

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.200 of 2012

and

CRIMINAL APPEAL No.1065 of 2014

COMMON JUDGMENT : (per Hon'ble Sri Justice N.Balayogi)

Both appeals arose out of conviction and sentence in the judgment dated 1.5.2010 in S.C. No.293 of 2009 on the file of the V Additional District & Sessions Judge, Tirupati, convicting appellants in both appeals i.e., A2 and A3 to undergo rigorous imprisonment for life and shall also pay a fine of Rs.500/- (Rupees Five Hundred Only) each, in default of payment of fine amount, to suffer simple imprisonment for a period of three months each for the offence punishable under Section 302 read with Section 34 I.P.C.

2. The case of the prosecution as per the evidence on record is that P.Ws.1 and 4 are brothers of deceased Sundaram, P.W.2 is sister-in-law of P.W.1, P.W.3 is the daughter of P.W.2. According to the evidence of P.W.1, the deceased and Ravi Sankar Reddy, brother of A1, had business dealings and in connection with their business, ill-feeling were developed. Ravi Sankar Reddy, brother of A1, was

murdered in the year 2002 in which case P.W.1, deceased Sundaram and P.W.4 were accused who were acquitted for the said case in the year 2005. As they were acquitted, A1 proclaimed that they will murder one of the brothers of P.Ws.1 and 4. According to the evidence of P.Ws.2 and 3 on 30.6.2008 at about 11.00 or 11.30 PM, while they were sleeping in the varanda, they heard the cries of the deceased and they woke up and saw that while A2 and A3 catching hold of legs and hands of deceased Sundaram, A1 hacked the deceased Sundaram with knife. Then, P.W.2 went to the house of P.W.1 to call him and told him that three persons hacked her husband, immediately P.W.1 came and witnessed while A1 hacking his brother Sundaram with knife and A2 and A3 caught hold of hands and legs of the deceased. On seeing P.W.1, A1 thrown the knife on P.W.1 and fled away proclaiming that Sundaram died. The deceased was in a pool of blood. Immediately, he was shifted to SVRR GG Hospital, Tirupati, there from he was referred to SVIMS Hospital, Tirupati and while he was shifting to SVIMS Hospital, on the way he died. P.W.1 presented the report to the Police, basing on which P.W.17 registered Ex.P9-FIR.

3. P.Ws.5 to 7's evidence is that on 30.6.2008 at about 11.00 to 11.30 PM while P.W.5 was at home and P.Ws.6 and 7 were sleeping, they heard the cries of P.W.2 and her children. On hearing the cries, they came out and saw three persons. P.W.5 witnessed A2

and A3 at the place and the other person holding the knife. According to P.W.6, among the three persons, two persons i.e., A2 and A3, who are present in the court, do not possess the knife. P.Ws.5 to 7 followed P.Ws.1 and 2 to their house and saw the accused in a pool of blood. According to P.W.8, while she was present at his tender coconut cart on 30.6.2008 at 9.00 PM A1 and A2 came on a motor bike, the accused took away her knife, which she used to cut the coconuts, saying that they would return the same after five minutes. In the next day morning, she came to know that A1 and A2 killed somebody. P.W.9 also deposed that on 30.6.2008 at about 9.00 or 9.30 PM, A2 came and asked knife (*surakatti*) saying that he wanted to cut the hen and on that, he gave him the knife. A2 and A3 are among the persons who came to him, but A2 did not return the knife. According to the evidence of P.W.10, at about 10 PM, A2 came and took away billhook – M.O.8 which being used for cutting trees, but did not return the same. According to P.W.11, on 1.7.2008 at 8 AM when he went to Ruiya Hospital, he came to know Sundaram died and the police held inquest over the dead body under Ex.P2.

4. The evidence of P.W.12 is that on 1.7.2008 at 7 AM, he came to know about the death of Sundaram and he went to his house and then the Police observed the scene of offence and prepared observation mahazar and seized blood stained shirt, knife without

handle and also handle of knife, sim card, cell phone cover, blood stained cot, damaged ceiling fan under Ex.P3 mahazar, besides that police seized two pairs of chappals near TUDA first road of Jayasankar colony under Ex.P4 mahazar dated 1.7.2008 at 7.50 AM. M.Os.9 to 19 are the material objects seized under Exs.P3 and P4.

5. According to P.W.13, on 9.7.2008 at 7.00 AM the C.I., Tirupati rural telephoned and asked him to come to Alipiri Toll gate and police found two persons and on seeing the police, they ran away, police caught them and interrogated them (A1 and A2), recorded their confession. A2 told that he will show knife and cloths, if police accompany them. In pursuance of Ex.P5 confession of A1 and A2, A2 led the party to his house at Sundaraiah nagar, went inside of the house, came with knife, pant and shirt. The Police seized them under cover of mahazar Ex.P6 dated 9.7.2008 at 10.45 AM which are marked as M.Os.20 to 22, M.O.6.

6. According to P.W.14, they took him in the jeep to the house of A3. On seeing the police, A3 tried to run away and the police caught him and C.I. interrogated him and recorded Ex.P7 mahazar.

7. P.W.15 is the Doctor who examined the deceased Sundaram on 30.6.2008 and as the patient was unconscious and gaspy,

he referred him to SVIMS Hospital, Tirupati. While shifting to the hospital, on the way, Sundaram died.

8. P.W.16 is the Doctor who conducted inquest over the dead body of Sundaram and found 33 external injuries and 5 internal injuries and found that all the wounds except abrasion contained blood clots. His evidence is that the metal piece is matching with the broken tip of one of the weapons (sickle) and opined that cause of death is due to hypovolaemic shock as a result of multiple wounds and issued Ex.P8 PME report and the said metal piece is identified and marked as M.O.23.

9. P.W.18, having received telephone message about registration of F.I.R. under Ex.P9, rushed to the hospital, received copy of Exs.P9 and P1, proceeded to the SVRR GG Hospital, Tirupati, posted guard at the dead body. Thereafter, he proceeded to the scene of offence, secured P.W.12, prepared Ex.P3 mahazar, seized M.Os.7 to 13, 15 to 17 under Ex.P3. On 1.7.2008 under Ex.P4 mahazar, he seized M.Os.18 and 19, examined the witnesses and recorded their statements. After inquest, dead body was sent to the Hospital for PME examination. M.Os.4 and 5 were handed over by Selva Pushpa and were seized under Ex.P11. On 9.7.2008, accused Nos.1 and 2 were arrested. Basing on Ex.P5 confession, A2 led the party to his house

where M.Os.20 to 22 and M.O.6 were seized under Ex.P6 - mahazar in the presence of P.W.13.

10. A1 and A2 identified their chappals M.Os.18 and 19 under Ex.P12.

11. On 12.7.2008, on information, he rushed to the house of A3, secured P.W.14 and another near Leela Mahal junction and reached the house of A3 at 5.15 PM and arrested A3 under Ex.P7. On 19.7.2008, the Investigating Officer produced M.O.8 on the direction of P.W.16 and the Doctor compared M.O.23 with M.O.8, which was matched, then seized M.O.23 – metal piece under cover of police proceedings Ex.P13. The seized material objects were sent to RFSL under Ex.P14 – letter of advice, subsequently received Ex.P15 – FSL report.

12. After filing the charge sheet, the learned III Additional Judicial Magistrate of First Class, Tirupati took the case on file for the offence under Section 302 read with Section 34 I.P.C. against A1 to A3 and numbered it as PRC No.65 of 2008.

13. On production of A1 to A3 from the Sub-Jail, Tirupati, all copies of documents were furnished to them as required under Section 207 Cr.P.C.

14. On hearing and consideration of entire material on record when the Magistrate found that the offence with which the accused charged is exclusively triable by the Court of Sessions, committed the case to the Court of Sessions under Section 209 Cr.P.C.

15. The District & Sessions Court numbered the same as S.C. No.293 of 2009 and made over the same to the Court of the V Additional District & Sessions Judge, Tirupati.

16. On 19.1.2009 police filed a memo reporting A1 died before the committal court. The committal court recorded the same and accordingly case against A1 stands abated.

17. After the accused produced before the V Additional District & Sessions Judge, Tirupati, from Sub-Jail, Tirupati, on hearing and consideration of entire material on record, the Sessions Judge charged them under Section 302 read with Section 34 I.P.C. and read over and explained to them in Telugu for which they pleaded not guilty and claimed to be tried.

18. In support of the prosecution case, to prove the charge against the accused, the prosecution examined P.Ws.1 to 18 and marked Exs.P1 to P15 and M.Os.1 to 23.

19. After closing the prosecution side evidence, A2 and A3 were examined under Section 313 Cr.P.C. The entire incriminating material against them in the prosecution evidence was put to them and the same was denied and they have stated that they have been falsely implicated in this case and they were no way connected to the death of the deceased.

20. When the accused were called upon to enter the defence, they did not choose to adduce any evidence.

21. For the sake of convenience, both the appellants in the appeals are called as appellants and the respondent as respondent.

22. The learned counsel appearing for both appellants i.e., A2 and A3 contended that P.Ws.1 to 3 are interested witnesses and they were planted by the prosecution. The names of the appellants did not find place in F.I.R. The prosecution failed to prove any motto for the accused to kill the deceased. There is improvement in the prosecution case from stage to stage. The accused are implicated out of suspicion that A2 happens to be a friend of A1 who is having bitter enmity with the family of the deceased. Further, besides those contentions, A3 in the appeal contended that there is any amount of doubt with regard to seizure of M.Os.1 to 23.

23. On the other hand, the Public Prosecutor contended that P.Ws.1 to 3 are the eyewitnesses and their evidence inspires

confidence. P.Ws.4 to 11 corroborate P.Ws.1 to 3 and that P.Ws.4 to 7 are persons who have last seen the accused on the night while running away. Whereas, P.Ws.8 to 10 are the persons from whom the accused secured the weapons and their evidence support the evidence of P.Ws.1 to 3. P.Ws.11 to 14 are the witnesses for seizure of material objects by P.W.18 during the course of investigation and the evidence of all the witnesses is reliable, trustworthy and the findings of the tribunal are legal, valid and do not warrant any interference.

24. There is no dispute regarding the relationship between P.Ws.1 to 3 and deceased. P.W.1 is the brother, P.W.2 is the wife and P.W.3 is daughter of the deceased. Since they are related to the deceased, their evidence has to be scrutinized with utmost care and caution. P.W.1 himself is the complainant under Ex.P1 dated 1.7.2008.

25. The evidence of P.W.17, the then Sub-Inspector of Police, Alipiri Police Station, is that on 1.7.2008 at 4.30 AM while he was in the police station, P.W.1 came to the police station, presented Ex.P1, basing on which he registered a case in crime No.123 of 2008 for the offence punishable under Section 302 read with Section 34 I.P.C., issued Ex.P9-FIR. The clinching evidence of P.W.1 is that there are business dealings between Ravi Sankar Reddy, who is none other than brother of A1 and the deceased Sundaram. Some ill-feeling

developed between Sundaram and A1 in connection with their business.

26. It is pertinent to note that Ravi Sankar Reddy was murdered in the year 2002. In the said case P.W.1, deceased Sundaram and P.W.4 were accused and the same was ended in acquittal in the year 2005. There is no cross-examination of P.W.1 with regard to criminal case filed against Sundaram, P.W.1 and P.W.4 in 2002 which ended in acquittal which clinches the issue that, that is the motto for the offence. It is the further evidence of P.W.1 that A1 Harinatha Reddy was proclaimed that P.W.1 and his brothers were acquitted from the murder case, so he intend to murder one of the brothers. P.W.4 corroborate P.W.1 to the effect that the deceased Sundaram, who is none other than his elder brother and Ravi Sankar Reddy, brother of A1 (died), did business jointly before 2002 and there arose some ill-feelings in between them. In the year 2002, Ravi Sankar Reddy was murdered. In that case, P.W.4, deceased Sundaram and P.W.1 were figured as accused and that case was ended in acquittal in the year 2005. Since then, A1 bore grudge against the brothers and proclaimed that he would kill one of the brothers. One day, P.W.4 heard while Harinatha Reddy (A1), A2 and A3 were talking with each other in burial ground to kill one of the brothers and informed the same to the deceased. So, the motto for the offence is that the brother of A1 i.e., Ravi Sankar was murdered in the year 2002 and a criminal case was

filed against P.W.1, deceased Sundaram and P.W.4, which was ended in acquittal in the year 2005 and that is the motto for Harinatha Reddy - A1 and he hatched a plan along with A2 and A3 to kill one of the brothers, accordingly A1 proclaimed the same in the burial ground and the same was heard by P.W.4.

27. A reading of Ex.P1 and P9 goes to suggest that P.W.1 in the Ex.P1 clearly asserted that on 30.6.2008 at 11.15 PM his sister-in-law-P.W.2-Parvathi came to his house and informed that when Sundaram, his elder brother, P.W.2 and themselves were sleeping on the cot in the varanda of their house, some three persons attacked Sundaram with knives and Sundaram scuffled with them. Immediately, he went to his elder brother's house shouting, at that time Harinatha Reddy was hacking on the head of his brother with knife in his hand and another two persons caught hold of his brother's both hands and legs. During course of examination, he stated that A2 and A3 are no way connected to the murder case of Ravi Sankar Reddy, but it is the evidence of P.Ws.1 and 4 that A1 - Harinatha Reddy proclaimed that P.Ws.1, 4 and Sundaram were acquitted from the murder case and so, he intend to murder one of his brothers, but P.W.4 stated that he heard while Harinatha Reddy - A1, A2 and A3 were talking with each other in burial ground to kill one of the brothers of Sundaram and the motive was clearly spoken that is the acquittal of P.W.1, P.W.4 and Sundaram from the murder case of Ravi Sankar Reddy, the brother of A1.

28. During the cross examination, P.W.1 stated that his house is thirty feet away from the house of the deceased. It is P.W.2 who went to his house while crying and informed that A1 to A3 attacked her husband deceased Sundaram. The accused are known to him prior to death of deceased and he knows the names and admits that he did not mention the names of the A2 and A3 in the F.I.R. By the time he reached the house of Sundaram the accused was present there. A2 and A3 both hold hands and legs of the deceased, whereas A1 hacked the deceased Sundaram. P.W.2 also corroborate with P.W.1 that at about 11 - 11.30 PM on 30.6.2008, she heard cries of her husband, then woke up and saw Harinatha Reddy-A1 (died) hacking her husband with knife. At that time, A2 and A3 - appellants herein caught hold the hands and legs of the deceased and due to fear, she ran to the house of P.W.1 while crying and P.W.1 came by running, then A1 thrown the knife on P.W.1 and ran away from the place saying Sundaram died. She also stated that she knows A2 and A3 as they were moving with A1. By then, she does not know names of A2 and A3. A3 holds legs, whereas A2 hold hands of her husband, while A1 hacked Sundaram. As she does not know the names of A2 and A3 at that time, their names were not found in Ex.P1. More so, as per the evidence of P.Ws.1 to 3, there were street lights and show lights to the gate of the house and in that lighting, they saw the accused.

29. P.W.3 also stated that she saw the accused prior to the incident, but she did not know their names even by the date of examination by the police. She came to know the names of the accused through elders. It is the evidence of P.W.3 that after the knife was broken in the hands of A1, he took another knife from the hands of A2 and hacked her father and by that time A3 was also holding knife in his hands and all the accused 1 to 3 are armed with knives, which is the material elicited by the defence counsel during cross-examination of P.W.3. P.W.3 further clarified that street light is there in front of their house. Therefore, it is very clear that P.Ws.1 to 3 identified the accused in the street light as well as show lights of the gate of the house of P.Ws.2 and 3.

30. Section 154 Cr.P.C. postulates information in cognizable cases. An F.I.R. is not a substantial piece of evidence which need not contain all minute points, it will only sets the criminal machinery into motion. An F.I.R. can be used for corroboration under Section 157 of the Evidence Act or for contradiction under Section 145 of the Indian Evidence Act. It is always not necessary to mention all accused person in F.I.R. (2008 (1) SCC 213). Therefore, absence of name of co-accused in F.I.R. by itself is not fatal. It will depend on circumstances around the offence. The consistent evidence of P.Ws.2 and 3 is that on 30.6.2008 at about 11.00 or 11.30 PM while they along with the deceased Sundaram and other sons of deceased were sleeping in the

varanda in front of their house, on hearing the cries of deceased Sundaram, P.W.2 woke up, saw Harinatha Reddy – A1 hacking her husband with knife, whereas A2 and A3 holding the hands and legs of the deceased. Similarly, P.W.3 corroborate P.W.2 in all aspects and also P.W.2 going to the house of P.W.1 and both came and all witnessed while A1 hacking with sickle to Sundaram and when the knife was broken, A1 took another knife from the hands of A2 and hacked Sundaram. Broken piece was also seized by the Investigating Officer during investigation along with the knife with which A1 hacked and thrown on the spot while leaving the place.

31. P.W.1 presented Ex.P1 before P.W.17 at about 4.30 AM on 1.7.2008 with regard to the offence took place on 30.6.2008 between 11.00 and 11.30 PM. The F.I.R. was registered at 4.30 AM on 1.7.2008, whereas the incident took place between 11.00 and 11.30 PM. Accordingly, there is five hours gap. It is night time when the incident took place and immediately after the incident, Sundaram was shifted to SVRR GG Hospital, Tirupati and therefrom he was referred to SVIMS Hospital, Tirupati and on the way he died.

32. P.W.15 is the Civil Assistant Surgeon, SVRR GG Hospital, Tirupati. His evidence is that on 30.6.2008, he examined Sundaram who was brought to the hospital and the patient was unconscious, gasping, so he referred the Sundaram to SVIMS Hospital,

Tirupati for expertise management. The material on record i.e., the evidence of P.Ws.1 to 7 goes to suggest that Sundaram was murdered on 30.6.2008 at about 11.00 - 11.30 PM while he was sleeping in the varanda along with his wife - P.W.2 and daughter - P.W.3 and sons. Immediately, he was shifted to SVRR GG Hospital. As per the evidence of P.W.15, as Sundaram was unconscious and gaspy, he referred the case to SVIMS Hospital, Tirupati for expertise management. On the way, he died. Therefore, on the early hours at 4.30 AM P.W.1 presented Ex.P1 report on 1.7.2008 before P.W.17, who registered the same as a case in crime No.123 of 2008 and issued Ex.P9-FIR. Therefore, there is no abnormal delay in submitting the F.I.R. and the delay occurred while shifting the injured Sundaram to SVRR GG Hospital and thereafter on the advice of P.W.15 to SVIMS Hospital, Tirupati and on the way he died.

33. P.W.17 during cross-examination stated that in Ex.P1 it was clearly stated that three persons attacked the deceased Sundaram i.e., Harinatha Reddy – A1 and two others and they can be identified by P.W.1. On the night accused were identified in the lighting of street light which is in front of the house of P.Ws.2 and 3 and deceased Sundaram and also in the lighting of show lights attached to the gate of their house. A2 and A3 are not new to them and they were identified by P.W.4 while in the burial ground A1 was talking with A2 and A3 to do away the life of one of the brothers of P.W.1. The evidence on

record clearly established the involvement of A2 and A3 – appellants herein along with A1 in furtherance of their common intention to kill one of the brothers among P.Ws.1, 4 and deceased Sundaram and who were witnessed by the witnesses P.Ws.2 and 3 directly and P.W.4 while they were leaving in the lighting of street lights and further that P.W.1 due to murder of his brother, he must have in shock and sufferance, so could not have mentioned the names of A2 and A3, but he specifically stated that A1 and 2 others, who are known to them, killed his brother Sundaram. Hence, the non-mentioning of the names of A2 and A3 in Ex.P1 - F.I.R. is insignificant when it was consistently recited that A1 and two others are known to them and whom they can be identified as they are known to P.Ws.1 and 2, as they are friends of A1.

34. It is the clinching evidence of P.Ws.2 and 3 that while A2 and A3 caught hold the legs and hands of Sundaram, A1 hacked the deceased with knife. Due to fear, P.W.2 went to the house of P.W.1 while crying and informed that A1 to A3 attacked her husband deceased Sundaram and that P.W.1 also witnessed while A1 hacking Sundaram while A2 and A3 caught hold of the hands and legs of the deceased Sundaram. On seeing P.W.1, A1 thrown knife on P.W.1 and ran away and while they were running away, P.W.4 at about 11.30 PM on 30.6.2008 saw A2 and A3 along with A1 - Harinatha Reddy going on Settipalle road and on seeing P.W.4, they ran away fast and on that, P.W.4 suspected the movements of accused and rushed to his brother's

house and by that time, his brother Sundaram was being taken to Ruiya Hospital. He followed them to Ruiya Hospital and from there to SVIMS Hospital. Though P.W.4 was cross-examined at length, no favourable information could be elicited. It could only elicit that the brothers of P.W.4 were figured as rowdy-sheeters in Alipiri Police Station. By the time he saw the accused were going by walk which is a further clarification the manner in which they were proceeding on the road and on seeing P.W.4, they started running away which lead to P.W.4 suspect movements of accused and he immediately ran to the house of Sundaram and came to know that his brother was shifted to Ruiya Hospital. P.W.5 on 30.6.2008 at about 11.00 – 11.30 PM heard the cries of P.W.2 and her children, came out of the house and saw the accused and another person holding knife in his hand and they said that Sundaram died. He saw A2 and A3 at that place. He went to the house of the deceased and saw him in a pool of blood on the cot. His family members were present at that time and the deceased was removed to Hospital in car.

35. During cross-examination P.W.5 clarified that by the time he reached the house of Sundaram, P.Ws.1 to 3 were present. He saw the accused from his house when they were going on the road. Similarly, P.W.6 also deposed that on hearing the cries he came out of the house and saw three persons and out of them one person holding a knife in his hand going in the street. A2 and A3, who are present in the

Court, do not hold any knife in their hands, where as person holding knife in his hand is not there i.e., A1. While going on the street, the accused proclaimed that Sundaram died. During cross-examination, nothing was elicited from P.W.6.

36. P.W.7 deposed that while she was sleeping in the house, heard cries of P.W.2 at the house of P.W.1. P.W.2 was crying saying that her husband was being killed, then she came out from her house, followed P.Ws.1 and 2 to the house of Sundaram. One of the accused hurled knife on P.W.1 and he escaped from the hit and the accused while leaving stated that Sundaram died and went away and she saw the accused and identified them. She saw the accused at the house of Sundaram at that time along with another. Therefore, the evidence of P.Ws.4 to 7 is that they witnessed while all the accused were going at settipalle road and on seeing P.W.1, they started running away. P.Ws.4 to 7 are the last seen persons.

37. With regard to the weapons used in the murder of Sundaram, there is the evidence of P.W.8, who used to sell tender coconuts on a cart. On 30.6.2008 at about 9.00 PM while she was at his tender coconut cart, Harinatha Reddy – A1 and Sampanth reddy – A2 came and A1 asked to give one tender coconut for which she refused saying already A1 is Rs.30/- dues to her, then A1 gave Rs.50/-. A1 and A2 came on a motorcycle and accused took away the knife -

M.O.6, which she used to cut tender coconuts, saying that they would return the same after five minutes, but the same was not returned to her. In the morning she came to know that A1 and A2 killed somebody. A2 is Sampath Reddy who came along with Harinatha Reddy and took away the knife. The only suggestion is A2 has not taken away the knife - M.O.6 from her.

38. Coming to the evidence of P.W.9 who also speak that on 30.6.2008 at about 9.00 or 9.30 PM A2 came and asked him to give knife (surakatti) saying that he wanted to cut a hen. At that time, A2 and A3 came along with another person, but A2 took away the knife, but did not return the same. In the morning he came to know about the death of the deceased. M.O.7 is the knife which A2 took away. The only suggestion to him is that the brother of the deceased do finance business in the area and he also borrowed amounts from them and depositing false hood at their instance due to fear of them and that A2 has no necessity to take away M.O.7 from him and the same was denied.

39. P.W.10 - K.Girija, who used to live by selling bamboos, deposed that two years ago at about 10.00 PM, A2 came and took away her billhook - M.O.8 which being used for cutting trees, but he did not return the same and it is about 13 inches length. The same

suggestion which was given to P.W.9 was also given to P.W.10 and the same was denied by her.

40. The evidence of P.Ws.8 to 10 goes to suggest that it is A1 to A3 went to P.W.8 and A2 collected M.O.6 width of which is 17 inches and from P.W.9, A2 collected M.O.7 (surakatti) and from P.W.10, he collected M.O.8 - billhook measuring 13 inches length. It is the consistent evidence of P.Ws.8 to 10 which established collection of M.Os.6 to 8 from P.Ws.8 to 10 by A2 and all the accused went to P.W.8 on motor bike at that time. The evidence of P.W.18 clinches the issues arose in the case that on 1.7.2008 at about 5.00 AM he received telephone message from P.W.17 about registration of F.I.R. under Ex.P9 at 4.30 AM on 1.7.2008, basing on Ex.P1 report presented by P.W.1. Immediately, P.W.18 reached Alipiri police station, collected Ex.P9 - express F.I.R. copy from P.W.17, proceeded to SVRR GG Hospital, Tirupati along with P.W.17 and staff, found dead body of Sundaram in the Hospital on a stretcher, then P.W.18 posted a guard at the dead body, thereafter, proceeded to the scene of offence, secured P.W.12 and Munirathnam and observed the scene of offence situated at Door No.11-130, Jayasankar Colony of Settipalli Panchayat, which is the house of deceased Sundaram. He prepared Ex.P3 at 7.00 AM on 1.7.2008. P.W.12 corroborate P.W.18 that on 1.7.2008 at about 7.00 AM he went to the house of deceased on coming to know of his death and by the time, police were present there. P.W.18 called him and

Maniratnam and observed the scene of offence and prepared observation mahazar - Ex.P3 on 1.7.2008 at 7.00 AM which was signed by P.W.12 and seized at the scene of offence M.Os.5, 7 to 13, 15 to 17 under Ex.P3 mahazar. M.O.5 is the shirt. M.O.7 is surakatti. M.O.8 is broken knife without handle with which accused hacked Sundaram. M.O.9 is blood stained cot where Sundaram was sleeping at the time of incident. M.O.10 is cell phone battery. M.O.11 is cell phone cover. M.O.12 is cell phone SIM card. M.O.13 is handle of the knife-M.O.8. M.O.15 is ceiling fan. M.O.16 is steel glass. M.O.17 is blood. The seizure is proved by the corroborative and consisting evidence of P.W.12 and Investigating Officer - P.W.18.

41. Further, the evidence of P.W.12 corroborated with P.W.18 establishes that at the scene of offence P.W.18 prepared Ex.P10 - rough sketch of the scene of offence wherein P.W.12 signed. Further, the evidence of P.W.18 is that on 1.7.2008 at 7.50 AM in the presence of P.W.12, he seized two pairs of chappals M.Os.18 and 19 at Jayasankar colony cross underneath the kanuga tree under the cover of Ex.P4 - mahazar. P.W.12 corroborates P.W.18 that P.W.18 seized M.O.18 one pair of black colour chappal and M.O.19 - one pair of snuff colour chappal.

42. P.W.18 then proceeded to SVRR GG Hospital, Tirupati, secured the presence of P.Ws.11 and 12 and other blood relatives

P.Ws.1 to 4, held inquest and Ex.P2 is inquest report. P.W.11 corroborates P.W.18 that on 1.7.2008 at 8.00 AM he went to Ruiya Hospital, Tirupati, having known the death of Sundaram and by that time police present there who conducted inquest over the dead body and prepared Ex.P2 inquest report whereunder he signed. Though P.W.11 cross-examined at length, could not elicit any favourable information. The clear evidence of P.W.11 is that he signed in Ex.P2 and later Radhakrishna and another signed. The only suggestion to P.W.11 is that he is a stock witness, but no evidence is placed in support of that suggestion. In the absence of any evidence, the evidence of P.W.11 corroborating the evidence of P.W.18 and supported by Ex.P2 established that inquest was held on the dead body of Sundaram in SVRR GG Hospital, Tirupati. After conducting inquest, dead body was sent to PME examination along with requisition, then he visited Jayasankar colony, secured P.Ws.5 to 7, examined and recorded statements. At the time of examination, Selva Pushpa handed over blood stained clothes M.Os.4 and 5, which were seized under Ex.P11 police proceedings dated 1.7.2008 at 2.00 PM.

43. The Doctor, who conducted PME on the dead body, is examined as P.W.16. According to him, he conducted postmortem examination from 2.30 PM to 3.30 PM and found the following antemortem external injuries:

- “1. Chop wound of 2x1 cm, bone deep, over forehead 1 cm left to the midline, obliquely placed. A triangular metal piece of 1.5x1.5x1 cm. each limb is present in the wound (Broken end is 1.5 cm).
2. Chop wound of 2x1 cm, muscle deep, over forehead 0.5 cm left to the midline, 1 cm above and parallel to wound No.1.
3. Chop wound of 7x1 cm, bone deep, over forehead, 2 cm right to the midline, placed horizontally with beveling upwards.
4. Incised wound of 6x1 cm, bone deep, over forehead, 1 cm below and parallel to wound No.3, with beveling upwards.
5. Incised wound of 2x1 cm, muscle deep, over right frontal area of scalp.
6. Chop wound of 1'7x4 cm, bone deep, over right upper parieto occipital area placed obliquely.
7. Chop wound of 8x1 cm, bone deep, 1 cm front and parallel to wound No.6.
8. Multiple chop and incised wounds of 8 to 12 x 1 cm, bone deep, each, placed front and parallel to wound No.7.
9. Incised wounds of 2x1 cm, cartilage deep, each, 2 No. over upper and middle parts of right ear pinna, which are continuous with upper part of wound No.8.
10. Incised wound of 4x1 cm, muscle deep, over lower part of left temple, placed horizontally.
11. Abrasion of 2x1 cm, over left malar eminence.
12. Incised wound of 3x1 cm, muscle deep, over right part of the upper lip with tailing of 7x1 cm to the back.
13. Laceration of 3x1 cm, muscle deep, over top of right shoulder.
14. Abrasion of 7x1 cm, placed horizontally, over outer aspect of right middle arm.
15. Abrasion of 4x1 cm, over outer aspect of lower part of right arm obliquely placed.
16. Abrasion of 9x2 cm over outer aspect of right upper forearm, placed obliquely.
17. Incised wounds of 3x1 cm, muscle deep, 2 in No. over back of right upper forearm, placed obliquely and parallel.
18. Multiple incised wounds, in an area of 15x8 cm, muscle deep, over front and outer aspect of right middle forearm, forming a single wound.

19. Incised wound of 3x1 cm, muscle deep, over back of right wrist joint.
20. Incised wound of 9x3 cm, bone deep, over back of right upper hand, placed horizontally.
21. Abrasion of 1x1 cm over outer aspect of upper part of the right side of the chest.
22. Abrasion of 1x1 cm over outer aspect of left side of the chest.
23. Abrasion of 6x1 cm over front of left lower thigh.
24. Chop wound 1.5x1 cm, bone deep, of middle phalanx of left little finger attached only with tag of skin in its back.
25. Chop wound of 6x7 cm, bone deep, of left palm, in the web space between little and ring fingers, and the finger is separated at metacarpo phalangeal joint and attached with a tag of skin in its back.
26. Incised wound of 3x1 cm, muscle deep, over inner aspect of base of left thumb.
27. Multiple scratches of 0.5 to 1 cm, each over back of left hand.
28. Incised wound of 3x1 cm, muscle deep over inner aspect of lower part of left forearm.
29. Incised wound of 8x2 cm, muscle deep, over back of lower left forearm.
30. Abrasion of 5x2 cm over back of middle part of left forearm.
31. Incised wound of 1x1 cm, muscle deep, over outer aspect of lower part of left arm.
32. Incised wound of 5x1 cm, muscle deep, over back of right lower neck and upper chest.
33. Incised wound of 2x1 cm, skin deep, over back of left lower neck and upper chest.

Internal :

34. Depressed fracture of 2x1 cm, involving left part of frontal bone, underneath wound No.1.
35. Depressed fracture of 2x0.5 cm, involving left part of frontal bone, underneath wound No.2.
36. Depressed fracture of 5x1 cm, involving right parietal bone, underneath wound No.6 and extended as fissured fracture of 18 cm, involving right part of frontal bone and right parietal bone in a zigzag manner and comminuted fracture of lower part of right parietal bone 5x1 cm of the dura matter is cut underneath the fracture.

37. Fissure fractures of 7,5 and 4 cm involving lower part of the right parietal bone, underneath wound No.7.

38. Brain contained the Subarachnoid hemorrhage over both parietal lobes and cerebellum of the brain.”

P.W.16 opined that all the wounds except the abrasion contained blood clots. Therefore, except the abrasion all other injuries contained blood clot. The metal piece is matching with the broken tip of one of the weapons (sickle) which was brought by the Inspector of Police - P.W.18 and the said piece was handed over to the police. Basing on the injuries found, P.W.16 opined that death was due to hypovolaemic shock as a result of multiple wounds and approximate time of death of the deceased was about 12 to 18 hours prior to examination. He issued Ex.P8 - PME report.

44. P.W.18 corroborates with P.W.16 that on the direction of P.W.16, he produced M.O.8 and the Doctor compared M.O.23 with broken part of M.O.8 and it is matched. Therefore, M.O.23 is the broken piece of M.O.8 and the same was seized under Ex.P13. According to P.W.16, the death was 12 to 18 hours prior to postmortem examination which was conducted on 1.7.2008. According to P.Ws.1 to 4 the incident took place at 11.00 – 11.30 PM. The examination was commenced at 2.30 PM on 1.7.2008. Accordingly, the time gap from 11.30 PM to 2.30 PM comes to 15 hours. If the time of incident is taken at 11.00 PM on 30.6.2008, it comes to 15.30 hours, so approximate time of death was corroborated with the medical evidence

of P.W.16 as mentioned in Ex.P8 - PME report. Further, the evidence of P.W.18 proved that M.Os.4 and 5 are handed over by Selva Pushpa and they were seized under Ex.P11 under police proceedings dated 1.7.2008 at 2.00 PM. There is no discrepancy in the cross-examination about M.Os.4 and 5.

45. It is the evidence of P.W.18 that on 9.7.2008 at about 7.00 AM while he was present in the office he received credible information about A1 and A2 who are at footpath of Tirumala nearby the tollgate. Immediately, P.W.18 along with staff left to Tirumala footpath in the jeep and on the way he collected P.W.13 and one Ramana and reached there at about 7.30 AM. P.W.13 corroborates P.W.18 that on 9.7.2008 at about 7.00 AM Tirupati Rural C.I. telephoned and asked him to present at Kapilatheertham road, Tirupati and accordingly he went there and by that time, P.W.18 and other persons in civil dress were present in the jeep. Police asked him to accompany them to Alipiri toll gate. Police observed two people and on seeing them, they tried to run away, then police caught hold them, interrogated before him (P.W.13). The two persons are Sampath Reddy – A2 and Harinatha Reddy – A1. Then, A2 and A1 (died) admitted the offence and A2 informed the police that he would show the knife and clothes if police accompany them. Relevant portion of the confession of A1 and A2 is Ex.P5. Then P.W.13 and Ramana signed in Ex.P5. A2 led the police party along with mediators to his

house at Sundaraiah Nagar. He went inside the house and came with knife - M.O.6, M.O.20 – bloodstained dark green (paachi colour) colour full shirt, M.O.21 – bloodstained cream colour pant and M.O.22 – bloodstained green and brown mixed colour shirt and handed over to the police and the police seized them in the presence of P.W.13 under Ex.P6 seizure mahazar on 9.7.2008 at 10.45 AM. In spite of cross-examination of P.W.13, nothing could elicit and the suggestion is that Exs.P5 and P6 are prepared in the police station, which was denied.

46. After the seizure of M.Os.20 to 22 and M.O.6 under Ex.P6 – mahazar, they returned to Alipiri Police Station along with A1 and A2 and get them in lock up. The police got identified the chappals M.Os.18 and 19 under Ex.P12 police proceedings, but the same cannot be relied. The identification of accused their chappals before police is not tenable. Even ignoring the chappals, still there is convincing evidence of their committing offence by the evidence of P.Ws.1 to 4 and collecting weapons by the evidence of P.Ws.8 to 10 and seizure of M.Os.20 to 22 and M.O.6 – knife by P.W.18, at the instance of A2. The further evidence of P.W.18 is that on 12.7.2008 on reliable information at about 5.00 PM he proceeded to the house of A3 and on the way secured P.W.14 and T.Muthuswamy and reached the house of A3 at 5.15 PM and called A3 and that he came out from the house. On interrogation, A3 confessed the crime and he was arrested under cover

of mahazar - Ex.P7 in the presence of P.W.14 and another. It is also evidence of P.W.18 that on 22.7.2008 the material objects seized during investigation were sent to court along with letter of advice to forward the same to RFSL for examination and report. Ex.P14 is the letter of advice. P.W.18 received Ex.P15 FSL report.

47. A reading of Ex.P15 goes to show that the material objects 18 in number were received in one sealed cardboard box, one sealed plastic gunny bag and one sealed jute parcel each ties with jute thread having four, one and two seals respectively, seals are intact and tallying with the specimen seal through Sri K.Surendrababu, PC No.2475 of Alipiri P.S. on 31.7.2008. After analyzing items 1 to 18, the Analyst detected blood on item Nos.1 to 18 and opined origin of blood stains on items, 1 to 3, 7 to 15, 17 and 18 are of human and blood group of blood stains on item Nos.1, 2, 3, 7 to 15, 17 and 18 could not be determined and origin of bloodstains on item Nos.4 to 6 and 16 could not be determined.

48. Section 34 of the Indian Penal Code reads as under :

“34. Acts done by several persons in furtherance of common intention : When a criminal Act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

A reading of Section 34 I.P.C. connotes that to apply Section 34 I.P.C., there should be a pre-oriented plan and participation of the accused in the crime and acting in pursuance of the plan, which means that the common intention must exist prior to the commission of the act in a point of time. Further, the act of the accused should facilitate the other accused to assault and kill a person said to be for shared common intention of committing murder of the deceased. Accordingly, to apply Section 34 of I.P.C. apart from the fact that there should be two or more accused, two factors must be established – (i) common intention and (ii) participation of the accused in the commission of an offence.

49. Harinatha Reddy - A1 hacked the deceased Sundaram, while A2 holds the hands and A3 holds the legs of the deceased Sundaram, as clarified by P.Ws.2 and 3 during cross-examination.

50. P.W.1 in the chief itself stated that there were ill-feelings between her brother Sundaram and Ravi Shanker Reddy – brother of A1 in connection with business dealings. The said Ravi Shanker Reddy was murdered in the year 2002 and a criminal case was filed against P.W.1, P.W.4 and the deceased Sundaram, which was ended in acquittal in the year 2005. Further, P.W.1 specifically deposed that he heard while A1 proclaiming that since P.Ws.1, 4 and

deceased Sundaram were acquitted in the murder case, he intends to murder one of the brothers. Similarly, P.W.4 corroborated with P.W.1 and further stated that Harinatha Reddy (A1), A2 and A3 were talking with each other in burial grounds with a view to kill them. Accordingly, in furtherance of their common intention, A2, A3 and A1 collected knives – M.Os.6 and 7 from P.Ws.8 and 9 and Billhook – M.O.8 from P.W.10 and it is A2, who collected those knives and all the accused went to them while collecting those knives on a motor bike. Accused used M.Os.6 to 8 in committing the offence and there is participation and contribution of A2 and A3, who assisted A1 in hacking Sundaram by caught hold of hands and legs of the said Sundaram. Accordingly, Prosecution well established the ingredients of common intention under Section 34 of the Indian Evidence Act.

51. In the facts and circumstances discussed above and findings therein we are of the considered view that though P.Ws.1 to 3 are related to the deceased, their evidence is reliable, trustworthy and inspires confidence. There is nothing suggested to discrete their evidence. The consistent evidence of P.Ws.1 to 3 is established that while A2 and A3 caught hold the deceased Sundaram, A1 hacked him with knife and caused multiple injuries. P.W.2, on hearing the cries of her husband, woke up and witnessed while A1 hacking the deceased, while A2 and A3 caught hold of him. On hearing the cries of deceased, P.W.3 also woke up and witnessed the incident. P.W.2 immediately

rushed to P.W.1 and informed the incident and thereupon, P.W.1 also witnessed the incident. P.Ws.4 to 7 have seen A1 to A3 while going on Setiipalle road stating that Sundaram died. When P.W.1 came, A1 thrown the knife in his hand on P.W.1, but he escaped and A1 to A3 fled away. P.W.7 also witnessed while the accused fled away on the road saying Sundaram died. P.Ws.4 to 7 are persons who last saw the accused while going on the street. P.Ws.1 to 3 identified the accused in the lighting of street light in front of the house of P.Ws.2 and 3 and also in the lighting of show lights fixed to the gate of the house.

52. Further, the evidence of P.Ws.8 to 10 is clear that A1 to A3 went on motor bike and they secured M.Os.6 to 8 from them and it is A2 who collected the knives from P.Ws.8 to 10. Their evidence clinches the source of weapon for the accused. The evidence of P.W.18 corroborating with the evidence of P.W.12 established the observation of scene of offence and preparation of rough sketch and the scene of offence and seizure of M.Os.9 to 19 under Exs.P3 and P4 and at the instance of A2 basing on confession Ex.P5 seized M.Os.20 to 22 under Ex.P3 - mahazar and M.O.7 in the presence of P.W.13. The seizure of weapons is proved by the arrest of A1 and A2. The arrest of A3 was proved by the corroborative evidence of P.W.14 under Ex.P7 - mahazar. The referring of the Sundaram to SVIMS hospital is supported by P.W.15 of SVRR GG Hospital who after examining Sundaram on 30.6.2008, as the Sundaram's condition was unconscious

and gaspy, referred him to SVIMS Hospital for expertise management. Doctor - P.W.16, who conducted PME on the dead body of Sundaram, observed 33 external injuries and 5 internal injuries and opined that cause of death of the deceased is due to hypovolaemic shock as a result of multiple wounds and the approximate time of death of deceased was about 12 to 18 hours prior to PM examination and issued Ex.P8 - PME report. According to him, he conducted postmortem examination from 2.30 PM to 3.30 PM. There is no delay in submitting F.I.R.

53. The non-mention of names of A2 and A3 in Ex.P1 by P.W.1 is immaterial, since F.I.R. also set the criminal law into motion and nothing elicited to discrete the evidence of P.Ws.1 to 4 or material witnesses P.Ws.8 to 10 from whom A2 secured M.Os.6 to 8. P.Ws. 4 to 7 are the witnesses who have last seen the accused and there is a chain of circumstances connecting the accused with the offence. The Investigating Officer produced M.O.8 on the direction of P.W.16 and the Doctor compared M.O.23 with M.O.8, which was matched, then seized M.O.23 – metal piece under cover of police proceedings Ex.P13. The evidence of P.Ws.1 to 3 is reliable, trustworthy and inspires confidence and the Court below rightly considered the evidence of P.Ws.4 to 7, who have last seen the accused after the incident while going on street and they were identified in the street light and the seizure of M.Os.6 to 8 is proved by the inquest and seizure

of other material objects is proved by the consistent and corroborate evidence of P.Ws.12 and 13. There is no error in the seizure material order by the trial Court. We do not find any illegality in the findings of conviction of the appellants - A2 and A3 warranting interference.

54. Accordingly, both the Criminal Appeals fail and are dismissed confirming the conviction and sentence imposed against the appellants/accused vide judgment dated 1.5.2010 in S.C.No.293 of 2009 on the file of the V Additional District & Sessions Judge, Tirupati.

55. Consequently, the miscellaneous petitions pending, if any, shall stand closed.



JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

January, 2018.

skmr