

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

CRIMINAL APPEAL No.678 of 2011

12.03.2018

Between:

The State of Telangana,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Appellant

and

Dhonakonda Ramesh and others

..Respondents/accused

Counsel for the appellant: Public Prosecutor (T.S.)

Counsel for respondent Nos.1, 2, 4 and 5: Mr.T.S.Anirudh Reddy
for Mr.T.Pradyumnakumar Reddy

Counsel for respondent No.3: Mr.Chalakani Venkat Yadav

Counsel for respondent No.6(died): None appeared

The Court made the following:

JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal by the State is filed against judgment, dated 03.07.2009, in Sessions Case No.125 of 2008 on the file of learned II Additional Sessions Judge, Nalgonda at Suryapet, whereby he has acquitted all the six accused – the respondents herein of the charges for the offences punishable under Sections 148, 302, 302 read with Sections 140 and 109 I.P.C.

2. The case of the prosecution as set out in the charge sheet is, briefly, stated hereunder.

P.W.1 – the complainant, who is the wife of Batchupally Venkateswarlu (hereinafter referred to as 'the deceased') and P.Ws. 2 to 7, 9 to 12 and 14 to 20 are the eye/circumstantial witnesses. P.W.8 is the photographer, who photographed the scene of offence and the dead body of the deceased. P.W.13 is the eyewitness to the incident. P.Ws.21 and 22 are the panchas to the confession and recovery panchanamas of accused Nos.1, 2 and 5. P.Ws.25 and 26 are the panchas to the confession and recovery panchanamas of accused No.4. P.Ws.27 and 28 are panchas to the confession and recovery panchanamas of accused No.3. The offence took place at Kothagudem village while falls under the limits of Thungathurthy Police Station.

That on 01.09.2005 at 04.00 hours, the Sub-Inspector (S.I.) of Police Thungathurthy received information over telephone from

P.W.7 that the deceased was murdered at their village. On that information, the S.I. along with other Police force rushed to Kothagudem village. At 05.00 hours, the complainant – P.W.1, submitted a complaint to the S.I. at Kothagudem village, in which, she stated that on 01.09.2005 (Thursday) early hours, there was a function of opening of new house. At about 02.30 hours, the power went off in their street. On that, her husband – the deceased, took one Vardhelly Sathaiah, whose house is located opposite to their house and stated that they were going to the transformer to restore the power, that after sometime, she heard the cries near the house of accused No.6 - Bheemireddy Kushalava Reddy, that herself, her aunt Kalakota Nagamma and Batchu Nagaraju rushed there and found that the deceased was struggling for life in a pool of blood in front of the house of accused No.3 - Maraju Pandu. That her own brother P.W.6 - Budda Anjaiah got her husband consume water and, later her husband lost his breath. P.W.1 noticed injuries on back side of the head, right shoulder, right side of the chest, from elbow to wrist of right hand, left ear and also through out the body of her husband inflicted by axes and hunting sickles. She also noticed one hunting sickle, one pen, one chappal in front of the house of accused No.6 - Kushalava Reddy at a distance from the dead body. The slippers of her husband were in the nearby drainage canal. She also noticed blood stains and one white towel

on a basement. In front of the same basement, there is a severed human little finger. She further stated that accused Nos.1 and 2 - Dhonakonda Ramesh, Pandavula Saidulu and their associates, at the instigation of accused No.6 - Bheemireddy Kushalava Reddy, who is financially sound, way laid and murdered her husband in the early hours by inflicting injuries with axes and hunting sickles. The reason for the murder of her husband was stated to be the group rivalry between her husband and accused No.6 - Kushalava Reddy and for supremacy over the village. She requested to cause enquiry and to take legal action against the accused who murdered her husband.

On receipt of the above complaint, P.W.33 – the S.I. of Police, Thungathurthy endorsed the same to the Station House Officer (S.H.O.), Thungathurthy with instructions to register a case and send the CD file to his camp at Kothagudem for investigation. Accordingly, at 05.30 hours, P.W.32 registered a case in Crime No.57 of 2005 under Section 302 I.P.C., issued express F.I.Rs., sent copies thereof to all concerned and also sent the CD file to the S.I., Thungathurthy camp at Kothagudem through PC 2230 for investigation.

As per the instructions of the Sub-Divisional Police Officer, Suryapet, dated 01.09.2005, P.W.34 rushed to the scene of offence

at Kothatudem along with Police force and took up the investigation, as the concerned C.I. of Police was busy in duty meet at Thirupathi.

During the course of investigation, P.W.34 examined and recorded the statements of the witnesses – P.Ws.1 to 8, photographed the scene and the dead body through a photographer – P.W.8, conducted the scene of offence panchanama in the presence of panchas - P.Ws.21 and 22 and seized the blood stained earth, control earth, one blood stained hunting sickle, one severed human little finger, one ball pen, one pair black chappals, one pair of slippers and one towel. A sketch of the scene was also drawn in the presence of the same panchas and later, inquest was held over the dead body of the deceased in the presence of the same panchas. The dead body was shifted to the Government Area Hospital, Suryapet for post-mortem examination under the escort of PC 692 of Thungathurthy Police Station (P.S.). P.W.30 - Dr.R.Sampath Kumar conducted autopsy over the dead body and opined that the death was caused due to the head injury and issued post mortem report. After post mortem examination, the blood stained banyan, lungi and underwear of the deceased were seized. On the same day, P.W.34 further examined and recorded the statements of the witnesses – P.Ws.9 to 12 and on the next day, he examined and recorded the statements of the witnesses – P.Ws.13 to 20. He

arrested accused Nos.1, 2 and 5 on 09.09.2005 and recorded their confessional statements in the presence of the panchas – P.Ws. 23 and 24 and recovered two axes, one from accused No.2 and another from accused No.5, which were used in the commission of offence. Net cash Rs.5,000/- (500 X 10) were also recovered from accused No.2, which were given by accused No.6 for the treatment of accused No.1. On the same day, P.W.34 arrested accused No.4 and recorded his confessional statement in the presence of the panchas – P.Ws.25 and 26 and recovered an axe, which was used in the commission of offence, in which accused No.1 confessed that he beat the deceased with hunting sickle and left the sickle at the scene, as his left hand's little finger was cut and sustained injuries, and sent accused Nos.1, 2, 4 and 5 to judicial custody. L.W.36 – Mr.G.Sivaram arrested accused No.3 on 14.09.2005 and recorded his confessional statement in the presence of the panchas – P.Ws. 27 and 28 and recovered an axe from his possession and remanded him to judicial custody. Accused No.1 was sent to the Government Area Hospital, Suryapet, for treatment. P.W.29 gave treatment to accused No.1, issued medical certificate and opined that the injuries sustained by the said accused were grievous in nature. The seized material objects i.e., blood stained earth, control earth, blood stained banyan, lungi, underwear and the four axes were sent to the Forensic Science Laboratory (F.S.L.), Hyderabad, in which L.W.31 -

Dr.G.V.Jagadamba, Assistant Director of the F.S.L., Hyderabad examined the material objects and reported that item Nos.1 to 10 are examined, that blood was detected on item Nos.1, 3 to 10, the origin of blood stains on item Nos.1, 3, 4, 5 and 7 is human, origin of blood stains on item Nos.6, 8 to 10 could not be determined, blood group on item Nos.4, 5 and 7 is 'B' group, blood group of blood stains on item Nos.1 and 3 could not be determined and that blood is not detected on item No.2 which is received as control for item No.1, and issued report, dated 29.10.2005. On 19.09.2005, the seized severed human finger of accused No.1 and accused No.1 were sent to F.S.L. Hyderabad through Court for D.N.A. test and the report was awaited.

Accused No.6 surrendered before the Judicial First Class Magistrate, Suryapet on 15.05.2006, as per the directions of this Court, *vide* order, dated 23.02.2006, in Crl.M.P.No.789 of 2006.

Letters were addressed to the General Manager, Cell One Office, Hyderabad to furnish the details of incoming and out going calls of cell Nos.9440471734, 9440084894 and 9440773265 from 01.08.2005 to 14.09.2005 and also requested to issue the details of the ownership of above cell numbers. On that, L.W.33 – N.V.Krishna Reddy issued details of the outgoing and incoming phone calls of above said cell numbers. As per record, cell

No.9440471734 belongs to accused No.1. P.W.31 issued details of the outgoing calls of phone No.236701 belonging to P.W.20, which shows that accused No.5 telephoned to accused No.6 through this phone number after the murder of the deceased.

As per the statements of the witnesses, the investigation revealed that there are two groups in Congress I party at Kothagudem Village, one was lead by the deceased while the other group was lead by accused No.6. Accused Nos.1 to 3 are the staunch supporters of accused No.6, whereas accused Nos.4 and 5 are their associates. The deceased was a village Post Master working since a long time.

Before joining the Congress I party, the deceased was in CPI (M) party and served as the Divisional Committee member. In the year 1994 Assembly elections, the deceased was a staunch supporter of the CPI (M), whereas accused No.6 supported Congress I party candidate openly though he was in CPI (M). In 1999 Assembly elections, the deceased also supported Congress I Party due to pressure from accused No.6, who also supported Congress I candidate. Subsequently, in 2004 Assembly elections, the deceased defected to Congress I party and became close to the sitting M.L.A. – Sri R.Dhamoder Reddy and actively participating in the village affairs.

In the last Gram Panchayat elections, one Jatangi Mallamma – the wife of accused No.5 was unanimously elected as the Sarpanch of Kothagudem Village with the support of the deceased, but the said Mallamma and her husband – accused No.5 are illiterate, as such, the deceased used to override accused No.5 and his wife much to their disliking and also their followers. Since the deceased has been taking active role in the village issues, such as in every work in the village, like issue of the ration cards, grant of widow pensions, sanction of individual latrines, bank loans, conducting of Panchayats etc., and became the sole beneficiary, resulting in accused No.6 and his group getting sidelined in the village matters. Due to his old age, accused No.6 was residing at Hyderabad and often coming to the Village. Due to his absence from the Village, the deceased benefited much and people started depending on the deceased for their works. Unable to bear the domination of the deceased, accused No.6 nurtured the feeling that he is losing grip on the village. Accused Nos.1 to 3 have been informing each and every activity of the deceased to accused No.6 either through telephone or personally and accused No.6 developed eyesore on the deceased and also a feeling that some thing had to be done to check the growth of the deceased in the village.

About 1½ year back, a panchayath was conducted in the village between Shivarathri Mallaiah and Vagalagani Uppalaiah, on the pretext that Mallaiah eloped Aruna, wife of Uppalaiah. In that Panchayath, the deceased and his followers have fined Mallaiah a sum of Rs.24,000/- and knocked away Rs.22,000/- and offered only the remaining Rs.2,000/- to the husband of Aruna, which he refused and brought the matter to the notice of accused No.6. On that accused No.6 called both the parties and the deceased and accused No.6 warned the deceased to be careful and accused Nos. 1 to 3 and 6 and their followers also discussed the style of functioning of the deceased.

Accused No.1 is the close follower of accused No.6 and he too moved closely with the deceased for getting share in the village Panchayats. When 63 individual latrines were sanctioned at Kothagudem village, the deceased collected Rs.100/- per head towards expenditure, which accused Nos.1 to 3 opposed. Accused Nos.1 to 3 and 6 also wanted their share from the amount which the deceased collected at the rate of Rs.100/- each from 63 villagers towards provision of low level sanitary works.

In the month of August, 2005, a school building was sanctioned by the Government and also sanctioned Rs.1,50,000/-. The building was to be constructed by the Village Sarpanch under

the supervision of the Head Master of the School. Because of the influence the deceased was wielding in the Village, accused No.6 was able to grab the contract much to dismay of accused No.5 and also drawn an amount of Rs.50,000/- for the construction. This was also one of the reasons for accused Nos.1 to 6 to develop ill feelings against the deceased. Accused No.5 openly protested about the illegal grabbing of the contract by the deceased in a Panchayat and also in the same Panchayat, he threatened the deceased that he would take revenge to the insult which has been meted out to him. The deceased was also instrumental in giving fishing rights of the local tank to the Harijans over looking the Mudiraj community people in the village to which accused No.2 belongs to. This has become eyesore to accused No.2 and he joined accused Nos.1, 3, 5 and 6. Further, he is also the village servant of Kothagudem village and a close associate of accused No.1. In the past, he prepared a list of the villagers, who are eligible for ration cards without the consultation of the deceased, due to which, the deceased got wild and warned accused No.2 not to meddle in the village. Similarly, there were several problematic incidents in the village between the accused and the deceased.

After four years, the deceased made a propaganda that accused No.4 was having illegal contacts with Dusherla Padma and held a Panchayat on that issue. The deceased and other elders

imposed fine of Rs.8,000/-. Accused No.4 sold his residential hut and paid the said fine amount to the elders. The fine amount was also taken by the deceased instead of paying the same to victim. Since then, he was having grudge against the deceased and was waiting for an opportunity to take revenge. Moreover since joining in Congress-I party, the deceased was dominating him and other villagers and he used to settle even small issues in Panchayat by keeping huge amount as deposit. To rid the village and villagers from the clutches of the deceased, accused No.4 and other accused have decided to kill the deceased with the support of accused No.6.

On 27.08.2005, in connection with Lok Adalath, accused Nos.1, 5, 6, the deceased, P.Ws.7 and 15 and some others came to the Court of the Judicial First Class Magistrate (JFCM), Suryapet and compromised in crime No.55 of 2004, registered under Section 325 read with Section 34 I.P.C. When accuse Nos.1, 5 and 6 met at the JFCM Court at Suryapet, accused No.6 discussed about the plan to kill the deceased and he clearly instructed them to kill the deceased within one week at any cost or otherwise, he would not come to the village.

The deceased constructed a new house in Kothagudem village and decided to celebrate the house warming function on 01.09.2005 at early hours and invited his relatives. Accused Nos.

1 and 5 informed the instructions of accused No.6 to accused Nos.2 to 4 on the night of 27.08.2005. On 31.08.2005 evening, accused Nos.2 to 5 assembled in the house of accused No.3 and kept in touch with accused No.1, who was away from the village and hatched a plan to kill the deceased on the same night. At about 21.50 hours, accused No.6 called up a mobile phone of accused No.1 and gave out the plan to kill the deceased. At about 23.00 hours, accused Nos.3, 4 and 5 collected axes and kept them in the house of accused No.3, meantime accused No.1, who went to Suryapet returned to the village and joined them. Accused No.1 went to his house, took a hunting sickle and went to the house of accused No.2. Accused No.2 took an axe from his house and they both came to the house of accused No.3. Accused Nos.1 to 5 decided to remove the fuses at the transformer to ensure power off in the lane, in which the deceased was residing, with a view to make the deceased to come out of his house to restore the power supply, so that they could execute their plan. Accordingly, at about 02.00 hours, accused Nos.1 to 5 went to the house of accused No.6 with axes and hunting sickle and laid in wait. Accused No.3 went to the transformer and removed fuses and returned to the house of accused No.6. When the power went off, the deceased went to the house of P.W.2 and requested and sent him to check the fuses at the transformer to restore the power supply and the

deceased also walked towards transformer and sat on the basement in front of the house of accused No.6. Accused No.1 with a hunting sickle, accused Nos.2 to 5 with axes attacked the deceased and inflicted injuries indiscriminately. In the melee, accused No.1 lost his little finger and also received injuries on the left elbow, due to which, he left his hunting sickle and all the accused slipped away from the scene. When the deceased raised hue and cry, P.W.13, whose house is located near by scene heard the cries of the deceased, went to the scene with charger light and identified the deceased struggling for life with injuries and also identified the accused while leaving from the scene. Again accused No.3 returned to the scene and axed the deceased to death. On hearing the cries, P.Ws.1 to 6 and others rushed to the scene. After the murder, accused No.1 called up on mobile phone accused No.6 cell No.9440773265 from his cell phone No.9440471734 and informed about the murder of the deceased. Later, accused Nos. 1 and 2 went to the house of P.W.9 at Gorentla village, classmate of accused No.1. Accused Nos.3 and 4 went towards Thungathurthy. Accused No.5 remained in the village. At about 04.20 hours, accused No.5 also telephoned to the mobile phone of accused No.6 No.9440773265 from the STD booth of P.W.20 and informed about murder of the deceased, which was confirmed by P.W.20. When the Police party visited the scene of offence, again accused

No.5 telephoned to the cell No.9440773265 of accused No.6 from same STD booth. Accused Nos.1 and 2 went to the house of P.W.9 and on request, P.W.9 arranged an auto of P.W.10 and in that auto, accused Nos.1 and 2 went to the house of P.W.11 - friend of accused No.1 at Kudakuda village. They informed P.W.11 that they sustained injuries in an accident in the beginning, but on repeated questioning, they confessed that they murdered the deceased at Kothagudem village and received injuries in the melee. When P.W.1 got frightened and sent the accused away from his house, accused Nos.1 and 2 went to the house of one Arruri Ramesh and requested him to take them to a Doctor for treatment. The said Ramesh took them to the hospital of P.W.12, where they were given first aid. From the hospital of P.W.12, accused No.1 also called up accused No.6 on mobile phone and spoke to him and demanded him to arrange money for the treatment for the injury sustained in the incident, upon which, accused No.6 rushed to Suryapet on the pretext of consoling the family members of the deceased and on the way to village, he paid Rs.6,000/- to accused No.2 near Sathyam Hotel at Suryapet.

Hence, it is obvious that accused Nos.1 to 3 along with their associates accused Nos.4 and 5 committed murder of the deceased brutally at the instigation of accused No.6 to establish his supremacy in the village for personal and political gains as accused

No.6 became old and not able to concentrate over the village affairs, resulting in losing of grip over the village to the deceased. Unable to swallow the supremacy of the deceased, he instigated accused Nos.1 to 3 in a planned manner and in turn, accused Nos.1 to 3 with the help of other accused Nos.4 and 5 hatched a plan to kill the deceased and executed the same on the wee hours of 01.09.2005. Thus, accused Nos.1 to 5 committed an offence punishable under Sections 147, 148 and 302 read with 149 I.P.C. while accused No.6 committed an offence punishable under Sections 147, 148 and 302 read with 149 and 109 I.P.C.

3. Based on the charge sheet filed by the Police, the Court below framed the following charges

FIRSTLY: That you A-1 to A-5 on the 01st day of September, 2005 in the early morning hours at Kothagudem village of Thungathurthy mandal, were a member of an unlawful assembly viz., in committing murder of Bachu Venkateshwarlu, commit the offence of rioting and at that time were armed with deadly weapons to wit hunting sickle and axes; and that you A-1 to A-5 thereby committed an offence punishable under Section 148 of the Indian Penal Code and within my cognizance.

SECONDLY: That you A-1 to A-6 on the 01st day of September, 2005 in the early morning hours at Kothagudem village of Thungathurthy mandal shared common object to commit murder of Bachu Venkateshwarlu and in furtherance of the said common object, did commit murder by intentionally causing the

death of Bachu Venkateshwarlu, by you A-1 hacking with hunting sickle and you A-2 to A-5 axing indiscriminately, while you A-6 abetted for the said murder, due to political grudges; and that you the accused No.1 to 5 thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.

THIRDLY: That you A-1 to A-6 on the 01st day of September, 2005 in the early morning hours at Kothagudem village of Thungathurthy mandal shared common object to commit murder of Bachu Venkateshwarlu and in furtherance of the said common object, did commit murder by intentionally causing the death of Bachu Venkateshwarlu, by you A-1 hacking with hunting sickle and you A-2 to A-5 axing indiscriminately, while you A-6 abetted the said murder, due to political grudges; and that you the accused No.6 thereby committed an offence punishable under Section 302 Read with Section 149 and 109 of the Indian Penal Code and within my cognizance.”

4. As the plea of all the accused is one of denial, they were subjected to trial, during which, the prosecution examined P.Ws.1 to 34 and got Exs.P-1 to P-31 marked and produced M.Os.1 to 11. On behalf of the defence, no oral evidence was let in, but it got Exs.D-1 to D-3 – the relevant portions of Section 161 Cr.P.C. statements of P.Ws.3, 5 and 6 marked. On appreciation of the oral and documentary evidence, the Court below has acquitted all the accused of all the charges framed against them.

5. At the hearing, Mr.Ch.Venkat Yadav, learned counsel for respondent No.3/accused No.3, has submitted that respondent No.6/accused No.6, who has not entered appearance in the appeal, is no more.

6. We have heard the learned Public Prosecutor (T.S.) and Mr.T.S.Anirudh Reddy, learned counsel representing Mr.T.Pradyumnakumar Reddy, learned counsel for respondent Nos.1, 2, 4 and 5/accused Nos.1, 2, 4 and 5 and Mr.Ch.Venkat Yadav, learned counsel for respondent No.3/accused No.3 and perused the record.

7. P.W.1 is the wife of the deceased and also the first informant, who gave Ex.P-1 report to the Police. In her cross-examination, she admitted that she did not mention in Ex.P-1 that accused Nos. 1 to 4 hacked the deceased with axes and sickles. However, she denied the suggestion that she did not state the said fact in her Section 161 Cr.P.C. statement before the Police. But, P.W.34 - the investigation officer admitted that in Section 161 Cr.P.C. statement, P.W.1 did not state before him that accused Nos. 1 to 4 hacked the deceased with axes and sickles and caused his death. He further stated that in Ex.P-1 lodged by P.W.1, she mentioned that there were disputes between the deceased and

accused No.6 over the supremacy in the village and thereby, she suspected the said person as the assailant.

8. P.Ws.2 and 4 – the alleged eyewitnesses turned hostile. Hence, their evidence was not of help to the prosecution. P.W.3 – another alleged eyewitness deposed in his evidence that he saw accused No.3 hacking the deceased in front of the former's house and he denied the suggestion that he did not state the said fact before the Police. P.W.34, however, admitted that P.W.3 did not state in his statement that he had seen accused No.3 hacking the deceased with knife.

9. P.W.5 – another alleged eyewitness deposed that when herself and P.Ws.1 and 3 went to the place of the incident, she saw accused Nos.1 to 4 hacking the deceased with axes and sickles in front of the house of accused No.3 and denied the suggestion that she did not state the said fact before the Police. However, P.W.34 in his evidence admitted that P.W.5 did not state before him that she saw four persons hacking the deceased with axes and sickles. Similarly, P.W.6 claimed that he saw accused Nos.1 to 4 hacking the deceased and denied that he did not state so before the Police in his statement under Section 161 Cr.P.C. However, P.W.34 in his cross examination admitted that P.W.6 did not state before him that he heard the cries of the deceased and he was at a distance of 100

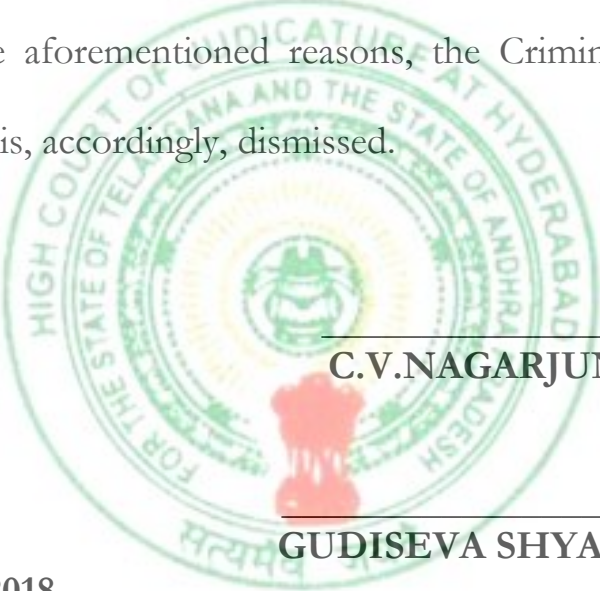
yards from where he saw accused Nos.1 to 4 hacking the deceased with axes and sickles. P.W.7 is the circumstantial witness, who turned hostile. P.W.8 is the photographer. P.W.9, who stated before the Police that accused No.1 approached him to engage an auto to go to Suryapet for treatment, turned hostile. P.W.10 also turned hostile.

10. P.W.11 – the RMP Doctor deposed that one Ramesh brought accused No.1 with an injury to his hospital and he gave first aid. He, however, deposed that he does not know which hand of accused No.1 sustained injury. P.W.12 also turned hostile. P.W.13, who was also an alleged eyewitness, also turned hostile. P.Ws.14 to 17, who were examined to speak about the motive also turned hostile. P.Ws.19 and 20 also turned hostile. P.W.29 – the Doctor, who treated accused No.1, found lacerated injury on the left little finger of the said accused.

11. There is no dispute about the nature of the death being homicidal. As noted hereinbefore, P.W.1 herself gave Ex.P-1 and she did not claim that she witnessed accused Nos.1 to 4 hacking her husband. In her statement given to the Police also she did not state so. Though P.Ws.3, 5 and 6 supported the case of the prosecution, in their earliest versions reflected in their statements recorded under Section 161 Cr.P.C., they have not claimed to have witnessed

accused Nos.1 to 4 killing the deceased. As noted hereinbefore, apart from some of the alleged eyewitnesses turning hostile, many of the circumstantial witnesses also turned hostile. Taking into consideration these facts, the Court below has extended the benefit of doubt to all the accused and accordingly, acquitted them. On re-appreciation of the oral and documentary evidence, we have no reason to differ with the reasoning and conclusion drawn by the Court below.

12. For the aforementioned reasons, the Criminal Appeal fails and the same is, accordingly, dismissed.



C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

12th March, 2018

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