

Bail Slip: The Petitioner released on bail by the order of the High Court dated 08-08-2018 in I.A.No. 1 of 2018 in CrI.A.No. 950 of 2014

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE THIRTIETH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CRIMINAL APPEAL Nos: 950 OF 2014, 1004 of 2014, 1029 of 2014 AND
CRIMINAL APPEAL NO. 947 OF 2024

CrI.Appeal No. 950 of 2014 :

CrI.Appeal Under Section 374 (2) of CrI.P.C. aggrieved by the Judgment dated 27-08-2014 in S.C. No. 403 of 2008 on the file of the Court of the Additional Metropolitan Sessions Judge Cyberabad at L.B.Nagar.

Between:

1. Gilkala Ganesh, S/o G.Narsing Rao R/o H.No. 4-6-4, Isamiya Bazar Kachiguda, Hyderabad. (A-5)
2. Devakathi Anil Kumar, S/o Govinda Rao R/O H.NO. 2-4-930/1 Nimboli Adda, Kachiguda, Hyderabad.(A-7)
3. Pindyala Sai Babu, s/o Anna Rao R/o H.No.3-2-308/24 Chappal Bazar, Kachiguda, Hyderabad (A-8) - ...APPELLANTS/ A-5, A-7, A-8

AND

State of Telangana, Represented by its Public Prosecutor High Court of Judicature, Hyderabad. ...RESPONENT

IA NO: 1 OF 2019

Petition under Section 389 (1) of Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased that this Honourable court may in the interest of justice and pending disposal of the criminal appeal No. 950 of 2014 be pleased to release the petitioners/A-5 and A-8 on bail and pass such other further orders as are deemed just and necessary in the circumstances of the case.

IA NO: 1 OF 2022

Petition under Section 389 (1) of Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High

Court may be pleased To suspend the execution of sentence passed in S C No.403/2008 on the file of the Court of the Additional Metropolitan Sessions Judge, Cyberabad at L B Nagar and release the petitioner A-5 on bail, pending disposal of the appeal CrIA No.950/2014 before this Hon'ble Court and pass

IA NO: 1 OF 2021

Petition under Section 391 of Cr.P.C praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to RECEIVE the citations as an additional material paper to consider the plea of the petitioners in the interest of justice.

IA NO: 2 OF 2022

Petition under Section 389 (1) of Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased To suspend the execution of sentence passed in S C No.403/2008 on the file of the Court of the Additional Metropolitan Sessions, Judge, Cyberabad at L B Nagar and release the petitioner A-5 on bail, pending disposal of the appeal CrIA NO.3950/2014 before this Hon'ble Court .

Counsel for the Appellant: SRI. RAKESH JANGEM

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 1004 OF 2014

CrI.Appeal Under Section 372 of Cr.P.C. against the Judgment dated 27-08-2014 in S.C.No. 403 of 2008 on the file of the Court of the Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar.

Between:

M. Praveen Reddy @ Parameshwar Reddy, S/o M. Krishna Reddy, Occ Corporator, GHMC, Hyderabad. R/o.H.No.2-7-95, Sree Rama Colony, Bharat Nagar, Uppal, Hyderabad. **...APPELLANT/ PW2**

AND

1. Punduri Jithender Reddy, S/o. Mohan Reddy, Occ: Real Estate Business, R/o. H.No.2-142, Hanumasai Nagar, Uppal, Ranga Reddy District (A-2)
2. Pothagoni Balraj Goud, S/o. Late Narsimha, Occ: Employee and Real Estate Business, R/o. H No.11-39, Beerappagada, Uppal, Ranga Reddy District. (A-3)
3. Tirunagari Anil Kumar, S/o. Krishnanand, Occ: Municipal Sub Contractor, R/o. H.No.15-97, Beerappagada, Uppal, Ranga Reddy District. .. (A-9)
4. State of Telangana, rep., by Public Prosecutor, High Court of Judicature at Hyderabad For the State of Telangana and the State of Andhra Pradesh

...RESPONDENTS

Counsel for the Appellant: SRI. T. PRADYUMNA KUMAR REDDY

Counsel for the Respondent No.1 : SRI NARAPARAJU AVANEESH

Counsel for the Respondent No.2 : SRI A. P. SURESH RAM

Counsel for the Respondent No.3 : SRI KARNA GOVINDA REDDY

Counsel for the Respondent No. 4 :THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 1029 OF 2014

Cri.Appeal Under Section 372 of Cr.P.C. against the Judgment dated 27-08-2014 in S.C.No. 403 of 2008 on the file of the Court of the Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar.

Between:

M.Praveen Reddy @ Parameshwar Reddy, S/o. M. Krishna Reddy, Aged about 34 years, Occ: Corporator, GHMC, Hyderabad. R/o.H.No.2-7-95, Sree Rama Colony, Bharat Nagar, Uppa1,Hyderabad.

...APPELLANT/ PW 2

AND

1. Gilkala Ganesh S/o. G. Narsing Rao, Aged about 20 years, R/o. H.No.4-6-4, Isamiya Bazar, Kachiguda, Hyderabad. (A-5)
2. Devakath Anil Kumar., S/o. Govinda Rao, Aged about 20 years, Occ Driver, R/o. H.No.2-4-930/1, Nimboliadda, Chappal Bazar, Kachiguda, Hyderabad. (A-7)
3. Pindyala Sai Baba, S/o. Anna Rao, Aged about 20 years, R/o.H. No.3-2-308/24, Chappal Bazar, Kachiguda, Hyderabad. (A-8)
4. State of Telangana rep., by Public Prosecutor,, High Court of Judicature at Hyderabad For the State of Telangana and the State of Andhra Pradesh.

...RESPONDENTS

Counsel for the Appellant: SRI. T. PRADYUMNA KUMAR REDDY

Counsel for the Respondent: THE PUBLIC PROSECUTOR

CRIMINAL APPEAL NO: 947 OF 2024

Cri.Appeal Under 378 (3) & (1) of Cr.P.C. against the Judgment dated 27-08-2014 in S.C.No. 403 of 2008 on the file of the Court of the Additional Metropolitan Sessions Judge, Cyberabad., L.B. Nagar.

Between:

The State of Telangana, rep. by The Public Prosecutor, High Court at Hyderabad.

...APPELLANT/ Complainant

AND

1. Puduri Jithender Reddy, S/o. Mohan Reddy, aged 32 years, Occ. Real Estate Business, R/o. H.No.2-142, Hanuma Sai Nagar, Uppal, R.R.District. (A-2)
2. Pothagoni Bairaj Goud, S/o. Late Narsimha, Aged 37 years, Occ. Private Employee and Real Estate Business, Rio. H.No.11-39, Beerappagadda, Uppal (A-3)
3. Tirunagari Anil Kumar, S/o. Krishanand, Aged 3 years, Occ. Municipal Sub-Contractor, R/o. H.no.15-97, Beerappagadda, Uppal. (A-9)

(A-1, A-4 to A-8 not necessary parties)

...RESPONENT/ Accused

Counsel for the Appellant: THE PUBLIC PROSECUTOR

Counsel for the Respondent No. 3: SRI KARNA GOVINDA REDDY

The Court delivered the following COMMON JUDGMENT :

THE HON'BLE SRI JUSTICE P.SAM KOSHY

AND

THE HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

**CRIMINAL APPEAL NOs.950 OF 2014,
1004 OF 2014, 1029 OF 2014 AND CRIMINAL APPEAL
No.947 OF 2024**

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice Sambasivarao Naidu)*

Assailing the Judgment dated 27-08-2014 in S.C.No. 403 of 2008 on the file of Additional Metropolitan Sessions Judge, Cyberabad, Four different Criminal Appeals have been filed before this Court. Accused No's.5, 7 and 8 have filed Criminal Appeal No.950 of 2014 under section 374(2) of Criminal Procedural Code (for short 'Cr.P.C'), questioning the correctness of their conviction for the offence under Section 302 r/w 34 of Indian Penal Code (for short 'I.P.C.'). Mr. M.Praveen Kumar, who was examined as PW.2 in the above Sessions Case has filed two Criminal Appeals. He has filed Criminal Appeal No.1004 of 2014 against the acquittal of A2, A3 and A9 for the offences under Sections 120-B, 302 r/w 120-B of IPC and Criminal Appeal No.1029/2014 under

Section 372 of Cr.P.C against the acquittal of A5, A7 and A8 for the offences under Sections 341 and 307 r/w 34 of IPC and under Section 25 of Arms Act. The State also filed one Criminal Appeal under Section 378(3) and (1) of Cr.P.C against the acquittal of A2, A3 and A9 for the offences under Sections 120-B, 302 of IPC r/w 120-B of IPC, and acquittal of A5, A7, and A8 for the other charges. Even though, four different appeals have been filed, all are against the same Judgment in SC.No.403 of 2008 but on different grounds, as such, all the appeals can be disposed by one common Judgment, hence this common Judgment.

2. The above referred Sessions Case vide SC.No.403 of 2008 has been filed against 9 (Nine) accused with an allegation that they have committed the offences punishable under Sections 341, 302, 307, 120-B r/w 34 of IPC and under Section 4 of Arms Act r/w Section 25 of Arms Act.

3. The following is the brief case of prosecution as per the charge sheet :

One M.Jagadishwar Reddy, who herein after will be referred as deceased and A1 (Yamjala Sridhar Reddy), who claims himself as Uppal YSR are strong supporters of

Congress (I) Party and residents of Uppal. PW.2 is brother of deceased Jagadishwar Reddy. The deceased formed a political organization known as MPR Yuvasena. Earlier A1 was President of Bharatiya Yuvajana Sangham, Uppal and was Director of A.P. State Trading Corporation about one year prior to the offence with which the accused were charge sheeted. However, in the subsequent election, PW.2 was elected as President of Bharatiya Yuvajana Sangham. Both A1 and deceased were competing for political supremacy in the same party, especially in Uppal area. Since Uppal was separated from Medchal Assembly Constituency and made as separate constituency, the rivalry between these two has been increased and both A1 and deceased developed deep animosity against each other. There were frequent clashes between these groups and about 7 Criminal cases have been registered against the groups.

4. The prosecution has alleged that, in view of the above political rivalry, A1 had decided to eliminate the deceased. About one month prior to 22-05-2007, A1, A2 and A3 met in a room at Mohan Reddy Function Hall, Uppal and prepared a plan to kill the deceased and subsequently, they

met two or three times and discussed about their plan, and the said meetings were witnessed by LW.14 Raheem Khan but he did not notice as to what they were discussing, but PW.7 who went to the above said function hall overheard their conversation where in, A2 informed A1 that he can provide suitable persons, who can kill the deceased. A2 contacted A4 and A5, who were involved in another murder case vide Crime No.453 of 2006 of Madhapur and took them to A1. A1 promised to pay Rs.5,00,000/- for executing the plan i.e., to murder the deceased. A1 wanted them to execute the plan even by taking help of others but it shall be done without any failure. About a week later, A2 to A5 met A1 at Sherton Hotel and he gave Rs.50,000/- to A2 as advance. A2, A3 shown the poster of deceased and informed A4 and A5 that the deceased used to wear white clothes and asked them to kill him. A1 had engaged A3 and A9 to watch the movements of the deceased, so that the same can be informed to him.

5. The prosecution has further alleged that out of the amount of Rs.50,000/-, A4 and A5 have purchased one secondhand Yamaha Motorcycle from PW.11, and also purchased two knives and spent the balance amount. A4 and

A5 sought the help of A6, who was a juvenile then, and also A7 and A8, who are their friends, for executing the murder plan.

6. It is the further case of prosecution that on 22-05-2007, A2 called A4 and A5 over phone and informed them the deceased went to Ramanthapur in his white Zen Car bearing No.Ap-29-2960 and he should be done to death in his return journey to Uppal and assured them that he would inform them about the movements of deceased. A4, A5 along with A6 to A8 had dinner at Madhura Bar, Ramanthapur. At about 10.30 p.m., A2 called A4 on phone and informed him that the deceased had crossed TV Studio at Ramanthapur and informed him that A1 would be waiting nearby and assured him that he need not worry and can go ahead with the task. Accordingly, A4 proceeded on the motor-bike along with A6 while A5 and A8 proceeded on another bike bearing No.Ap 9B 3551 along with A7, who rode the bike. A4 and A5 were armed with knives, and followed the car of deceased. By that time, PW.1 was driving the car. At about 10.45 p.m., when the car reached Rama Dharam Weigh Bridge, near Indian Oil Petrol Bunk, IDA, Uppal on Hyderabad – Warangal Road, A6

who was riding the bike suddenly crossed the car and stopped it in front of the car of deceased. The deceased got down the car and walked towards A6 by abusing him for stopping the bike across the road in front of his car. A4 who was the pillion rider of A6 has removed the knife, and though the deceased who noticed A4 removing the knife, rushed towards his car, A4 stabbed him indiscriminately. A5, A7 and A8 who came later to the scene, surrounded the scene and prevented the others from intervening and to ensure the deceased cannot escape. PW.1 tried to rescue the deceased, but A4 stabbed him also and he received injuries. The deceased suffered profuse bleeding and fell on the road and A4 stabbed him again to make sure he was dead. The prosecution has further alleged that A1 and A2 reached the scene of offence in a Auto to confirm that the planned murder is accomplished and PW.5, PW.6 noticed these two accused at the scene of offence. Soon after the incident, the accused escaped from the scene of offence. PW.6, who is shown as an eyewitness to the above offence said to have made a call to PW.2 from the mobile of PW.1 and PW.2 reached the spot in ten minutes and

PW.1, PW.2 and PW.6 shifted the deceased to Kamineni Hospital, but the Doctors declared him as brought dead.

7. The prosecution further alleged that at about 3.30 a.m., on 23-05-2007, the then Inspector of Police, Uppal, who is examined as PW.17 received a written complaint from PW.1 at Kamineni Hospital and he forwarded the same to police station with a direction to register a case through a constable and LW.28 HC 883 by name Narayan Das registered the complaint as a case in Crime No.503 of 2007 under Sections 341, 302, 120-B r/w 34 of IPC and sent the CD file to PW.17. PW.1 suspected A1, A2, Seetharamamma, Sridhar Rao, Akula Mahender, Chinna Reddy, Malla Reddy, Venugopal, Ashok and Ravi Kumar are responsible for the above said offence. The prosecution further alleged that though the initial investigation was by PW.17, in view of the instructions of ACP, Malkajgiri, PW.18 took up the further investigation.

8. The prosecution further alleged that PW.18 visited the scene of offence and conducted panchanama before LW.20- KonchalaKanti Gopal Reddy and LW.21 Mashyam Srinivas and said to have collected some material objects and

also collected blood stained earth etc., from the scene of offence. He has conducted inquest on the dead body of the deceased at Kamineni Hospital at L.B.Nagar before same witnesses. He said to have seized blood-stained clothes of the deceased before same witnesses and referred the dead body for post-mortem examination.

9. It is also alleged in the charge sheet that in view of the instructions of ACP, further investigation was taken up by PW.19, who has examined PWs.3 to 11 and some other witnesses. The further averments of the charge sheet would disclose that PW.19 having apprehended A2 with the help of his team said to have interrogated him before the independent mediators and in view of the information collected from A2, he could notice the involvement of other accused and said to have arrested A5 to A8 at their respective houses and said to have seized money which they have received from the prime accused for committing murder of deceased Jagadishwar Reddy. These accused were later produced before the Court for judicial custody and PW.19 having completed the investigation filed charge sheet. He tried to explain the discrepancy in the complaint (FIR) with

regard to the involvement of accused No's.5, 7, 8 and vehicles they said to have used when compared with the statements of the witnesses before the Investigating Officers and in such attempt, he tried to explain by saying that since the offence took place on the high way and immediately after the occurrence, some more vehicles might have been stopped at the place of offence and people gathered there and the complainant, who has already received injuries and in view of confusion, could not have given the actual details and he might have noticed a car at the scene of offence and under mistaken impression that A5, A7 and A8 got down the said car mentioned the same in the report.

10. The charge sheet filed against all the accused was taken cognizance by the learned Magistrate, who after securing all the accused and on compliance of Section 307 of Cr.P.C., committed the case to District Court where it was registered as SC.No.403 of 2008 and it was made over to Addl. Metropolitan Sessions Judge, Cyberabad, L.B.Nagar. The learned Addl. Metropolitan Sessions Judge has examined the accused on record and framed charges against them as follows:

1. Charge under Section 120-B(1) of IPC against A1, A2, A3, A5, A7, A8 and A9.
2. Charge under Section 25 of Indian Arms Act against A5.
3. Charge under Sections 341 r/w 34 of IPC against A5, A7 and A8.
4. Charge under Section 302 r/w 34 of IPC against A5, A7 and A8.
5. Charge under Section 307 r/w 34 of IPC against A5, A7 and A8.
6. Charges under Sections 302, 307, 341 of IPC and Section 25 of Indian Arms Act r/w 34 against A1, A2, A3, A5, A7, A8 and A9.

11. The accused present before the trial Court have denied the above referred charges and claimed to be tried. During the trial, the prosecution has examined PWs.1 to 19 and marked Exs.P1 to P29 and MOs.1 to 20. The accused also marked some documents vide Exs.D1 to D11.

12. After conclusion of trial, the entire Incriminating evidence deposed before the witnesses were stated to the accused who have denied the same. The learned trial Judge having heard the Public Prosecutor and defense counsel and after perusing the entire record, came to the conclusion that

the prosecution was able to prove the guilt of A5, A7 and A8 for the offence under Section 302 r/w 34 of IPC and accordingly, convicted them under Section 235(2) of Cr.P.C. and sentenced them to suffer Rigorous Imprisonment for Life and also to pay fine of Rs.5,000/- each, in default to suffer Simple Imprisonment for One (1) month. The trial Court found A2, A3 and A9 not guilty for the offences with which they were charged and also found A5, A7 and A8 not guilty for the remaining charges and accordingly, recorded acquittal for the said charges. It appears from the record, since A1 and A4 died during the pendency, case against them was abated, and police have filed a separate charge sheet against A6 as he happened to be a Juvenile. As already stated in the previous paragraphs the accused who were convicted for offence u/s 302 r/w 34 IPC, i.e. A5, A7, and A8 have filed a separate appeal questioning their conviction on the ground that the trial court failed to appreciate the evidence in a correct way and the appeals have been filed against the acquittal of A2, A3 and A9 for all the charges framed against them and acquittal of A5, A7 and A8 for the rest of the charges.

13. The learned counsel representing A5, A7 and A8, who have filed Criminal Appeal No.950 of 2014, has submitted that the trial Court failed to appreciate the oral and documentary evidence placed before the Court and did not read the cross-examination of all the material witnesses in a proper way and without appreciating the fact that though there was no proper explanation from the prosecution as to how the report said to have been presented by PW.1 reached the police agency and without appreciating the discrepancy in the evidence of material witnesses about the presence of these appellants, on the basis of an incorrect conclusion convicted them for the offence under Section 302 r/w 34 of IPC. He has mainly attacked the evidence of PWs.5 to 7 on the ground that there is no explanation from the Investigating Agency as to how the Investigating Officers could know the presence of these three witnesses at the scene of offence although they did not approach the police on the date of offence or on the next two days. Therefore, it clearly indicates that the prosecution has planted these three witnesses to connect the accused with the present crime. He has also argued that the evidence of PW.19 clearly indicates

that he has produced all the accused along with material objects before the press, which was telecasted in all the Televisions, thereby, the Test Identification Parade conducted by PW.14 loses its importance. There is a huge gap in between the date of offence, arrest of accused and date on which the Test Identification Parade was conducted. Therefore, there is every possibility for the prosecution witnesses to see these appellants, who were in judicial custody and who were produced before the Court for every 14 days for extension of remand.

14. While arguing the other appeal filed by PW.2 against these accused (A5, A7 and A8) questioning their acquittal for the offence under Sections 307, 341 r/w 34 of IPC, he has further submitted that the evidence of PW.1 vide his cross-examination itself indicates that these three accused were falsely implicated in this case, thereby, the trial Court having appreciated the evidence of all the witnesses rightly acquitted these accused for the offences under Sections 307, 341 r/w 34 of IPC, and as such there is no ground to set aside the said acquittal or to convict them for the remaining charges.

15. The learned counsel who has filed Criminal Appeal No.1029 of 2014 and Criminal Appeal No.1004 of 2014 on behalf of PW.2 questioning the acquittal of A2, A3 and A9 for the offence under Sections 120-B, 302 r/w 120-B of IPC and also acquittal of A5, A7 and A8 for the offences under Sections 307, 341 r/w 34 of IPC, has submitted that the evidence brought on record clearly indicates that there was high handed attempts for tampering with the evidence and influencing the material witnesses in spite of which the prosecution could produce all the material witnesses before the trial Court. But the trial Court failed to appreciate the evidence of material witnesses which clearly indicates and proved the involvement of A2, A3 and A9 also in the commission of offence. The evidence of PW.1 is very clear that A5, A7 and A8 were present at the scene of offence and prevented the other public from rescuing PW.1 and in view of the evidence of PW.1 that there was an attack against him in the hands of A4, these three accused are liable for the punishment under Sections 307, 341 r/w 34 of IPC, therefore, he sought for conviction of these accused under the above said provisions.

16. The Additional Public Prosecutor who filed Criminal Appeal (SR) No.45104 of 2015 also argued on the same lines and sought for conviction of A2, A3 and A9 for the offence under Sections 120-B, 302 r/w 120-B of IPC and also for the conviction of A5, A7 and A8 for the offence under Sections 307, 341 r/w 34 of IPC.

17. According to the allegations in the charge sheet and as per the evidence of PW.1, it is firstly alleged that there is political rivalry between the deceased and A1 and since A1 was not happy with the importance that was acquired by the deceased and PW.2, he has hatched a plan to eliminate the deceased and in pursuance of the said plan, A1 said to have contacted A2, who in turn secured the other accused and engaged them for accomplishing their plan of murder of deceased. According to the specific allegations made in the charge sheet, when the deceased was proceeding from Ramanthapur to Uppal, A4, A5 and A6 waylaid their car by keeping the motorbike of A6 and made the deceased to get down from the car and when the deceased got down the car, A4 attacked him with a knife and killed him. The alleged offence took place before 12.00 in the night. According to the

specific evidence of PW.1, he got prepared a report with the help of PW.10 and handed over the same to police, who visited the Hospital. According to the evidence of PW.10, on 22-05-2007, at about 11.00 or 11.15 p.m., he came to know that Jagadeshwar Reddy was stabbed to death and he visited the house of deceased and from there he went to scene of offence situated at IDA, Uppal, then went to Kamineni Hospital. He has visited the scene of offence and reached the Hospital at 12.00 in the night. He has specifically stated before the Court that at 2.50 a.m., on 23-05-2007, he has drafted a report to the narration of PW.1, and the same was presented to the police.

18. In this case, when the trial was in progress, some material documents and material objects were found missing and the original report said to have been scribed by PW.10 and presented by PW.1 was one among those material documents that got missed from the record. The learned Public Prosecutor with the permission of the Court marked a photocopy of the alleged report as Ex.P1. During his arguments before the Court, the learned counsel for the appellants in Criminal Appeal Nos.1029 of 2014 and 1004 of 2014 has filed

a copy of the original report and advanced his arguments based on the said report. Therefore, according to the evidence of these two material witnesses, the defacto complainant could prepare a report after 2.30 a.m., and presented the same to police. According to the evidence of PW.17, the then Inspector of Police, Uppal on the date of the above said offence, on receipt of information about the attack on the deceased, he proceeded to Kamineni Hospital, L.B. Nagar and at 3.30 p.m., on 23-05-2007, he received a report from PW.1 at the Hospital itself and by making an endorsement, he referred the said report to SHO, Uppal with a direction to register the same as a case and according to his instructions, one Head Constable by name Narayan Das, who is shown as LW.28 and who was not examined before the trial Court registered a case and sent the case dairy to him. PW.17 has claimed that Ex.P1 contain his signature and also the signature of said Narayan Das. However, PW.1 from whom this witness said to have received the report categorically deposed before the Court that he know Muthyam Reddy (PW.17) was S.H.O. of Uppal Police Station on that particular day, but PW.17 did not visit him during that night.

He never met PW.17 till his discharge from the Hospital. He has also deposed before the Court that even after his discharge, he was never enquired by PW.17 about this offence and after signing the report, he did not sign any other report. PW.10, who drafted the report to the dictation of PW.1 and who was also with PW.1 at the time of his presenting report to police deposed before the Court that PW.1 handed over Ex.P1 to police but he does not know the designation of the police personal.

19. The cross-examination of PW.17 further shows that he has received information about the above said offence at 11.30 p.m., he made a General Case Dairy and proceeded to the Hospital. He has received Ex.P24 i.e., certified copy of printed F.I.R. and admitted before the Court that as per the said printed F.I.R. one General Dairy was made at police station at 4.34 a.m., It was elicited from PW.17 that till 3.30 a.m., on 23-05-2007, he did not receive any complaint from anybody though he was at the Hospital. He has not verified when HC Narayan Das dispatched the original FIR to the Court. According to his further evidence, he has handed over the case dairy file to PW.18 in pursuance of the instructions of

ACP. However, as per the alleged instructions of Commissioner of Police, Cyberabad vide Ex.P25 dated 23-05-2007, PW.17 was asked to hand over the investigation to PW.19. The memo vide Ex P25 on the basis of which PW.17 said to have handed over the investigation to PW.18 and on the basis of which PW.19 said to have took up the investigation reads as follows :

"Since there are allegations against the local Police, the case is entrusted to Inspector S.B.Sir P.Radha Kishan Rao for further investigation under direct supervision of DCP (Crimes). SHO Uppal is directed to hand over the CD file to Sri P.Radha Kishan Rao immediately".

20. This memo was addressed to PWs.17 and 19 and there was no reference about PW.18. However, PW.18 claims that in pursuance of the alleged instructions of ACP, he took up the case from PW.17 and said to have proceeded with the investigation. PW.19 has admitted before the Court that there were no such instructions for handing over the case file to PW.18. The evidence of these three Investigating Officers creates any amount of doubt whether really PW.18 conducted any portion of investigation before PW.19 started the investigation. As could be seen from the said memo, it is very

clear that there were serious allegations against the Police Department about the way the investigation was conducted and a specific order was passed by the Commissioner of Police to PW.17 to handover the investigation to PW.19. Therefore the question of PW.17 handing over investigation to PW.18 is itself doubtful. Though PW.18 claims that he has visited the scene of offence, conducted a panchanama before two independent witnesses, who are shown as LWs.20 and 21 in the charge sheet, they were not examined before the Court. There is no explanation from the prosecution as to how PW.18 could conduct inquest at Kamineni Hospital when the death of the deceased was declared in the mid night of 22/23-05-2007 itself, and as to how the dead body was kept at the hospital. The recovery of blood-stained clothes of the deceased by PW.18 also creates any amount of doubt because PW.19 categorically deposed before the Court that the shirt shown to him at the time of his evidence was not the shirt that he produced before the trial Court.

21. Even though a highly reputed political leader was killed in a public place and though another highly influenced political leader was shown as first accused in the said

assassination and though there were allegations against the local police officers, these three Investigating Officers acted in a most negligent way and their investigation is nothing but perfunctory investigation. There is no explanation from the prosecution as to whom PW.1 presented his report and as to how PW.17 claims that he received Ex.P1. In fact, the original of alleged report of PW.1 was not available before the trial Court at the time of examination of PW.1. As could be seen from the allegations in the charge sheet, and in view of political rivalry that was explained by the prosecution, one can expect how the thing must have happened at the scene of offence, and at the hospital. Soon after the alleged attack, the deceased was shifted to Kamineni Hospital. The alleged attack was at about 10.50 or 11.00 pm. The Inspector of police, Uppal, who is examined as PW 17 claims that he, having received the information about the said attack, said to have made an entry in the general diary and rushed to the hospital, which is very close to the police station. But no report was presented till 4 am next day. Even though PW.17 claimed that he received the original of Ex.P1 from PW.1 at the hospital, PW.1 specifically deposed that he did not present

any report to PW.17 and in fact he did not see the said Investigating Officer. He did not state to whom he has presented his report. Therefore, the prosecution failed to explain as to how the report reached the police station. It is very strange to accept in such a high profile murder case, where there were serious allegations against the police as per the memo issued by Commissioner of Police itself, no complaint was lodged with the police till more than 6 hours, and as per report vide Ex.P1 it is quite clear that a detailed lengthy report was presented before police.

22. PW.1 did not dispute the averments/allegations made in Ex.P1 report, therefore, if the contents of report are taken into consideration, it was his case at the time of his report before the police that at about 10.45 p.m., on 22-05-2007, when they reached Indian Oil Petrol Bunk at IDA, Uppal between Ramanthapur and Uppal Circle, two persons who came before their car, stopped the motor-bike in front of their car and Jagadishwar Reddy got down from the car and went near to the motor-cycle. Pillion rider of the above referred motorbike suddenly took out a knife and on seeing the same, the deceased rushed towards the car, but the

pillion rider stabbed the deceased, thereby, PW.1 got down the car and went there to see the deceased but he was attacked by the same person on his left elbow.

23. It is the further case of PW.1 as per his report that he found a white car from which two more persons got down, but nowhere in the said report he has stated that 3 more persons came to the scene of offence and surrounded the scene of offence and prevented the others from rescuing deceased. As per his evidence before the Court, those three persons whom he has identified as A5, A7 and A8, came to the scene of offence on a motor-bike. After the offence, they fled away on the same motor-cycle. However, in the cross-examination, it was elicited from PW.1 that he has signed Ex.P1 report after reading the contents and in the said report, he has mentioned two person came on a motor-cycle and two more persons came to the scene on a white Indica Car and all of them attacked the deceased. He has also admitted he got mentioned in Ex.P1 that he cannot identify other persons and Ex.P1 is silent about the arrival of three persons on a motor-cycle.

24. As could be seen from the record placed before the Court, PW.1 was first examined before the Juvenile Court where a separate charge sheet was filed against A6. In the cross-examination of PW.1, he has categorically stated that he has stated before the Police that he has identified only three persons among the four, who came on car and bike. It is elicited from PW.1 that in his evidence before the Juvenile Court, he did not say about the arrival of three more persons on a motor-bike, while the offence was taking place or those three persons surrendering the scene of offence and threatening the others from saving the deceased. PW.1 categorically admitted before the trial Court that in his evidence before the Juvenile Court, which was recorded much prior to the evidence of the present Sessions Case, he has stated about the arrival of only two persons on a motor-cycle and one among them stabbing the deceased and it is also admitted by PW.1 that in his report, he did not mention one among the three persons armed with a knife and threatened the general public.

25. Therefore, the above referred cross-examination coupled with Ex.P1 clearly indicates that it was the specific

case of PW.1 at the time of his report before police that two persons have stopped their bike in front of their car and one among them was the pillion rider of the bike stabbed the deceased and when he tried to intervene, he caused an injury to PW.1 and in the meanwhile, two more persons reached the place in a Indica Car. Therefore, what all PW.1 stated before the Court is only an afterthought attributing something against A5, A7 and A8.

26. To connect these three accused with the alleged offence, the prosecution sought to rely on the evidence of PWs.5, 6 and 7. As rightly argued by the learned counsel in these appeals, there is no explanation as to how the Investigating Officer i.e., PW.19 could know their presence at the scene of offence. It is elicited from these three witnesses that they did not visit the police station nor they have informed their witnessing the offence to any persons interested on behalf of the defacto complainant. If really they were present at the scene of offence and witnessed the incident and approached the police during that night, their statements could have been recorded by PW.17 or PW.18. The cross examination of these witnesses indicates as to how they are

interested and related to the deceased and his associates. Therefore, the examination of PWs.5, 6 and 7 about three days after the alleged incident creates any amount of doubt whether really they were present and witnessed the offence. Except the evidence of these three witnesses whose presence at the scene of offence is highly doubtful, and evidence of PW.9, there is no other incriminating material to believe the presence of the accused at the scene of offence.

27. In order to prove its case, the prosecution also sought to rely on the evidence of PW.9, who was a auto driver. According to his evidence before the Court, on 22-05-2007, he started at Abids with three passengers to drop them at Uppal X Road and reached near Petrol Bunk at IDA Uppal at 10.30 or 10.45 p.m., He stopped the auto for purchasing petrol. He found a Zen car coming from Ramanthapur and he noticed another motor-cycle coming in the same direction and pillion rider of the motor-bike stabbed the person who was in white dress, who got down from the car. PW.9 further stated before the Court that in the meanwhile three persons came to the scene of offence on another motor-cycle and one of them threatened the public. PW.9 tried to explain that he was

present and witnessed the entire offence. PW.9 claims that he dropped the passengers at Uppal X Roads and while returning, when he stopped the auto, police enquired from him the number and he was able to say the number of motor-cycle that he is said to have noticed at the scene of offence. Though PW.9 claimed that on the next day itself, he was called by police, this portion of his evidence was not supported by the evidence of Investigating Officer, who said to have examined him. The evidence of PW.9 that he has witnessed the offence and after dropping the passengers again he came to the spot and informed the police about the offence etc., creates any amount of doubt whether he really was there at the scene of offence. Therefore, the evidence of PWs.5, 6, 7 and 9 clearly shows that they are only planted witnesses to speak something against the accused.

28. It is true, the prosecution sought to rely on the evidence of PW.19 and PW.13 to connect these accused based on recovery of some money. In view of the death of a strong political leader in the general public, the news must have flashed in and around the city. If any person really involved in the commission of offence must be conscious of the follow

29. If the evidence of PWs.5, 6, 7, and 9 whose presence at the scene of offence is doubtful is excluded and if the alleged confession which these appellants said to have made by staying at their houses in the above referred circumstances is also excluded, there is no incriminating material against A5, A7 and A8. It is true police have produced some cash before the court to show that the same was recovered from the accused. As could be seen from the cross-examination of Investigating Officer, no note-numbers were mentioned in the alleged confession. In view of the status of the de-facto complainant and other interested witnesses, it may not be difficult for the police to produce such a small amount as it was recovered from the accused.

30. The trial Court having discussed all these discrepancies still convicted A5, A7 and A8 of the offence under Section 302 of IPC with the aid of 34 of IPC. In view of the admissions made by PW.1 in the cross-examination, in the light of suspicious circumstances under which Ex.P1 was brought into existence and in view of the doubt about the presence of A5, A7 and A8 at the scene of offence, it cannot be said that these three accused have shared common

intention with A1 or A2 for killing the deceased. The entire case is against A4, who died during trial in the case and against whom the case was already abetted. To believe that A5, A7 and A8 had common intention of killing the deceased, there must be positive evidence to show that they shared the common intention with A1 or A2. The presence of these three accused at the scene of offence itself is highly doubtful. The recovery of money in pursuance of their alleged confession from their respective houses in the heat of the above stated circumstances is also highly doubtful. But the trial Court in spite of observing that there was no chance for PW.7 to watch and hear the conversation between A1 and A2 about their plan to kill the deceased still held that the prosecution was able to prove guilt of these three appellants for the offence under Section 302 r/w 34 of IPC which is unsustainable.

31. The trial Court ought to have considered the oral evidence of PW.1 including his cross-examination, where in, certain important omissions were brought. In fact, the Investigating Officer - PW.19 himself while filing the charge sheet, tried to explain the discrepancy about the averments made in the report and evidence of these material witnesses.

If really there was an incident as analyzed/narrated by prosecution in the charge sheet and these three appellants really got down a motor-bike and prevented the other people from saving the deceased, it could not have escaped the attention of PW.1 and he must have mentioned the same in the report itself. The important omissions elicited from PW.1 which was duly proved by the cross-examination of the Investigating Officers, creates any amount of doubt whether really these three accused were present and participated in the offence as deposed by PW.1. Therefore, the conviction recorded against these three accused is liable to be set aside.

32. The trial Judge while appreciating the evidence of material witnesses having considered the discrepancies and as there is no acceptable evidence to believe the involvement of A2, A3 and A9 rightly acquitted them from the charges that were framed against them. In addition to this, in the light of what is observed in the previous paragraphs, the presentation of a report before the police, with so many details itself is doubtful and there is no acceptable explanation from the prosecution as to how the report reached the police station. The evidence of these three Investigating Officers although

there is a memo from Commissioner of Police directing PW.17 to entrust the investigation to PW.19, still PW.18 claims that he has conducted a portion of investigation, which is not believable. The specific times mentioned in the material documents also creates a doubt as to whether PWs.1 and 10 presented a true version or prepared a politically motivated report and presented the same to the police.

33. There is Test Identification Parade on which the prosecution strongly relied to connect the accused with the present case. But in the light of the evidence of PW.19 that he has produced all the accused before the press and as there is long gap between the date of arrest and the requisition for police for conducting Test Identification Parade, there is every chance for the material witnesses to see the accused, who were in judicial custody, so that they can easily identify them as culprits at the time of Identification Parade. Therefore, much weight cannot be given to the said Test Identification Parade. Therefore, for all these reasons, the prosecution was not able to prove the guilt of all the accused for the charges that were framed against these accused and the trial Court rightly found A2, A3 and A9 not guilty, recorded conviction against A5, A7

and A8 for the offence under Section 302 r/w 34 of IPC is unsustainable.

34. Therefore, the appeal preferred by A5, A7 and A8 vide Criminal Appeal No.950 of 2014 deserves to be allowed and the Criminal Appeal Nos.1004 of 2014, 1029 of 2014 and Criminal Appeal (SR) No.45104 of 2015 are liable to be dismissed.

35. In the result, the Criminal Appeal No.950 of 2014 is allowed. Conviction of A5, A7 and A8 is set aside and they shall be set at liberty, if, they are not required in any other cases, and fine amount if paid, shall be returned to them after appeal time is over.

Criminal Appeal Nos.1004 of 2014, 1029 of 2014 and Criminal Appeal (SR) No.45104 of 2015 stands dismissed.

Consequently, Miscellaneous petitions if any, are closed.

No costs.

//TRUE COPY//

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

SECTION OFFICER

To

1. The Additional Metropolitan Sessions Judge, Cyberabad, at L.B.Nagar, Hyderabad, Ranga Reddy District. (with records)
2. The Station House Officer , Uppal Police Station, Hyderabad District.

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3. The Superintendent, Cherlapalli Jail, Ranga Reddy District.
 4. One CC to SRI RAKESH JANGEM Advocate [OPUC]
 5. One CC to Sri T. PRADYUMNA KUMAR REDDY, Advocate (OPUC)
 6. One CC to SRI NARAPARAJU AVANEESH, Advocate (OPUC)
 7. One CC to SRI A. P. SURESH RAM, Advocate (OPUC)
 8. One CC to SRI KARNA GOVINDA REDDY, Advocate (OPUC)
 9. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
 10. Two CD Copies

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Bj

HIGH COURT

DATED:30/07/2024



COMMON JUDGMENT

CRIMINAL APPEAL Nos: 950 OF 2014 , 1004 of 2014, 1029 of 2014 AND
CRIMINAL APPEAL NO. 947 OF 2024

ALLOWING THE CRL APPEAL NO. 950 OF 2014 AND DISMISSING THE CRL.
APPEAL NOS. 1004 OF 2014 , 1029 OF 2014 AND 947 OF 2024

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