

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL APPEAL No. 1269 OF 2011
AND
CRIMINAL REVISION CASE No.368 OF 2009

COMMON JUDGMENT: (Per the Hon'ble Sri Justice P. Keshava Rao)

Heard both the counsel in the criminal appeal as well as in the criminal revision case.

2. CrI.A.No.1269 of 2011 is filed by the State and CrI.R.C.No.368 of 2009 is filed by the wife of the deceased against the judgment in SC.No.324 of 2006 dated 20.11.2008 on the file of the I Additional Sessions Judge, Kadapa, acquitting the respondents 1 to 6 for the offences under Sections 148, 302, 120-B, 109 r/w 149 IPC and Sections 25(1B)(a) and 27 of Indian Arms Act.

3. Since the criminal appeal and the criminal revision case are arising out of the judgment in SC.No. 324 of 2006, with the consent of all the learned counsel, the arguments are heard together and a common judgment is being passed.

4. The case of the prosecution is that on 26.12.2004 one Chavali Veeranjaneeyulu (hereinafter referred to as "the deceased") accompanied by PW-3, and LWs.4, 6 and 7 went to Nandimandalam at 9.30 P.M. and boarded the bus bearing No. AP-04-U-9903 to go to Hyderabad. One V. Obul Reddy and V. Thati Krishnaiah, PWs.22 and 23 respectively also boarded the bus. The bus left Kadapa at 10.30 P.M. At 02.10 a.m. the bus was stopped by LW.1 and PW-1, being the cleaner and driver respectively, after

crossing Kurnool, at Taj Hotel near Thungabhadra check post for a tea break. By the time the subject bus was stopped at the said place, another bus bearing No. AP-04-U-9906 coming from Hyderabad and proceeding to Kadapa, belonging to Sindhuri Travels also arrived. A-1 to A-5 travelling in Scorpio vehicle bearing No. AP.04.U.7444 driven by LW-12 and accompanied by cleaner, LW-13 stopped the said vehicle on the National Highway at a considerable distance from Taj Hotel. At about 2.15 a.m. A-1 to A-5 in furtherance of their common object to kill the deceased, in collusion with A-6 formed into an unlawful assembly armed with firearms and hunting sickle and approached the subject bus. A-1, with a country made revolver, A-2 with a company made revolver, And A-3 with a sickle entered the bus. After seeing the deceased sleeping, A-1 beat him on the forehead with the butt of revolver and A-2 opened four rounds with his company made revolver at the deceased. The deceased having received bullet injuries on the left side of the head, died instantaneously. During the said process, A-4 and A-5 standing near the bus were giving a guard to the incident. In fact, PW-7 had seen the occurrence of incident from inside the bus and also saw A-1 to A-3 with A-4 and A-5 running towards scorpio van. PW-8 had seen A-1 to A-3 getting down the bus with firearms and hunting sickle and running towards scorpio along with A-4 and A-5. After hearing the shots of firearms inside the bus, LW.1, PWs.1 and 2 and other passengers who got down for tea boarded the bus and found the deceased dead with bullet injuries at 0400 hours. Immediately, LW.1 and PW-2 went to Kurnool Taluq Police Station and gave a report. Pursuant thereto, a

crime was registered vide FIR No.217 of 2004 for the offences under Sections 147, 148, 302 r/w 149 IPC and Sections 25(1B) (a) and 27 of the Arms Act.

5. During the course of investigation, PW-26-D.S.P. Intelligence, Kurnool, who worked as Inspector of Police, Kurnool Rural Circle – the investigating officer, held inquest over the deadbody of the deceased between 08.30 a.m. to 11.30 a.m. in the presence of panchayatdars PW-15, PW-21 and LW-43 and seized the seating chart, piece of fired bullet-M.O.6, identity card of the deceased, blood stained seat cloth-M.O.7, blood stained white seat cover and Rs.1100/- cash-M.O.14. On 28.12.2004 at 05.30 p.m. at the office of the Sub-Divisional Police Officer, Kadapa-PW-26 seized the crime vehicle i.e. Scorpio bearing No. AP-04-U-7444 and blood stained grey colour cover-M.O.8 from the seat. On 29.12.2004, PW-26 seized the photographs of A-1 to A-6 from their houses under cover of panchanamas at different intervals of time and handed over the same to the Circle Inspector of Police, Kurnool, Taluq Circle. On 31.12.2004 on the requisition of investigating officer, the test identification parade of photos of the accused was conducted at Madnal Revenue Officer, Kadapa, in which LW.12 and PW-4 identified the photos of A-1 to A-3 who participated in the commission of the offence. In fact, the Special Judicial Magistrate of First Class for Prohibition and Excise, PW-20 recorded the statements of LW.12 and PW-4 under Section 164 Cr.P.C. On 11.01.2005 at 10.30 a.m. A-1 to A-5 were arrested by the investigating officer in the presence of panchayatdars at R.T.C.

bus stand, Manthralayam and their voluntary confession was recorded about the commission of offence and disclosure of place of concealment of crime weapons used by them, which were seized and preserved under the cover of panchanama. Later, A-1 to A-5 were produced before the Court of Judicial Magistrate of First Class, Kurnool and remanded to judicial custody. However, A-6 secured anticipatory bail from this Court on 16.02.2005. The Assistant Director, A.P. Forensic Science Laboratory after examination of items 3 and 6 i.e. the company made 0.32 caliber six chambered revolver and country made 0.38 caliber five chambered revolver opined that they are in working order. Items 1 and 2 are the 0.32 caliber lead bullet fired from item No.3. Item No.4 is 0.32 caliber revolver cartridges and item 7 is 0.38 caliber cartridges are company made and live. He also opined that the said bullets can be fired from items 3 and 6 respectively. The District Collector and Magistrate issued sanction orders to prosecute A-1 under Sections 25(1B) (a) of Arms Act and A-2 under Section 25(1B) (a) and 27 of Arms Act vide proceedings dated 22.3.2005. The Forensic Professor, Kurnool who conducted autopsy over the dead body of the deceased opined that the death of the deceased was due to shock and haemorrhage due to multiple firearm injuries. After investigation, charge sheet was laid against the accused for the above said offences. After compliance with the procedure under Section 207 Cr.P.C. in supplying the charge sheet and other documents, the case was committed to the Court of Session. The Sessions Court, after taking cognizance of the offences, numbered the case as S.C.No.324 of 2006. The Court below, after framing

charges for the above said offences, read over and explained to them the respondents 1 to 6, for which they denied the same and claimed to be tried.

6. To substantiate their case, the prosecution examined PWs. 1 to 26 and Exs:P-1 to P-53 are marked apart from M.Os.1 to 14. On behalf of defence, no witnesses are examined, but Exs:D-1 to D-9 have been marked.

7. After closure of prosecution evidence, the respondents 1 to 6/accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances/material appearing against them in the evidence of prosecution witnesses. The accused denied the same and pleaded not guilty. After appreciation and analyzing the entire evidence on record, the Additional Sessions Judge by judgment dt.20.11.2008 acquitted the accused for the offences with which they were charged.

8. Aggrieved by the said judgment acquitting the accused, the State filed Crl.A.No.1269 of 2011 and the wife of the deceased filed Crl.R.C.No.368 of 2009 before this Court.

9. Learned Public Prosecutor appearing for the State would submit that the judgment of the Court below is contrary to law, weight of evidence and probabilities of the case. The learned Additional Sessions Judge erred in not appreciating that the prosecution proved the ingredients to constitute the offences alleged against the accused. He also contended that the learned Sessions Judge failed to appreciate the evidence of the

prosecution witnesses, more particularly, PWs.3, 7 and 8, relating to the motive and commission of offence by the accused.

10. Learned counsel appearing for the revision petitioner, being the wife of the deceased, submitted that the evidence of PWs.7 and 8, who were the eye witnesses is trustworthy and, clinchingly established the offence committed by the accused. In fact, there is no reason to disbelieve their evidence. The learned counsel submitted that the evidence of PW.3 demonstrates the long standing enmity between the two groups headed by A6 and the deceased, since prior to the assembly elections held in 2004, that in fact, during the election period, the women folk belonging to the deceased group insulted A6, that A5's brother loved one girl, but refused to marry her and that the deceased got their marriage done against A5's will. He further submitted that even the recovery of M.Os.10 to 12 is a strong circumstance against A2 and they were proved to be the weapons used in commission of offence against the deceased. The learned counsel also submitted that A2 and A3, being the Police Constables, were absconding from their respective duties since the relevant dates as evident from Exs.P-35 to 39, which clinchingly establish their participation in the crime apart from other aspects.

11. On the other hand, the learned counsel appearing for respondent Nos.1 to 6 supported the impugned judgment and submitted that the prosecution miserably failed to establish its case beyond reasonable doubt against the accused.

12. PW.1, who is the driver of the bus bearing No.AP 04 U 9903, on 26.12.2004 at about 10.15 p.m., started his bus to go to Hyderabad. At about 2.10 a.m., after crossing Kurnool, he stopped the bus at Taj Palace Hotel for tea break. When he was washing his face in the hotel, he noticed another bus bearing No.AP 04 U 9906 of Sindhuri travels coming from Hyderabad side also came and stopped at the same point for tea break. One Umapathi was the driver of the said bus. When both of them are taking tea, one Khanna, cleaner of the bus bearing No.AP 04 U 9906, came to them and informed that somebody killed one of the passengers of the bus bearing No.AP 04 U 9903. When both of them rushed to the bus, they found all the passengers in the bus got down, that he along with Umapathi, Khanna and LW.1, Ramakrishna (cleaner of bus bearing No.AP 04 U 9903) went into the bus and found the passenger of seat No.6 dead with bleeding injuries. Immediately, LW.1 went to the Rural Police Station, Kurnool, and submitted a report. The above said evidence of PW.1 shows that he is only a hearsay witness since he was informed by one Khanna that somebody killed one of the passengers in the bus and he was also informed by Ramakrishna that somebody opened fire against the passenger of seat No.6. The witness has not identified the signatures of the said cleaner, Ramakrishna. Though he was shown as LW.1, he was given up by the prosecution. When the statement of the said Ramakrishna is recorded by PW.23-S.I. of Police at the relevant point of time, and when the said aspect is not corroborated by PW.1, it is difficult to believe the evidence of PW.3 that Ex.P-33 (report) contains the

signature of LW.1. Therefore, non-examination of LW.1 is fatal to the case of the prosecution.

13. In fact, PW.23 in his evidence stated that on 27.12.2004 at about 4.00 a.m. while he was in the police station, LW.1 came and gave an oral statement, which was reduced into writing and issued the FIR. However, according to PW.1, he and LW.1 went to the police station at about 2.00 or 2.30 a.m. Therefore, the evidence of PW.1 is not corroborated by the evidence of PW.23 in this aspect. In this regard, the discrepancies are marked as Exs.D-1 to D-3. In Ex.D-1, PW.1 stated to the police that himself and LW.1 reached the Taluq Police Station at 4.00 a.m., which is contrary to the evidence given by him before the Court stating that at about 2.00 or 2.30 a.m. they rushed to the police station and gave a report. Exs.D-2 and D-3 are the discrepancies relating to the incident of firing with pistol and all the passengers in the bus due to fear with loud cries along with their belongings got down from the bus, which is contrary to the evidence given by him before the Court stating that by the time he along with Umapathi, Khanna and Ramakrishna went into the bus, they found the passenger of seat No.6 dead with bleeding injuries. He did not depose in Ex.D-1 about the passengers crying loudly. In the light of these three discrepancies, it is unsafe to rely on the evidence of PW.1 as the same is not trustworthy.

14. PW.3, who is the brother of the deceased, was examined to prove the motive. He deposed that he knows A-6, who was a friend of his deceased brother and the other accused with relationship. However, PW-3 was not an eye witness to the occurrence. He

came to know about the death of his deceased brother at 5.00 a.m. through police of Pendlimarri Police Station. PW-3 deposed that on the previous night, himself, LW.4 - Chandrasekhar, LW.6 - Shaik Khader Basha, LW.7 - Ramanjaneyulu and his deceased brother left the village in a jeep and reached Kadapa at about 9.30 p.m. in order to send off his deceased brother in a bus, that they went to Sndhuri travels whereat his brother purchased a ticket and boarded the bus and sat in seat No.6 and that the bus left Kadapa at 10.30 p.m. He further deposed that himself and the other inmates of their jeep went to Mayura hotel, which is nearer to 7 road circle, to have tea, that while taking tea, they noticed a white Tata Sumo type vehicle, that A1 to A6, K.Subbareddy and B. Srinivasulu boarded the said vehicle and left towards I Town police station, that after taking tea, they went to Nandimandalam Village, and that after he was informed at about 5.00 a.m. about the death of his deceased brother, he along with LWs.6 and 7 rushed to the scene of offence in the jeep and found the dead body of his deceased brother with bleeding injuries. He deposed that there were differences between his deceased brother and A-6 with regard to a contract work. That as far as the love affair of the brother of A5 with a girl is concerned, the deceased intervened and got their marriage performed, and that therefore A5 bore grudge against him. That apart, PW-3 also stated that during the assembly elections of 2004, a quarrel took place between Telugu Desam Party workers and the Congress party workers of their village and in that connection when A-6 came to their village, the ladies of their village objected, that some of the ladies caught hold of the

shirt of A-6 and assaulted him, and that in that connection, A6 challenged his deceased brother saying that he will remove the head of the deceased, since he was responsible for the assault on him by the ladies. But, in the cross-examination, PW-3 deposed that he heard the words said by A6. It is relevant to note that no other prosecution witness has corroborated the evidence of PW-3. Admittedly, PW-3 is not an eye witness to the murder of his deceased brother. Since the previous night PW.3 has seen the accused, he suspected them as being responsible for the incident. But, in the cross-examination, pw-3 stated that he did not state before the Inspector of Police at the time of inquest the names referred by him in his chief-examination. He also did not state before the police about the differences between his deceased brother and A6. That apart, in the cross-examination PW-3 also stated that he did not entertain any suspicion. Therefore, his evidence before the Court regarding the enmity between his deceased brother and A-6 appears to be an improvement. As such, evidence of PW-3 is not believable as far as the motive is concerned.

15. The other two important witnesses are PWs.7 and 8, who were the passengers, traveling along with the deceased in the bus. The evidence of PW.7 is that he is a resident of Vemula Village and doing lemon and castor oil cake business. He knows the deceased – Veeranjanyulu and all the accused. He also deposed that he knows PW.8. He deposed that he purchased two tickets from Sndhuri travels and they were allotted seat Nos.23 and 24.

According to him, PW.8 is his partner in doing the above said business. PW-7 further deposed that on the fateful night, they were travelling in the bus to Hyderabad to purchase castor oil cake, that two or three minutes after they occupied their seats, the deceased Veeranjaneeyulu boarded the bus and occupied seat No.6, that at about 2.10 a.m., the bus, after crossing Thungabhadra check post, stopped at Taj Hotel, that immediately, thereafter, the lights were put on by the driver, that some of the passengers got down to have tea and that PW.8 also got down to pass urine. That while so, A1 to A3 entered into the bus, that A1 and A2 were armed with revolvers and that A3 was armed with a hunting sickle. That after noticing them, the person, who was sitting beside the deceased, moved to the rear portion of the bus, that A1 with his revolver fisted on the forehead of the deceased, and that A2 opened four rounds of fire with his revolver against the deceased on the left fore head temporal region. PW-7 further deposed that all the passengers in the bus got frightened and alighted the bus, that he went to the deceased and found him dead with bleeding injuries, and that he also noticed that A1 to A3 getting down the bus and going along with two other persons in a white Tata Sumo vehicle towards Hyderabad. He further deposed that PW.8 came to him and informed that A1 to A5 were proceeding in a vehicle towards Hyderabad side. PW-7 also deposed that himself and PW-8 booked 150 bags of castor oil cakes on 28.12.2004 from Mallikarjuna traders, that on the same night they left Hyderabad and reached Vemula on 29.12.2004, that on 30.12.2004, Chinnachowk Police came to his house and asked him and Krishnaiah to come to police station, that

accordingly they went to the police station whereat the Circle Inspector of Police, Kurnool, examined them. Ex.P-10 is the purchase bill in the name of PW-7 and Ex.P-11 is the purchase bill in the name of PW.8 and Ex.P-12 is the weigh bill. But, in the cross-examination, PW-7 denied the suggestion that he stated before the police as in Ex.D4 that he went to Hyderabad to place an order for castor oil cake.

16. PW.13, who was working as a clerk in lorry broker's office, deposed that he does not know PWs.7 and 8, that never sold castor oil cake to anybody in Kadapa District and that when the police showed the bill he deposed that the licence number mentioned in the weigh bill is his licence number, but he did not issue the same and sign Exs.P10 to P12. In the cross-examination, he stated that Exs.P10 to P12 do not contain his hand writing and he did not sign them, that for the first time he has seen them when Kurnool police placed them before him and that in fact, prior to 28.12.2004, Mallikarjuna Traders was not in existence.

17. In the light of the above, the evidence of PW.7 about issuance of Exs.P10 to P12 is doubtful and the same are not proved. Then, a doubt arises whether PWs.7 and 8 have travelled to Hyderabad on 26/27.12.2004 night and booked castor oil cakes on 28.12.2004 from Mallikarjuna traders. But, in his 161 Cr.P.C., statement, PW-7 has not stated as he deposed before the Court. Even from this it shows that he made improvements in the evidence given before the Court. In the light of these discrepancies and the

evidence of PW-7 appears to be improbable and does not inspire any confidence and hence the same cannot be accepted.

18. PW.8 deposed that after passing Urine, he came nearer to the bus while smoking cigarette, that he noticed A1 to A5 coming towards the bus, that A1 to A3 rushed into the bus armed with revolvers and hunting sickle, and that A4 and A5 were standing in front of the bus, that when PW-8 was about to move towards the bus, he heard revolver sound four times from the bus and that thereupon he stopped and noticed A1 to A3 coming out of the bus hurriedly and thereafter A1 to A5 rushing towards the road where a white vehicle was parked facing towards Hyderabad and proceeded in the vehicle towards Hyderabad. He further deposed that when he stepped into the bus, PW.7, while coming out of the bus, informed that A1 to A3 fired at the deceased whereupon PW-8 informed PW.7 that A1 to A3 accompanied by A4 and A5 left together in a vehicle towards Hyderabad and that he too went into the bus and found the deceased dead with bleeding injuries. Therefore, PW.8 is not an eye witness to the alleged firing by A1 to A3 at the deceased and his evidence is hearsay. PW.8 in the cross-examination stated that since 5½ years he discontinued his joint business with PW-7. But, according to PW.7, PW.8 is his partner in doing the business and both of them boarded Sindhuri bus to book castor oil cakes at Hyderabad from Mallikarjuna traders. PW.8 was examined on 04.03.2008. The incident in question took place on the intervening night of 26/27.12.2004. So, according to PW.8, when he stopped business 5 ½ years ago, his evidence that he was

doing business with PW.7 by the date of incident cannot be accepted. In fact, PW.8 is a distant relative of the deceased. Further, in the cross-examination, PW.8 has stated that if the shop owner is approached by a customer through a phone call to send castor oil cake bags and if the customer is known to him, the bags will be sent to him. When such an option was available, there was no necessity for PWs.7 and 8 to go to Hyderabad to book castor oil cake bags. Even, according to PW.7, he was regularly purchasing the castor oil cakes from the shop of Mallikarjuna traders and therefore there is no reason for PWs.7 and 8 to go all the way from Vemula to Hyderabad only for the purpose of booking the castor oil cake bags when the same are available on a phone call. In the light of these material inconsistencies, the evidence of PW.8 is also not inspiring confidence and the same is not trustworthy.

19. When the motive is not established and the evidence of alleged eye witnesses is not trustworthy, conviction cannot be based on mere suspicion. However strong the suspicion is, it cannot take the place of proof. It is relevant here to mention that PW.3, who was examined to prove the motive, in the cross-examination stated that he did not entertain any suspicion though the accused and other persons who were their political rivals immediately followed the bus in which his deceased brother was travelling to Hyderabad.

20. The other important aspect in the matter is with regard to tracing of the phone calls. PW.22, the Inspector of Police who was examined in this regard, stated that he received a memo from

D.I.G., Kurnool Range through Circle Inspector of Police, Kurnool Taluq to assist the Circle Inspector of Police, Rural, in investigation in the present case. On 01.01.2005, he was instructed by the Inspector of Police, Kurnool Police Station, to collect BSNL cell phone call details of mobile numbers 9440582984, 9440941846, 9440427977 and 9440305111. Thereupon, he contacted the Manager Security, BSNL Cell One, Hyderabad and obtained the call details of the above cell numbers through e-mail. On 05.01.2005, he collected the call details of mobile number 9440894490. On 10.01.2005, 12.01.2005, 14.01.2005 and again on 01.02.2005 and 02.03.2005, he collected the mobile call details, the subscriber addresses of the above said mobile numbers and sent the same to the Circle Inspector of Police, Kurnool Taluq Circle through fax. So the evidence of PW-22 goes to show that he has assisted in the investigation of this case by collecting the subscriber names, the call particulars, the towers etc. However, in the cross-examination, PW-22 stated that he has not maintained any separate record in respect of the work carried out by him on the above said aspect. When PW-22 has taken part in the investigation, he is supposed to maintain Part-I C.D. of the case and submit the same to the Investigating Officer, who was actually investigating the case. In fact, even PW.25 also deposed that on 30.12.2004 on the instructions of his superior officers, he conducted field enquiries in this case and during the course of his enquires, he ascertained the facts of the case relating to travelling of PWs.7 and 8 in Sindhuri travels bus bearing No.AP 04 U 9903 on the date of offence. According to his evidence, PW.6 sold two tickets to PW.7 and he informed the said fact to the Inspector of Police, Kurnool

Taluq Police Station, who, in turn, instructed to produce all of them before him at Kadapa and accordingly, he produced PWs.6 to 8 before him. On 19.01.2005, as per the instructions of Circle Inspector of Police, Kurnool Taluq Circle, he secured the presence of three witnesses, examined them and recorded their detailed statement in his Part-I C.D. and forwarded the same to the Inspector of Police, Kurnool Taluq Police Station. But, contrary to what PW.22 has stated supra, PW.25 maintained a separate Part-I C.D., which was submitted by him to Investigating Officer, but, in the cross-examination he has stated that there is nothing in writing evidencing the instructions issued by the Circle Inspector of Police, Kurnool Taluq, that he is also aware that he cannot participate in the investigation undertaken by the Kurnool Taluq Police without instructions and that he has to obtain instructions from his superior authorities in case he wants to participate in the investigation of other jurisdiction cases. But, there is no evidence forthcoming in this regard. Therefore, it can be safely presumed that PW-25 has unauthorizedly participated in the investigation, which is supposed to be conducted by the investigating officer only. Therefore, this part of the investigation is illegal and irregular and the same is fatal to the case of the prosecution.

21. As far as the evidence of PW.22, as stated supra, is concerned, when he has not maintained a separate Part-I C.D., his evidence also cannot be relied upon. In this regard, though the evidence of PW.26, who is the investigating officer, corroborates with the evidence of PWs.22 and 23, it does not help the

prosecution case in view of the evidence of PWs.22 and 25 that they have not maintained Part-I C.D. and that they participated in the investigation without instructions from the superiors.

22. Further, the best possible evidence that was available with the prosecution was in the form of persons, who were sitting beside the deceased, apart from one Khanna, who was cleaning the windshield of the bus bearing No.AP 04 U 9906. However, they were not examined by the prosecution. At least, the prosecution ought to have examined the person, who was sitting beside the deceased. In fact, as per the evidence of PW.7, after seeing A1 to A3, the person sitting beside the deceased got up and came to him. So, in the light of the said evidence, the evidence of the person sitting beside the deceased assumes much importance, but for the reasons best known, the prosecution has not examined him.

23. When the prosecution fails to establish the best available evidence to prove the guilt of the accused, an adverse inference has to be drawn against its case.

24. The other evidence produced by the prosecution to prove the guilt of the accused is PW.10. His evidence is to the effect that he heard the conversation of four persons from inside the shutter of LR. Mundi. His evidence is that about more than three years ago, one day prior to Christmas day he was asked by LW.27 – Govindareddy to accompany him to find out the prevailing prices of lemon at LR. Mundi, that at about 4.00 p.m., they reached Mundi, that he knows Baba Fakruddin, who was the clerk of LR.

Mundi, but he was not present by the time they visited the Mundi and that the shutter of LR Mundi was closed that they waited before the LR Mundi by sitting in front of it, that at that time, they heard some conversation among four persons from inside the shutter to the effect that "if Veera gadu would not be killed, our honour will be at stake". PW-10 deposed that they thought that it was the voice of A6, that they also further heard that "the deceased Veeranjaneyulu visiting regularly to ZP. Office, Kadapa, on every Monday and if he would come, it will be very easy to kill him". From this voice they thought that it is the voice of A1. They further heard that "wherever Veera gadu will be secured, he will be killed". From this voice they thought that it is the voice of A2 and A3. That five minutes thereafter, A1 to A3 and A6 came out of the LR Mundi after raising the shutter and left towards Kothur side in a Tata Sumo vehicle. Two days thereafter, he came to know that the deceased Veeranjaneyulu was murdered near Kurnool. In the cross-examination, PW-10 has stated that he did not attempt to inform the deceased or anybody about their alleged hearing of conversation at LR Mundi till the date of examination by the police. The conduct of PW-10 in not disclosing to the deceased the alleged conspiracy to kill him, or to anybody till the date of his examination by the police, throws any amount of doubt on the veracity of his testimony. Though PW.10 has referred to the name of one Govinda Reddy, who is referred to as LW.27, and with whom PW-10 allegedly visited the Mundi, he was not examined by the prosecution. Therefore, the evidence of PW.10 is not corroborated by any other evidence. If really PW.10 accompanied Govinda

Reddy to L.R. Mundi and heard the conversation of four persons inside the shutter planning to kill the deceased, to corroborate the same, Govinda Reddy would have been examined by the prosecution. Therefore, the evidence of PW.10 also cannot be relied upon in the absence of any other corroborative evidence.

25. As discussed supra, though the evidence of PW.10 raises a suspicion, in the absence of any corroborative evidence, it is unsafe to rely on the same since the suspicion cannot take the place of proof.

26. On the above analysis, this Court is of the opinion that the prosecution failed to prove the guilt of all the accused for the offences alleged against them. There is no irregularity or illegality in the judgment passed by the Court below in acquitting the accused.

27. Accordingly, the Criminal Appeal and the Criminal Revision Case are hereby dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

C.V.NAGARJUNA REDDY, J

P. KESHA RAO, J

Date: 20.08.2018
ES/CCM

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