

*HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

+Crl.A.Nos.894 of 2011 and 259 of 2013

% 08-08-2018

Crl.A.No.894/2011:

\$ Mukkamala Chinna Venkata Reddy
and others

..Appellants

Vs.

State of A.P.,
Represented by Public Prosecutor,
High Court, Hyderabad

..Respondent

<GIST:

>HEAD NOTE:

! Counsel for appellants: Sri T. Pradyumnakumar Reddy

^ Counsel for respondents: Public Prosecutor (AP)

?CASES REFERRED :

1. (2016) 2 SCC 607
2. (1980) 4 SCC 425
3. (2003) 3 SCC 355
4. (1972) 3 SCC 393
5. (2002) 1 SCC 487
6. (2011) 6 SCC 288
7. (2009) 6 SCC 308
8. (1983) 3 SCC 327
9. (2004) 8 SCC 660
10. (2010) 6 SCC 407
11. (2013) 6 SCC 417

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..Respondent

Counsel for appellants: Sri T. Pradyumnakumar Reddy
Counsel for respondents: Public Prosecutor (AP)

Crl.A.No.259 of 2013:

M. Ramanamma

..Appellant

And

Katappagari Suryanarayana Swamy
@ Narayana and others

..Respondents

Counsel for appellant: Sri C. Masthan Naidu
Counsel for respondent Nos.1 to 4: Sri T. Pradyumnakumar Reddy
Counsel for respondent No.5 : Public Prosecutor (AP)

The Court made the following:

COMMON JUDGMENT:

(per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Crl.A.No.894 of 2011 arises out of the Judgment in S.C.No.341 of 2006 whereby the learned I Additional Sessions Judge, Anantapur convicted A-1 to A-8 for the offence punishable under Section 302 r/w. Section 149 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5000/- each, in default of payment of fine to suffer simple imprisonment for three months; convicted A-1 to A-8 for the offence under Section 148 IPC and sentenced them to undergo rigorous imprisonment for one year for the offence under Section 148 IPC; convicted A-1 to A-8 under Section 25(1B)(b) of the Arms Act and sentenced them to undergo rigorous imprisonment for three years; convicted A-2 and A-7 for the offence under Section 326 IPC and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs.3000/- each, in default to undergo simple imprisonment for two months; convicted A-3, A-5 and A-7 for the offence under Section 404 IPC and sentenced them to undergo rigorous imprisonment for one year and to pay a fine of Rs.2000/- each, in default to undergo simple imprisonment for one month.

Crl.A.No.259 of 2013 is filed by the defacto complainant against the said same Judgment in S.C.No.341 of 2006 whereby the learned Sessions Judge acquitted A-9 to A-12 for the offences under Sections 148, 341, 302 r/w. Section 149 IPC, 307, 326 and 404 IPC and Section 25(1B)(b) of the Arms Act.

The case of the prosecution, in brief, is as under :

PW-1, the defacto-complainant, was the wife, PW-2 and LW-10 were the brothers, PW-3 and LW-4 were the cousins and LW-9 was the father of Mekala Sreenath Goud (hereinafter referred to as “the deceased”). That A-1 to A-13 led by A-1 belong to Congress Political Party and the deceased belonged to Telugu Desam Party and they were supporting their respective political party candidates in the elections in their village. That there were bitter feelings between the said two groups since 10 years and cases and counter cases were pending between them and thus there were factious and political rivalry between the accused and the deceased. That the deceased used to help poor people in the village and was getting good name which became eyesore to his opponents. That with the Congress Party coming into power, the accused got moral courage and decided to do away with the life of the deceased and accordingly the accused hatched a plan.

That on 3-2-2005 the deceased along with his wife (PW-1) went to Narpala village on his TVS Victor motor cycle bearing registration No.AP02K4914 and consulted a doctor as his wife was suffering from some ill-ness, that the accused came to know of the deceased visiting Narpala and he would return back to the village in the evening, that A-6 and A-7 requested and took the motor cycle of LW-11, that according to their plan, A-1 to A-13 went near the garden of Venkatapuram Ramana Reddy which is by the side of the road in between Chennempalli cross and Bommalatapalli on Narpala-Anantapur road and way laid for the arrival of the deceased, that at about 5.30 p.m., on seeing the deceased and his wife coming on his motor cycle, the accused kept the motor cycle (AP02K7857) across the road and made the deceased to slow down, that A-1 to A-13, armed with deadly weapons such as hunting sickles and sticks emerged out of the hiding place on either side of the road and surrounded the deceased and his wife (PW-1), that A-1 instigated the other accused to kill the deceased; that in furtherance of their common object, the accused hacked the deceased with hunting sickles and dragged him out of the motor cycle; that when PW-1 intervened and requested the accused not to kill the deceased, A-2 and A-7 hacked

on her hands and pushed her aside and that again the accused hacked the deceased with hunting sickles and beat him with sticks indiscriminately and the deceased succumbed to the injuries. That PW-2 and PW-3 who were coming on the motor cycle behind the deceased witnessed the occurrence and identified all the accused. That on noticing PW-2 and PW-3, the accused tried to catch them in order to kill them but out of fear PW-2 and PW-3 turned back their motor cycle and fled the place and that the accused dishonestly took away the motor cycle of the deceased. PW-4, LW-4 and LW-6, who came to know about the offence rushed to Chennempalli cross road and noticed PW-1 crying for help, took her to the Government General Hospital, Anantapur and got her admitted where her statement was recorded by PW-15 – Police constable and that a case in Cr.No.12/2005 was registered in Bukkarayasamudram Police Station by the Inspector of Police, Itikalapalli circle. That during the course of investigation, on 4-2-2005 at 2 A.M., the Investigating Officer - PW-18, seized the blood stained clothes of PW-1 at the Government General Hospital, Anantapur under the cover of Ex.P-6 – mahazar, attested by panchdars i.e., PW-11 and LW-12, and held inquest over the dead body of the deceased at the scene of offence in the presence

of PW-6 and LW-16. That the on 5-2-2005, at 9.00 A.M., PW-18 seized the blood stained TVS Victor motor cycle of the deceased which was abandoned on the road situated on the outskirts of Danduvaripalli village, B.K.Samudram Mandal, under the cover of Ex.P-3 mahazar attested by PW-7, LW-17 and LW-19 and that on the same day at 6.00 P.M., PW-18 seized the motor cycle bearing No.AP02K7857 in front of the house of LW-11, which A-6 and A-7 took from LW-11 on the date of the offence. On 7-2-2005 at 4.00 P.M., PW-18 seized the torn and blood stained black blouse of PW-1 produced by LW-10 in B.K.Samudram Police Station under the cover of Ex.P-7 mahazar attested by PW-12 and LW-22.

That on 12-2-2005 at about 7.00 A.M., PW-18 arrested A-1 to A-9, A-12 and A-13 at Yerra Bavi hillock situated at a distance of two furlongs from Pulakunta village, Anantapur Rural Mandal, that the said accused confessed about the offence committed by them and produced 8 hunting sickles used in the commission of the offence and that the said accused also confessed that they have washed off the blood stains on the sickles after the offence, that on 12-2-2005 at about 7.00 A.M., PW-18 seized the said hunting sickles under Ex.P-10 mahazarnama, attested by PW-16 and PW-17 and that PW-18 sent A-1 to A-9, A-12 and A-13 for judicial

custody. That A-10 and A-11 surrendered before the Additional Judicial First Class Magistrate, Anantapur on 16-2-2005 and they were remanded to judicial custody. That PW-10 conducted post mortem examination on the dead body of the deceased and issued Ex.P-5 post mortem report, wherein he opined that the deceased died due to head injury as a result of multiple cut laceration of head. That PW-13, the medical officer examined PW-1 at the Government General Hospital, Anantapur, and issued Ex.P-8-wound certificate and that in Ex.P-14 – Report of the Regional Forensic Science Laboratory, Tirupati, the Assistant Director who examined some of the material objects, stated that the blood detected on certain items was of human origin. After completion of the investigation, PW-18 laid the charge sheet against the accused for the offences under Sections 147, 148, 341, 302, 326, 404 r/w. Section 149 IPC against A-1 to A-13 and under Section 25(IB)(b) of the Arms Act against A-1 to A-8.

Accused No.13 died. Therefore the case against him abated.

The other accused denied the charges framed against them by the learned Sessions Judge and stood the trial. In support of its case, the prosecution examined PW-1 to PW-18 and marked Exs.P-1 to P-14 and produced MOs.1 to 24. No witnesses were

examined on behalf of the defence, but however Exs.D-1 to D-4, relevant portions in the evidence of PWs.2, 4 and 8 were marked. The learned Sessions Judge, upon appreciation of the oral and documentary evidence on record, convicted and sentenced A-1 to A-8 and acquitted A-9 to A-12 as stated hereinbefore.

Sri T. Pradyumnakumar Reddy, learned Counsel for the appellants submitted that the entire prosecution case is vitiated by the long and inordinate delay in the FIR reaching the court thereby giving scope for false implications, embellishments and distortions and that the unexplained delay in this regard is more fatal in fact cases such as the present one. He has further submitted that the evidence shows that the investigation commenced much before the FIR was registered and therefore the FIR is hit by Section 162 Cr.P.C., that the time and the manner in which the incident has taken place appear to be totally different from that pleaded by the prosecution, that PW-1 to PW-3 are planted witnesses as their testimony suffers from many inconsistencies and unnaturalities, that neither PW-2 and PW-3 nor PW-4 went to the Government Hospital in which PW-1 was admitted and that the evidence regarding the post murder events suffers from lack of credibility. The learned Counsel relied upon several omissions extracted from

the evidence of PW-18 to drive home his submission that the evidence let in by the prosecution is not worthy of acceptance and that PW-16 and PW-17, the alleged panch witnesses for recovery of MOs.11 to 18 – sickles, under Ex.P-10, having turned hostile, the prosecution failed to prove the recovery.

Opposing the above submissions, the learned Public Prosecutor submitted that in the facts and circumstances of the case, it cannot be said that there was any delay in the registration of FIR and that no prejudice was pleaded, much less proved, on account of the alleged delay in the registration of the FIR. Alternatively, he has submitted that PW-1 being an injured witness, her presence at the scene of offence is guaranteed and that therefore the Court below has rightly believed her evidence. He has also sought to justify the conduct of PW-2 to PW-4 and submitted that at the earliest point of time, PW-1 has referred to the names of A-1 to A-8 with specific overt-acts and therefore the prosecution was able to prove their collusion beyond reasonable doubt. He has opposed the submission of the learned Counsel for the appellants that the medical evidence does not corroborate the oral testimony of PW-1 to PW-3. As regards the recovery of crime weapons, the learned Public Prosecutor has submitted that in cases

based on the testimony of eye witnesses, recovery of material objects does not play a significant role and that therefore it did not affect the case of the prosecution.

We have carefully considered the submissions of the learned Counsel for the parties with reference to the record.

The Point that arises for consideration is whether the prosecution was able to prove the guilt of the accused beyond all reasonable doubt ?

Delay in registration of FIR: According to the prosecution, the offence took place at 5.30 p.m. It has come out in the evidence that the distance between the scene of offence and Bukkarayasamudram Police Station is 16 K.Ms. PW-18, the Investigation Officer, admitted in his evidence that the distance between Bukkarayasamudram Police Station and the Magistrate's quarter is 5 K.M. PW-15, Constable at the Police Outpost in the Government General Hospital, Anantapur, deposed that at about 9.00 P.M., he has received medical admission intimation of PW-1 and that he went to the orthopaedic ward and recorded the report of PW-1 and sent the same to Bukkarayasamudram Police Station along with a Home Guard. PW-18 deposed that on 3-2-2005 at about 6.50 p.m. when he was at the Circle Office of Itikalapalli, the

Sub-Inspector of Police, Bukkarayasamudram Police Station informed him on cell phone that the deceased was murdered, that immediately he informed the same to the Sub-Inspectors of Police of Rappthadu and Narpala and instructed them to go to K.K. Agraharam village as well as to the scene of offence and that he rushed to Bukkarayasamudram Police Station and from there to the scene of offence. In his cross-examination, PW-18 stated that by about 7 or 7.15 p.m. he was at the scene of offence and that around 12 midnight, he handed over the FIR to the constable at the time of leaving the Bukkarayasamudram Police Station. He admitted that the distance between the Government Hospital and the Magistrate's quarter is about 1½ or 2 furlongs.

The above discussed evidence would show that the police had knowledge of the murder before 7 p.m., but the FIR was allegedly registered at 11 P.M., while it reached the jurisdictional Magistrate at 4.10 A.M. on the following day. No explanation whatsoever was forthcoming from the prosecution side for the inordinate delay in the FIR reaching the Magistrate. Though in Ex.P-1, PW-18 has endorsed that he has registered the FIR at 11 P.M., as rightly submitted by the learned Counsel for the appellants, the same is a self-serving claim, and the truth or

otherwise thereof could be tested based on the time at which the FIR was received by the Magistrate.

In **State of Rajasthan Vs. Daud Khan**¹, the Supreme Court, held at para-26 as under :

“The interpretation of Section 157 CrPC is no longer res integra. A detailed discussion on the subject is to be found in *Brahm Swaroop Vs. State of U.P.* (2011(6) SCC 288) which considered a large number of cases on the subject. The purpose of the “forthwith” communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR.”

In **Marudanal Augusti Vs. State of Kerala**², the Supreme Court has emphasized on the importance of forwarding of the FIR to the Magistrate and held, at para-24, as under :

“The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with the earliest dispatch which intention is implicit with the use of the word ‘forthwith’ occurring in Section 157 CrPC, which means promptly and without any undue delay. The purpose and object is very obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.”

¹ (2016) 2 SCC 607

² (1980) 4 SCC 425

The decision in **Marudanal Augusti** (2-supra) was referred to and relied upon by the Supreme Court in **Rajeevan Vs. State of Kerala**³.

The consequences of not explaining the delay in lodging the FIR have been discussed in **Thulia Kali Vs. State of Tamil Nadu**⁴ wherein it was inter alia observed as under :

“First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained.”

The above Judgment was followed in **Maharaj Singh Vs. State of U.P.**⁵ and **Rajeevan Vs. State of Kerala** (3-supra).

³ (2003) 3 SCC 355

⁴ (1972) 3 SCC 393

⁵ (2002) 1 SCC 487

Having regard to the fact that the FIR reached the Magistrate at 4.10 A.M., it is not possible to believe the version of the prosecution that it was registered at 11 P.M. In the absence of any explanation offered by the prosecution for the long delay, we are of the opinion that the prosecution case is seriously affected by such delay. In the light of the facts and the legal position discussed above, we have no hesitation to hold that the long and unexplained delay in the F.I.R. reaching the Court seriously affected the case of the prosecution.

Analysis of evidence: Coming to the oral testimony of the witnesses, PW-1 who is the widow of the deceased stated that on the day of occurrence, she along with the deceased went to Narpala village on the motor cycle to meet the doctor at 4 p.m; that after consulting the doctor and purchasing medicines, they were returning to their village at about 5.30 p.m. and that when they reached the place near the garden of Venkataramana Reddy, they found one motor cycle placed obstructing their way on the middle of the road. She has further deposed that when the deceased slowed down the motor cycle, all the accused arrived holding weapons in their hands; that A-1 to A-8 were armed with hunting sickles; A-9, A-10, A-12 and A-13 (since died) were armed with

sticks and A-11 was armed with a knife; that A-1 has questioned the other accused as to why they were all waiting without attacking the deceased; that A-1 beat the deceased with a hunting sickle, A-2 to A-8 also hacked the deceased with hunting sickles all over the body; A-9 to A-13 also beat the deceased and caused injuries; that when she intervened and requested the accused to spare and save the deceased, A-7 and A-2 beat her with hunting sickles on her hands; that PW-1 sustained cut injuries on both her hands and fell down on the spot; that the accused dragged her to one side of the road and that A-1, A-6, A-7 and A-8 beat the deceased and hacked him with hunting sickles indiscriminately all over the body apart from cutting his hands. PW-1 further deposed that when the deceased fell down, the accused left the scene of offence and went away on the motor bike of the deceased and another bike kept on the road and also on other vehicles. The witness further deposed that at that time, PW-2 and PW-3 had come on motor cycle and the accused have taken them away from that place; that the deceased died on the spot; that she informed the people passing on the road that the accused killed her husband and that nobody came near the witness as she sustained bleeding injuries on her hand. PW-1 has further deposed that she then went to Chennampalli

cross where LW-4 and PW-4 came and enquired with her as to what had happened and that she narrated the details of the incident to them. That the said two persons have taken the witness to the Government Hospital, Anantapur where PW-2 arrived while the witness was being admitted in the hospital. PW-1 further deposed that she was in the hospital for four days, that later she was referred to St. John's Hospital, Bangalore for treatment; and that later she took treatment for 15 days in Sai Baba Hospital, Puttaparthi and for one month in the Osmania General Hospital at Hyderabad. That while PW-1 was in the Government Hospital, Anantapur, Ex.P-1 report given by her was recorded by the Police and as she sustained injuries on her hand, she had put her thumb impression on Ex.P-1. PW-1 was subjected to serious cross-examination. She stated that she does not know whether M.P.P. Elections were held in the year 2003 and that she does not know the various activities taking place in her village. The most crucial statement made by PW-1 which may seriously affect the credibility of her evidence is to the effect that she does not know any other villagers except her relatives in the village. It is not the case of the prosecution that the accused are related to the family of PW-1 and the deceased.

PW-1 has further deposed that the distance between Bommalatapalli village and Sanjeevapuram cross is about $\frac{1}{2}$ K.M, that it may be true that the distance between Sanjeevapuram cross to Chennampalli cross or K.K. Agraharam cross is about 2 K.Ms; that the distance between Chennampalli cross and K.K. Agraharam village is about $2\frac{1}{2}$ K.Ms; that the distance between Sanjeevapuram cross and K.K. Agraharam is about 2 K.M; and that there is one tar road from K.K. Agraharam to Bommalatapalli village via Sanjeevapuram cross. The witness added that the said road was damaged and some autos and other vehicles will travel from Bommalatapalli to K.K. Agraharam via Sanjeevapuram cross, while buses ply between Bommalatapalli and Narpala. PW-1 admitted that buses from Sanjeevapuram to Anantapur will pass through Bommalatapalli and Chennampalli cross. She however denied that there will be heavy and frequent vehicular traffic on Anantapur - Narpala road, but she admitted that vehicles ply on that road. She stated that she does not know whether there are clinics adjacent to the road between their village and Chennampalli cross. She admitted that Bukkarayasamudram Police Station is adjacent to the road, that there is Government Hospital in Bukkarayasamudram and that to go to Anantapur from Chennampalli cross, one has to

cross Bukkarayasamudram Police Station and the Hospital. PW-1 expressed ignorance whether the distance between Bukkarayasamudram and Anantapur is 5 K.Ms. or not. The witness further stated that the doctor at Narpala had not given any prescriptions but that he gave some medicines.

As regards the attack, PW-1 stated that the deceased was attacked and hacked while he was on the motor bike and later he was dragged, that at that time she got down from the motor cycle and stood aside and that all the accused beat and hacked the deceased after surrounding him; that she was standing by the side of the deceased during the attack and that the accused have not attacked her and the deceased simultaneously. PW-1 further stated that she cannot say how many of the accused have attacked the deceased from back and how many from the front. She added that the deceased was attacked from all sides. She also stated that when six of the accused attacked him, her husband did not fall down from the bike, that blood oozed from the injury of her husband and that the tar road also must have had blood stains. The witness further stated that she had requested the passengers on the road to help her but she did not have any acquaintance with them. She admitted that she did not state before the Police that a motor cycle

is placed near the road near Venkataramana Reddy garden. She also admitted that she has not given the names of A-8 to A-13 in Ex.P-1 report. She admitted that there is an electric sub-station near Chennampalli cross, that there is a telephone booth near the electric sub-station and that she also has a telephone at her house and that blood was oozing from her hands till she reached Chennampalli cross. She also admitted that there is a rice mill near Chennampalli cross but she does not know whether the people of the rice mill had friendly relationship with her husband. She further stated that she came to Chennampalli cross at about 6.00 or 6.30 p.m. and went to Anantapur Government Hospital in a bus and reached Anantapur at about 7.30 p.m. She admitted that she did not make any attempt to give report at Bukkarayasamudram Police Station nor did she think of going to the Hospital at that place or to any doctor till she reached the Government Hospital, at Anantapur. The witness initially stated that the Inspector has come to the hospital on the next day morning and again she stated that the Inspector came to the hospital two hours after she gave report to the Police. The suggestions put to PW-1 that the deceased was addicted to womanizing, that very often he used to go to meet other women at Sanjeevapuram and also at Bommalatapalli village

at around 10.00 P.M., that with regard to the debauchery of the deceased there were many quarrels with other men, that the deceased died at some other place and the accused were falsely implicated, that the witness did not suffer any injuries and that she has managed the Police and doctors to foist a case against the accused, were all denied by her. In the cross-examination made by the counsel for A-3, A-4 and A-9, PW-1 stated that her husband did not raise any cries or sought for any help and that the entire incident took place within a span of five minutes. She denied the suggestion that she has not described the sickles used by the accused as 'hunting sickles' in her complaint. She also stated that she cannot specifically say on which part A-9 and also A-3 and A-4 have beaten the deceased. She further stated that she cannot narrate the exact overt-acts against those accused. She also deposed that she did not state before the doctor that the incident occurred at 4.30 p.m. It was suggested to PW-1 that she did not sustain any injury in the alleged incident and that the deceased was beaten by his enemies during night time and that subsequently after coming to know about the death of her husband, she gave false report and implicated the accused and obtained false wound certificate at the instance of the former M.P. Kalava Srinivasulu.

If we closely analyse the evidence of PW-1, it suffers from the following unnaturalities and improbabilities :

- (i) When PW-1 candidly admitted that she does not know any other villagers except her relatives in the village, it does not pass one's comprehension as to how the witness could name as many as six accused who are not among her relatives, along with their father's names in Ex.P-1 report given by her to the Police.
- (ii) When PW-1 was returning along with the deceased after consulting the doctor and purchasing medicines, the Police neither found medicines at the scene of offence nor seized them.
- (iii) The incident allegedly took place at about 5.30 p.m. near Chennampalli cross, close by to which there was an electric sub-station and a telephone booth. PW-1 admitted that she has telephone connection at her house. She did not attempt to inform the people at her house by making a telephone call from the telephone booth near the scene of offence. She has also not requested for the assistance of the people either at the telephone booth or at the electric sub-station. Instead,

she claimed to have walked to Chennampalli cross from the scene of offence and travelled all the way in a bus to Anantapur Government Hospital via Bukkarayasamudram.

- (iv) The witness admitted that to reach Anantapur from Chennampalli cross, they have to pass through Bukkarayasamudram where there was a Police Station as well as a Government Hospital. A person with injuries from which blood was allegedly oozing would not take the risk of travelling longer distance to Anantapur in a bus instead of alighting at Bukkarayasamudram and rushing to the nearest hospital.

- (v) When the incident took place within the limits of Bukkarayasamudram Police Station, it defies any logic or reason for PW-1 to travel all the way to Anantapur bypassing Bukkarayasamudram.

- (vi) It is not possible to believe that when six accused attacked him, the deceased did not fall down from the bike as testified by PW-1.

- (vii) PW-1 being an eye-witness and watched the incident standing by the side of the deceased was expected to remember the overt-acts at least in a broad sense, if not in a minute manner. Her testimony that she does not remember as to how many of the accused hacked her husband from the back side and how many hacked from the front side, throws any amount of doubt on her claim of being an eye-witness to the alleged occurrence.
- (viii) When as many as 13 accused attacked the deceased, his not raising any cries or not seeking any one's help, more so when PW-2 – his own brother and PW-3 his cousin, were allegedly witnessing the attack from a close distance as deposed by PW-1, militates against natural human instincts.
- (ix) The version of PW-1 that PW-2 and PW-3 were taken away by the accused after attacking her and the deceased contradicts the version of PW-2 and PW-3 who deposed that due to fear of attack by the accused, they turned their motor cycle and fled away from the scene of offence.

The learned Public Prosecutor laid strong emphasis on the injuries sustained by PW-1 and submitted that the testimony of an injured witness enjoys high probative value. In support of this submission, he has placed reliance on **Brahm Swarup Vs. State of U.P.**⁶ and **State of Himachal Pradesh Vs. Rakesh Kumar**⁷. We shall presently examine this aspect.

PW-1 deposed that when she intervened, all the accused have attacked her husband; that A-7 and A-2 had caused injuries to her with hunting sickles on her hands, that she sustained cut injuries on both her hands and that thereafter, the accused dragged her to one side of the road. In Ex.P-8-wound certificate, the following injuries are noted :

1. A lacerated wound of Lt. hand
2. A lacerated wound with extensor tendency injury of Rt. Hand with fracture of both bones.
3. ? Amputation of Lt. thumb

PW-13, the doctor who issued Ex.P-8-wound certificate, in his chief-examination, opined that the three injuries noted in the said certificate are possible with hunting sickles like MO-12 to MO-19. In his cross-examination, while denying the suggestion that

⁶ (2011) 6 SCC 288

⁷ (2009) 6 SCC 308

laceration cannot be caused with sharp edged weapon like sickle, he however admitted that usually sharp edged weapon will cause incised wound, but cut laceration will be caused with sharp edged heavy weapon. He further deposed that he knows the difference between laceration and cut laceration, that MO-12 to MO-19 would cause only cut lacerations and that he did not find any injury on the right forearm of PW-1. He further admitted that whenever a fracture of ulna and radius is caused with the weapons like MO-12 to MO-19, there must be an external injury on the fore-arm and that he did not find any fracture to the left hand. He further admitted that as per the medical jurisprudence, amputation means removal of limb by surgery and that there is no partial amputation in medical jurisprudence. He however added that as the thumb was not completely separated from the hand and it was hanging, he had put a question mark there but he did not note all that in detail in Ex.P-8. But he admitted that X-ray report of left hand is not showing partial or full amputation of the thumb.

It could be deciphered from the medical evidence as discussed above, there is a difference between a lacerated wound and cut laceration, the latter of which will be caused by a sharp edged weapon like sickle. PW-13, who claimed to be conscious of

the difference between the two types of laceration wounds, however, referred the wounds as only lacerated wounds but not cut lacerations. We also noticed from the evidence of PW-1 that she made a vague statement that she was beaten by A-2 and A-7 on her hands without specifying as to on which parts of the hands she was attacked. Ex.P-8-wound certificate described injury No.3 as amputation of left thumb which was subsequently explained by PW-13 that what he meant was that the thumb was hanging by the skin. PW-1 has not specifically referred to the injury on her left thumb. If PW-1 has sustained such an injury, described as grievous injury in Ex.P-8-wound certificate, we do not see any reason for her to not refer such an injury in her evidence. Further, except the omnibus allegation that A-2 and A-7 have beaten her with hunting sickles on her hand, PW-1 did not specify as to how many injuries were caused to her by them. Thus, the omnibus overt-acts spoken to by PW-1 not only was with reference to the attack on the deceased but also the attack on herself. PW-18, the Investigation Officer, admitted that PW-1 did not mention in Ex.P-1 or in her statement recorded under Section 161 Cr.P.C. about A-1 hacking the deceased, about the accused beating the deceased with sticks, about A-1, 6 and 8 hacking the deceased after

he was dragged from motor bike and about PW-1 not referring to the names of PW-2 and PW-3 in Ex.P-1 and her not stating about PW-4 accompanying her and PW-2 admitting her in the hospital. The failure of PW-1 to refer to the specific overt-acts against A-2 and A-7 who allegedly attacked her and the number of injuries she has received in such attack, as discussed hereinbefore, raise a serious doubt on the veracity of her testimony. The ocular evidence of PW-1 on the nature of the weapons allegedly used by A-2 and A-7 vis-à-vis the nature of injuries referred in Ex.P-8 is not corroborated by medical evidence.

The shortcomings in the evidence of PW-1 as noted above lead to a serious doubt as to whether the incident, at the place and the time and the manner as pleaded by the prosecution, has occurred at all. This doubt is further firmed-up by Ex.P-5 post-mortem report wherein it is stated that the autopsy was commenced on 4-2-2005 at 11 A.M and the approximate time of death was about 12 hours prior to the post-mortem examination. Therefore, the case of the prosecution that the offence has taken place at 5.30 p.m. on the previous day does not fit into the medical evidence. All these circumstances lend support to the defence's

stand that the occurrence has taken place around 10 P.M. at a different place and PW-1 was not an eye-witness to it (occurrence).

In **Brahm Swaroop (6-supra)** relied upon by the learned Public Prosecutor, the Supreme Court held that in the case of injured witness, in general there is an inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailants in order to falsely implicate someone. In the instant case, the various reasons discussed above exposing the falsity of the evidence of PW-1 displace the general assumption regarding the inbuilt guarantee of the presence of the injured witness at the scene of offence.

In **State of Himachal Pradesh Vs. Rakesh Kumar (7-supra)** the Supreme Court relied upon the evidence of PW-1 to PW-3, the friends of the deceased, who were termed as natural witnesses. Therefore, the said Judgment turned on its own facts and the same does not help the prosecution in the instant case.

PW-2 is none other than the own brother of the deceased. According to him, at about 5.30 p.m., when he along with PW-3, who is the son of his junior paternal uncle, were returning to their village on motor bike, at Bommalatapalli village, he found the deceased and PW-1 going on a TVS Victor motor bike ahead of

him, towards their village, that when his brother has reached the garden land of Ramanareddy, he found one motor cycle placed across the road and on seeing the motor cycle, the deceased stopped his motor cycle, and that thereafter, all the accused attacked the deceased by coming from either side of the road with sickles and sticks. PW-2 further deposed that PW-1 requested the accused not to beat her husband and spare him, upon which A-7 and A-2 had hacked PW-1 on her hand with sickles and dragged her out of the place. That at the time of the incident, himself and PW-3 reached upto a distance of about 20 yards from the place of offence and that all the accused beat the deceased indiscriminately. That at that time the witness raised cries saying that they had killed their brother unnecessarily and thereupon A-1 had asked the other accused to beat PW-2 and PW-3 and that out of fear the latter turned their motor bike and went away to their village via Sanjeevapuram; that after reaching their village, PW-2 informed the villagers that the accused killed his brother and thereafter himself and PW-3 proceeded to the Government Hospital, Anantapuram, that by the time he reached the hospital he found his sister-in-law been brought to the hospital by LW-4, PW-4 and LW-6; that PW-2

admitted PW-1 in the hospital and that thereafter both PW-2 and PW-3 went to K.K. Agraharam.

In the cross-examination for A-1, A-2 and A-5 to A-7, PW-2 stated that he had seen the deceased and PW-1 for the first time at a distance of 15 yards at Bommalatapalli village and noticed obstruction of motor cycle on the road at a distance of 20 yards; that he has also stopped his motor bike and seen his brother stopping his motor bike near the obstruction. He deposed that he has not alerted his brother on seeing the obstruction placed on the road. He further deposed that when the accused were beating the deceased, he and PW-3 were raising cries, but due to the threat to his life, he was afraid to go near his brother and save him. He also admitted that he cannot say from which side the accused has caused injuries to the deceased. He admitted that he did not inform the Police that A-3 and A-5 to A-7 had attacked the deceased. He admitted that PW-1 did not fall on the body of the deceased and that at the time of attack of PW-1, she was still on the motor bike and when the deceased had fallen down by the side of the motor cycle, all the accused had attacked him and beat him indiscriminately, but he cannot give the details and the exact time for which the attack took place. He further deposed that while all

the accused were beating his brother and causing injuries to him and his sister-in-law, he was sitting on the motor bike till A-1 instigated the other accused to attack him also. He further stated that he admitted PW-1 in the emergency ward and went away after keeping his wife in the hospital, that he left the hospital at about 11 p.m. and that by that time the Police did not come there. In the cross-examination made on behalf of A-3, A-4 and A-9, the witness deposed that he used to go alone on his business purpose and that he had never taken anybody to guard him and that only on the day of the incident, he had taken PW-3 along with him. He admitted that even after the motor cycle was placed as obstruction on the road, there was a possibility of the deceased proceeding further by the margin of the road. He feigned ignorance as to how the accused have held sickles in their hands and as to how many number of times each accused hacked the deceased. While claiming that he has got love and affection for his brother and PW-1, he however stated that he did not intervene to save them when they were being beaten up. He also stated that he cannot say on which side the accused have gone after the incident. He admitted that while going to his village from the scene of offence, he did not make any attempt to give report at Narpala Police

Station which was at a distance of 4 K.Ms. from the scene of offence. In the cross-examination made on behalf of A-1, A-2, A-5 and A-7, the witness stated that there was no Police Picket in the village. However, in the cross-examination made on behalf of A-3, A-4 and A-9, he admitted that there was a Police Picket at their village even prior to the death of his brother and that he did not either give any report at the Police Picket in their village nor at any Police Station. PW-18, the Investigation Officer, admitted that PW-2 did not state that A-3, A-5, A-6 and A-8 hacked the deceased.

The evidence of PW-2 raises more questions than providing answers. Being the brother of the deceased and having got used to faction in the village, the conduct and behaviour of PW-2 was wholly unnatural. We are conscious of the fact that each person reacts when he witnesses attack on another person in his own way.

In **Rana Pratap Vs. State of Haryana**⁸, the Supreme Court, at para-6, held :

“ Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Some run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the

⁸ (1983) 3 SCC 327

extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

Similar view was reiterated in **State of Himachal Pradesh Vs.**

Mast Ram⁹. In **Gopal Singh Vs. State of Madhya Pradesh**¹⁰,

the Supreme Court did not agree with the view of the High Court in accepting the testimony of an alleged eye-witness as his conduct was unnatural. It observed, at para-25 as under :

“We also find that the High Court has accepted the statement of Feran Singh, PW-5 as the eyewitness of the incident ignoring the fact that his behaviour was unnatural as he claimed to have rushed to the village but had still not conveyed the information about the incident to his parents and others present there and had chosen to disappear for a couple of hours on the specious and unacceptable plea that he feared for his own safety.”

In **Lahu Kamlakar Patil Vs. State of Maharashtra**¹¹, the alleged

eye-witness hid himself behind the pipes in a hotel after allegedly witnessing the murder through out the night, fled to Pune in the early morning and after going home, changed his clothes without mentioning about the incident to his family members. He also failed to explain the reason for his going to Pune. The Supreme

⁹ (2004) 8 SCC 660

¹⁰ (2010) 6 SCC 407

¹¹ (2013) 6 SCC 417

Court treated this conduct as wholly unnatural. It is instructive to excerpt para-26 of the said Judgment, below:

“From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded.”

Coming to the conduct of PW-2, no person of ordinary human behaviour would continue to sit on the motor cycle either without intervening or at least without fleeing from the scene all through the time when the accused were attacking his brother and sister-in-law. At least if PW-2 did not have the courage to intervene, he would have gone to Narpala Police Station on his motor cycle which is just 4 K.Ms. away from the scene of offence. If not, at least, he would have informed the Police Picket in his village as soon as he reached there. His contradictory answers as

regards the existence or otherwise of a Police Picket, casts a serious cloud on the veracity of his whole testimony.

The most startling revelation made by PW-2 is that neither himself nor any of his relatives in the village tried to go to the scene of offence to find out whether the deceased was alive or not and if he was alive in what condition he was, till the next day morning, that he slept in K.K. Agraharam during that night which is about 1½ K.Ms. from the scene of offence and that he along with his two brothers and father went to the scene of offence on the next day at 7.00 A.M. This candid admission also reflects the improbability of this person being aware of the incident during the night of occurrence, let alone his being an eye-witness to such an incident. No person in the place of PW-2 who claimed to have love and affection towards his brother and sister-in-law, would just abandon the deceased and leave PW-1 to her fate and sleep in the village without even attempting to go to the scene of offence till the next day morning. Further, if the incident was in the knowledge of the father and the other brothers of PW-2 and the deceased, it is not possible to believe that they had not visited the scene of offence until 7 A.M. on the next day. Even if PW-2 was an eye-witness and did not venture to intervene to save the life of

the deceased and protect PW-1 from being attacked, the least he would have done was to come back to the scene of offence as soon as the offenders left it and try to save the life of the deceased. In our opinion, the behaviour of PW-2 is too unnatural to believe him to be an eye-witness. Therefore, there is no escape from the conclusion that like PW-1, PW-2 is also a planted witness.

The version of PW-3 is also on similar lines to that of PW-2. PW-3 admitted that he does not do any business in paddy with PW-2, that he does not know whether PW-2 does not have any licence to do paddy business and that except on the day of the occurrence he did not go along with PW-2 for purchasing paddy on any other day. PW-3 could not state as to how many accused came and from which side. He however stated that all the 13 accused have attacked his brother at the same time, which is at variance with the evidence of PW-2, who deposed that after A-1 to A-8 hacked the deceased with sickles, A-9 to A-13 dragged and beaten him with sticks. PW-3 also deposed that himself and PW-2 did not intervene and tried to save his brother. While admitting that there was a Police Picket in the village, the witness further stated that they neither gave information to the Police at the Picket nor went to the house of the deceased, but they met his paternal

uncle in the village and informed him about the incident. PW-3 further stated that by the time he and PW-2 went to the hospital, PW-1 was standing outside the hospital and that they have not given any report in the Police Station either before or after admitting PW-1 in the hospital. He also deposed that even after reaching their village, they did not inform the Police and the Police Picket about the death of the deceased and that during that night none of them from the village had gone to the place of offence to see the dead body of the deceased. He further also admitted that he does not know the number and colour of the motor bike of PW-2 and that he cannot say the nature of sticks used by the accused. He however added that they were 'maddi' sticks. The suggestion put to PW-3 that as himself and PW-2 were related to the deceased, they were planted as eye-witnesses, was however denied by him.

Apart from the evidence of PW-3 being contradictory to that of PW-2 as to the manner in which the accused attacked the deceased, his testimony suffers from the same defects/lacunae with which PW-2's evidence suffers and for the same reasons for which we held that PW-2 was a planted witness, we hold that PW-3 is also not an eye-witness to the occurrence.

PW-4 stated that while he was in the village along with LW-4 and LW-6, one auto came to their village at about 5.45 or 6.00 P.M. that the auto driver informed them that the deceased was murdered on the road leading from Bommalatapalli to their village; that he along with PW-2 took another auto and went to Chennampalli cross, that at that place they found PW-1 with bleeding injuries on her hands; and that on their enquiry PW-1 informed them that while she along with her husband were returning from Narpala village, the accused attacked them near Ramanareddy's garden and killed her husband while causing injuries to her. He further deposed that when there was heavy bleeding from the hands of PW-1, he tore his towel and tied the same to her hands; that when an R.T.C. bus arrived at Chennampalli cross, they have shifted PW-1 to the Government Hospital, Anantapur, that when they reached the hospital, PW-2 and PW-3 also came to the hospital and admitted PW-1 in the Government hospital. PW-4 further deposed that on the next day morning he along with LW-4 and LW-6 went to the place of offence where the dead body was lying and that Police also came there and examined and recorded his statement.

The evidence of PW-4 is also wrapped in unnaturality. On his own admission, PW-4 did not have any special affection for the deceased and his family and that there is no special reason for him, LW-4 and LW-6 to follow PW-1 and stay in the hospital and also to go to see the dead body of the deceased on the next day morning. Therefore, it is not possible to believe that PW-4, who had no special acquaintance with or affection to the family of the deceased, would have engaged an auto on coming to know about the incident and rushed to Chennampalli cross where PW-1 was allegedly waiting, sitting under a tree. It has not come in the evidence of PW-4 that on hearing about the incident, he made any attempt to inform the family members of the deceased in the village. He specifically stated that he did not try to give report either at the Police Picket in the village or any other Police Station. In the normal course of events, a person in the position of PW-4 would not have rushed to the rescue of PW-1 without first informing her family members in the village about the incident, if not, without giving a police report. We noticed another element of unusual behaviour of this witness in his disengaging the auto in which he travelled and taking the seriously injured PW-1 in a bus to a farther place such as Anantapur without disembarking at

Bukkarayasamudram where jurisdictional Police Station and also a hospital are located. The explanation offered by PW-4 for disengaging the auto that though they engaged the auto to go to the place of offence, the auto driver informed that he will only drop them at Chennampalli cross, also sounds unconvincing. When an event such as murder has taken place, an auto driver plying in a rural area would not ordinarily refuse to take the seriously injured person to hospital leaving the person to his/her fate. The evidence of PW-4 thus seems incredulous.

PW-5 deposed that he saw A-6 and A-7 coming from Anantapur at around 11.30 A.M. or 12 Noon and proceeding towards Narpala side. His evidence would in no way connect the accused to the offences with which they were charged.

Once we discard the evidence of PW-1 to PW-5, the only evidence that remains to be considered is the alleged recovery. MO-12 to MO-19 were allegedly recovered under Ex.P-10 panchanama attested by PW-16 – VRO and PW-17 – Panchayat Secretary. Both of them turned hostile. Added to that, the said M.Os. were not sent for examination by the Forensic Science Laboratory. Therefore the prosecution failed to prove the recovery of MO-12 to MO-19 from the accused.

On the analysis as above, we have no hesitation to hold that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt and hence the appellants/A-1 to A-8 in Crl.A.No.894/2011 are entitled for acquittal.

As regards Crl.A.No.259 of 2013, it is the case of the prosecution that A-9 to A-13 attacked the deceased with the sticks i.e., M.Os.10 and 11. The Court below has acquitted A-9 to A-12 mainly on the ground that they were not named in Ex.P-1 report lodged by PW-1. It has also found that the MO-10 and MO-11 were recovered from the scene of offence but not at the instance of A-9 to A-13 and that there is no evidence to corroborate the case of the prosecution that said M.Os. were used in the commission of the offence. Although PW-1, PW-2 and PW-3, deposed about A-9 to A-13 beating the deceased with MOs.10 and 11, for the same reasons assigned hereinbefore based on which we disbelieved their evidence, Crl.A.No.259 of 2013 is liable to be dismissed.

In the result, Crl.A.No.894 of 2011 is allowed by setting aside the conviction and sentences of the appellants therein and Crl.A.No.259 of 2013 is dismissed. Fine amounts, if any, paid by the appellants in Crl.A.No.894/2011 shall be returned to them and

their bail bonds shall stand cancelled. The said appellants shall surrender before the Superintendent, Central Jail, Kadapa, for completing the legal formalities for their release.

Justice C.V. Nagarjuna Reddy

Justice Gudiseva Shyam Prasad

Date : 08-08-2018

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