnesses who were with P.W.1, in allowing him to go alone to the police station to submit a complaint by driving a two-wheeler for an hour is the third instance and the so called claims of these eye-witnesses that P.W.1 returned after submitting a written complaint but did not divulge the information to them is the fourth instance. P.W.5's statement that he

immediately informed the Rayadurg police and they arrived there and took custody of the dead body gains credence from the fact that the Section 161 CrPC statements drafted by P.W.7 in relation to these witnesses bear the date 08.04.2008. It appears that for some reason, the police engineered the case as if the investigation started only on 09.06.2008. Given the fact that there is no indication as to when Ex.P7 FIR reached the Court on 09.04.2008, the possibility of manipulation of the case by the police and the parties concerned cannot be ruled out.

Convincing testimony of a sole witness can be the basis for conviction in a given case, if such testimony is found to be entirely reliable (See VADI VELU THEVAR V/ s. STATE OF MADRAS<sup>1</sup>). Similarly, wholly reliable evidence of a single eye-witness can be the basis of a conviction (See SHI VAJI SAHABRAO BOBADE V/ s. STATE OF MAHARASHTRA<sup>2</sup>, ANIL PHUKAN V/ s. STATE OF ASSAM<sup>3</sup>, KARTIK MALHAR V/ s. STATE OF BIHAR<sup>4</sup> and BHIMAPA CHANDAPPA HOSAMANI V/ s. STATE OF KARNATAKA<sup>5</sup>). It is however equally well settled that testimony of eye-witnesses riddled with discrepancies should be discarded or it may result in the conviction of innocent persons (See STATE OF MADHYA PRADESH V/ s. MAKHAN @ MADAN<sup>6</sup>). Similar was the view expressed by the Supreme Court more recently in GANESH DATT V/ s. STATE OF UTTARAKHAND<sup>7</sup>.

Given the number of contradictions and discrepancies in the versions put forth by the so called eye-witnesses in the case on hand, this

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<sup>1</sup> AIR 1957 SC 614

<sup>2</sup> (1973) 2 SCC 793

<sup>3</sup> (1993) 3 SCC 282

<sup>4</sup> (1996) 1 SCC 614

<sup>5</sup> (2006) 11 SCC 323

<sup>6</sup> (2008) 10 SCC 615

<sup>7</sup> (2014) 12 SCC 389

Court has no doubt in concluding that they were planted witnesses and none of them witnessed the actual commission of the offence.

It is indeed unfortunate that a young man came to meet with his death by unnatural means but the wrongdoer(s) will never be brought to book as the police seem to have first decided on whom they should pin the crime and thereafter engineered the investigation accordingly. The manipulation by the police in this case is writ large on the face of it. This practice is indeed worrisome, if not distressing. Planting witnesses to masquerade as eye-witnesses so that the blame can be fastened upon the person chosen by the police is shocking to say the least. Production of the so called murder weapon, which did not even pertain to the case, added insult to injury. Though the defence hinted at some altercation and enmity between the deceased and someone by name Mallikarjuna, with whose daughter the deceased's brother had an incident, the police obviously did not choose to follow up that track and conveniently pinned the offence upon the accused and built up the case accordingly. So much so, that they went to the extent of projecting eye-witnesses, who were clearly planted. Unfortunately, the learned Sessions Judge fell into the trap of the prosecution and held against the accused. Though the learned Sessions Judge referred to case law in the context of minor discrepancies and contradictions in the evidence of eye-witnesses, he lost sight of the major discrepancies and contradictions in the case on hand, which completely demolished the case of the prosecution.

On the above analysis, this Court has no hesitation in concluding that there was no evidence worth the name to pin the offence upon the accused. The testimony of the eye-witnesses was mere eyewash and the

discrepancies in their versions clearly demonstrated that they were planted witnesses.

In the result, the judgment dated 31.05.2012 passed by the learned III Additional Sessions Judge (Fast Track Court), Anantapur, in Sessions Case No.129 of 2009 is set aside and the appellant/accused is acquitted of the charge under Section 302 IPC. As he has already been enlarged on bail pending this appeal, he shall approach the Superintendent of Police of the Central Prison where he was incarcerated for completing the necessary formalities in the light of his acquittal. The bail bonds furnished by him pursuant to the order dated 18.07.2017 passed in this appeal shall stand discharged. The fine amount paid by him, if any, pursuant to the sentence imposed in Sessions Case No.129 of 2009 shall be refunded to him.

The Registry shall forward a copy of this judgment to the concerned Inspectors-General of Police of the States of Telangana and Andhra Pradesh, in terms of Rule 161 of the Criminal Rules of Practice and Circular Orders, 1990, for future guidance and corrective action.

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SANJAY KUMAR, J

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ABHINAND KUMAR SHAVILI, J

30<sup>th</sup> NOVEMBER, 2018

**L/R copy to be marked - Yes**  
**B/o PGS/SVV**