

(2002) 01 AP CK 0014

Andhra Pradesh High Court

Case No: Criminal Appeal No"s. 738 and 739 of 2000

Pullareddigari Venkataramana
Reddy

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: Jan. 4, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2002) 1 ALD(Cri) 491 : (2002) CriLJ 1943

Hon'ble Judges: T. Gopalkrishna, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: C. Padmanabha Reddy, for the Appellant; P.P., for the Respondent

Final Decision: Allowed

Judgement

B. Sudershan Reddy, J.

Both these criminal appeals may be disposed of by this common Judgment as they are filed against the same Judgment in S.C. No. 17 of 1996 on the file of the learned II Additional Sessions Judge, Chittoor at Madanapalle. By the said Judgment the learned Sessions Judge convicted A.1 u/s 302 read with Section 34 IPC and A2 u/s 302, IPC and sentenced both of them to undergo imprisonment for life and to pay a fine of Rs. 5,000/- in default to undergo rigorous imprisonment for one year.

2. A. 1 is the appellant in Crl. A. No. 738 of 2000 and A.2 is the appellant in Crl. A. No. 739 of 2000. Both of them are aggrieved by the Judgment of the learned Sessions Judge dated 14-6-2000 made in S.C. No. 17 of 1996.

3. Before advertiring to the question as to whether the Judgment of the learned Sessions Judge suffers from any infirmity requiring any correction as such by this Court, it may be necessary to briefly notice the prosecution case.

4. The case of prosecution is that on 27-5-1994, at about 11.00 a.m. in front of Gopi Tea stall at the bus stand of Tarikonda, appellant No. 1 caught hold of the hands of one Raghunatha Reddy (deceased) and appellant No. 2 stabbed him with a pen knife. Immediately, Raghunatha Reddy fell down and died.

5. The deceased Raghunatha Reddy and the appellants are step brothers. There were some property disputes between them. They are the residents of Eguvaburujupalle village. Appellant No. 2 is the brother-in-law of appellant No. 1 having married his sister.

6. On 27-5-1994 at about 11.00 a.m. the deceased Raghunatha Reddy was sitting in front of Gopi hotel (owned by PW 6). Appellants 1 and 2 came there and picked up a quarrel with the deceased regarding partition of some lands. It is case of the prosecution that appellant No. 1 caught hold of the hands of the deceased Raghunatha Reddy towards backwards and appellant No. 2 picked out a small knife from his pocket and stabbed him on his chest. The deceased Raghunatha Reddy cried for help and fell down.

7. P.W. 1 who is no other than the son of the deceased and who was carrying tomato baskets on a bullock cart from his village arrived near the scene of offence. P.W. 5 Venkata Reddy who is a native of the same village witnessed the incident. P.W. 2 Venkata Swamy Reddy, the brother of the deceased who was waiting at Tarigonda bus stand for a bus to go to Gurramkonda also witnessed the incident. On seeing P.Ws. 1, 2 and 5, the accused ran away from the scene of offence. Immediately, while P.W. 1 rushed to his father (deceased) and took the head of his father to his lap, P.W. 2 poured water into the mouth of his deceased brother. Soon after, Raghunatha Reddy died.

8. On 27-5-1994 itself at about 1.00 p.m P. W 1 went to Gurramokonda Police Station and gave a report Ex. P1 to P.W. 13, the Sub-Inspector of Police who registered the same as Crime No. 21 of 1994 u/s 302, IPC. P.W. 13 accordingly issued express First Information Reports to all the concerned. Ex. P1 is the First Information Report sent to the Court. P.W 13 immediately left the police station and reached the scene of offence at about 2.00 a.m. He secured the presence of P.Ws. 8, 9 and others and held inquest over the dead body of the deceased from 2.00 to 5.00 p.m. Ex. P.5 is the Inquest Report.

9. P.W. 13, the S.I. of Police examined P.Ws. 1 and 2 and recorded their statements. A rough sketch of the scene of offence was prepared by him and it is Ex.P. 12. He also prepared observation Mahazar report Ex. P.6 at about 5.00 p.m. in the presence of P.W. 9 and one Gopal Reddy and seized M.Os. 1 to 4 and 10. M.O. 11 control earth and M.O. 13, blood stained earth. Thereafter, he recorded the statement of P.W. 6 u/s 161, Cr.P.C. Immediately after completion of the inquest. P.W. 13 sent the dead body to the Government Hospital, Vayalpad, Chittoor District. The further investigation was handed over on 28-5-1994 to P.W. 12.

10. P.W. 4, the Civil Assistant Surgeon, Government Hospital, Vayalpadu conducted the autopsy over the dead body of the deceased on 27-4-1994 and found four injuries on the body of the deceased. He opined that the deceased died due to haemorrhage and shock due to injury of right ventricle about 20 hours prior to the post mortem examination. Ex.P. 12 is the post mortem certificate.

11. P.W. 13, the S.I. of Police seized M.O. 5 (Biscuit colour jubba), M.O. 6 (Mill cut banian with blood stains). M.O. 7 (white colour polyster dhoti) and M.O. 8 (underwear).

12. On 29-5-1994, P.W. 12 the S.I. of Police, Kanigiri took up the investigation from the Incharge Inspector Venkateshwar Reddy. Thereafter he examined P.W. 7 on 8-6-1994 and recorded his statement u/s 161. Cr.P.C.

13. Appellant No. 2 surrendered before the learned Sessions Judge, Chittor. The Investigating Officer P.W. 12 filed an application for police custody of A.2 on 29-9-1994 and accordingly he was handed over to the police and on the same day his confession statement was recorded in the presence of P.Ws. 10 and 11. At the instance of appellant No. 2, P.W. 12, the Investigating Officer seized M.O. 10 (pen knife) at Tarigonda market.

14. The prosecution, in order to establish its case against the appellants examined P.Ws. 1 to 13 and marked Exs. P.1 to P.12 and produced M.Os. 1 to 13.

15. P.Ws. 5, 6, 10 and 11 did not support the case of the prosecution and they were accordingly treated hostile with the permission of the Court by the prosecution.

16. On behalf of the appellants, D.W. 1 was examined and Exs. D. 1 to D. 16 were marked.

17. The learned Sessions Judge acquitted both the appellants herein under the Judgment dated 24-7-1997. Aggrieved by the same, the State preferred Criminal Appeal No. 1461 of 1997 before this Court and this Court by its Judgment dated 28-7-1999 remitted the case to the file of the learned II Additional Sessions Judge, Chittoor at Madanapalle with a specific direction to rewrite the Judgment and discuss the evidence of P.Ws. 1 and 2 thoroughly by duly recording the reasons as to why the learned Judge wants to accept or reject the same.

18. The learned II Additional Sessions Judge, Chittoor after rehearing the arguments of the prosecution as well as the defence, found the appellants herein guilty of the offence which they were charged and accordingly convicted them as noticed in the foregoing paragraphs. The learned Sessions Judge believed the evidence of P.Ws. 1, 2, 5 and 7 and accepted the case of the prosecution.

19. In these appeals, Sri Padmanabha Reddy, learned Senior Counsel appearing for the appellants submits that P.Ws. 1 and 2 are chance witnesses and their evidence cannot be accepted. It is further submitted that the prosecution failed to explain the

injuries found on the body of the deceased. It is also submitted by the learned senior counsel that P.W. 7 is a planted witness and it would not be safe to rely upon this evidence for convicting the appellants herein u/s 302, IPC. It is further submitted that there are material contradictions in the evidence of P.Ws. 1, 2, 5 and 7. The learned Senior Counsel would further contend that the learned Sessions Judge had not taken note of vital aspects which are apparent on the face of the record and committed an error in convicting the appellants herein. In support" of his submission, the learned senior counsel would draw our attention to the fact that no bloodstains were found on the clothes of P.W. 1 who is alleged to have taken the head of the deceased into his lap immediately after appellant No. 2 stabbed him. In the circumstances, the presence of P.W. 1 becomes highly doubtful is the submission of the learned senior counsel.

20. The learned Public Prosecutor very strenuously contends that P.Ws. 1 and 2 cannot be treated as chance witnesses. The town where the incident took place is adjoining the village of the deceased and P.W. 1. Ex. P.1 would clearly reveal that P.W. 1 came to the town Tarigonda as he was asked by the deceased to come to town and bring the tomato baskets for sale in the market. It is contended by the learned Public Prosecutor that Ex. P. 1 and the evidence of P.W. 1 would clearly reveal in a very natural manner the whole of the incident as it had taken place. It is further contended that even if the evidence of P.W. 7 is to be ignored by the Court for any reason, it would be absolutely safe to convict the appellants herein based on the evidence of P.Ws. 1 and 2 who are the eye-witnesses. It is contended that there are no circumstances to disbelieve the evidence of P.Ws. 1 and 2. It is contended that mere non-explanation of two of the injuries found on the body of the deceased it-self would not be fatal to the case of the prosecution . The prosecution, according to the learned Public Prosecutor, has successfully established the vital injury found on the body of the deceased, which was given by appellant No. 2. It was further contended that mere non-explanation of the two injuries itself would not be a ground to disbelieve the whole of the prosecution story.

21. Even according to the prosecution, the evidence of P.Ws. 1, 2 and 7 is a crucial one. The prosecution places heavy reliance upon the evidence of P.Ws. 1, 2 and 7 and more particularly on the evidence of P.W.1. In the circumstances, it would be necessary to notice the evidence of P.W. 1 in somewhat detail.

22. P.W. 1 is no other than the son of the deceased-Raghunatha Reddy. He stated that his father Raghunatha Reddy was murdered on 27-5-1994. He speaks about property disputes between the deceased-Raghunatha Reddy's family and A, 1, Some civil and criminal cases also are pending in the Courts, It is stated that the disputed land is in possession of the family of Raghunatha Reddy. On 27-5-1994 in the morning, according to P.W. 1 the deceased went to Tarigonda. While he was going, he asked him (P.W. 1) to bring tomato baskets to Tarigonda. At about 10.00 a.m. P.Ws. 1, 5 and Venkat Reddy started to Tarigonda market on a bullock cart

which is just about 3 miles away from the village of Diguva Burujupalle where the deceased and P.W. 1 reside. It is in his evidence that on reaching near Tea hotel of Gopi, P.W. 6 at Tarigonda, it was noticed that A. 1 and A.2 were talking with the deceased in front of Gopi hotel. On seeing all of them, he got down from the bullock cart. He noticed that appellant No.1 caught hold of the hands of the deceased towards back from behind and appellant No.2 stabbed the deceased twice on his left chest. P.W. 1 kept the head of his father on his lap. His junior paternal uncle Venkataswamy Reddy, P.W. 2 in the mean-while came there and it was stated to him that appellant No. 2 stabbed the deceased with a knife. The deceased breath his last breathe. On seeing P.Ws. 1, 2 and 5, the appellants ran away. It is further stated by him that he had asked P.W. 2 to be by the side of the dead body and immediately he rushed to the Gurramkonda Police Station and gave a report Ex. P. 1 to the police. The incident took place at about 11.00 a.m. The complaint was lodged by him at about 1.00 p.m. According to P.W. 1, the scene of offence is 12 kms. away from Gurramkonda Police Station. He went to the police station by bus. It is stated that the police examined P.Ws. 1, 2 and 5 at the scene of offence and inquest proceedings were conducted. On returning to the scene of offence from the police station, he found his grandmother Krishnamma, his brother Venkatarama Reddy and his mother Narasamma and some others were present at the dead body of his father. It is stated that somebody at the Gurramkonda Police Station, drafted Ex. P. 1 to his dictation.

23. In the cross-examination, it is admitted by P.W. 1 that his clothes were not blood-stained. He denied the suggestion that one need not pass through Gopi hotel to reach Tarigonda market from their village and that the bus route directly leads to market from their village. It is further stated by him that the appellants and the deceased were standing on the public road and the appellants were altercating with the deceased. It is admitted by him that he did not state in Ex. P. 1 and the deceased and A. 1 and A.2 were altercating with each other. He did not state any thing about such altercation in his 161 statement to that effect and the same is marked as Ex. D. 1. He denied the suggestion that he did not mention in Ex. D.1 that he witnessed A. 2 stabbing the deceased twice on his chest. He admitted that he did not mention in Ex. D. 1 that appellant No. 2 took out knife from his pant pocket or that he stated the same in his 161 statement. He further stated that the actual offence of the appellant No. 2 stabbing the deceased took place while still he was in the cart. It is stated by him that while his father was being stabbed he cried for help but nobody came there. In the cross-examination, he further admitted that he did not state either in Ex. P. 1 or in 161 statement that he witnessed the occurrence from a distance of 10 baras.

24. It would be appropriate to immediately notice as to what is stated by him in Ex. P. 1. In Ex. P. 1, it is stated by P.W. 1 that he started at about 10.00 a.m. taking tomato baskets in double bullock cart belonging to Ramana Reddy along with P.W. 5 who accompanied him and when they reached Tarigonda Bus stand, they noticed

appellant No. 1 and his brother-in-law A2 were altercating with the deceased. Then they noticed appellant No. 1 holding his father's hands on his back side and at the same time appellant No. 2 stabbed him with a knife on the chest and his deceased father then fell down crying with pain. He and P.W. 5 immediately got down from the double bullock cart and went running towards the deceased and in the meanwhile his junior paternal uncle P.W. 2 also came there. The accused ran away. Immediately P.W. 2 ran and got a glass of water and poured water into his father's mouth and his father died while he was on his lap. He saw two stab injuries on the left side of the chest from which blood was oozing. This is what he stated in Ex. P. 1.

25. It is required to notice that in Ex. P. 1 it is categorically stated by P.W. 1 that he had seen both the appellant and the deceased altercating at Tarigonda bus stand. It is not stated by him that appellant No. 2 took out a pen knife from his pocket and twice stabbed the deceased. In Ex. P. 1 it is further stated by him that he and P.W. 5 were in the double bullock cart when the incident had taken place. The distance between the bullock cart from where P.Ws. 1. and 5 witnessed the incident is not stated in Ex. P. 1, It was also not stated in the evidence of P.W. 1 as to what was the distance between the bullock cart and the scene of offence. It is further required to notice that in the cross-examination, he stated that the distance was about 10 baras from the bullock cart to the scene of offence. In his evidence P.W. 1 states that the incident had taken place in front of Gopi hotel belonging to P.W. 6. In Ex. P. 1 it is stated that the incident has taken place at the bus stand. Obviously, many others would have witnessed the incident if the same had taken place either at the bus stand or in front of Gopi hotel which is supposed to be on the main road of the so-called town. It is not explained as to what steps P.W. 1 has taken when he found the deceased and the appellants altercating. In the evidence it is stated by him that the deceased and the appellants were talking. It is also required to notice that after immediately getting down from the bullock cart, P.W. 1 had taken the head of the deceased into his lap and in Ex. P. 1 it is categorically stated that blood was oozing out from the left side of the chest of the deceased after he was stabbed by appellant No. 2. It is admitted that there were no blood stains on the clothes of P.W. 1. In the normal course, if the blood was oozing out at least there could have been some blood stains on the clothes of P.W. 1. Even with regard to the scene of offence, there is any amount of inconsistency in the statement of P.W. 1 and Ex. P. 1 report. Admittedly, there appears to be long standing civil and criminal disputes between the family of the deceased and the appellants. In the circumstances, we are required to cautiously, carefully and minutely scrutinise the evidence of P.W. 1 since admittedly he is an interested witness. It is not as if we are proposed to discard the evidence of P.W. 1 on the ground that he is an interested witness. But, we would like to carefully notice the evidence of P.W. 1 and for that reason we have elaborately dealt with the evidence of P.W. 1 and noticed the contents of Ex. P. 1, First Information Report lodged by him.

26. Then we will proceed to discuss the evidence of P.W. 2, who is no other than the younger brother of the deceased. He also admitted in his evidence that there are land disputes between the family of the deceased and the appellants and civil and criminal cases are also pending, It is stated that the deceased-Raghunath Reddy was murdered on 27-5-1994 at Tarigonda. He left his village Diguvaburujupalle at about 9.00 a.m. He met the deceased at Tarigonda and talked to him. He came to Tarigonda on the way to go to Gurramkonda. He wanted to go to Gurramkonda to have treatment as he was indisposed. He stated that he purchased some medicines at the medical shop at Tarigonda to have some relief. He waited at the flower shop in the bus stand to go to Gurramkonda. He states that he found his brother in the Gopi tea stall. Appellants came to the deceased and had talks with him. Appellant No. 1 caught hold of the hands of Raghunatha Reddy towards back side and appellant No. 2 took out a knife from his pocket and stabbed his brother, the deceased. On seeing him, appellants ran away. He witnessed the incident from a distance of 30 baras. He came to his brother running. P.W. 1 also came to the deceased. P.Ws. 1 and 5 came to Tarigonda with tomato baskets in the bullock cart. He poured a glass of water into the mouth of his brother. P.W. 1 kept his father's head on his lap and his brother breathed his last breathe. Then he remained at the deadbody and P.W. 1 went to Gurramkonda Police Station to lodge a complaint. The incident had taken place at about 11.00 a.m.

27. In the cross-examination, he stated that he was proceeding to Gurramkonda and on his way he got down at Tarigonda. He was going to meet one Dr. Gopalu at Gurramkonda since he had appointment with him on that day. The witness is stated to be suffering from heart ailment. It is stated that by the time he arrived at Tarigonda, the deceased was in front of the hotel. His brother consumed tea in Gopi hotel. There were about 5 or 6 persons in the hotel. On his way to the bus stand, he met his brother. The incident has taken place half an hour after he had talked with his brother. For about half an hour, his deceased-brother was standing. He was waiting at the flower shop to go to Tarigonda.

28. He denied the suggestion that he did not state to the police that P.W. 5 came to the scene of offence along with P.W. 1. He also denied the suggestion that he did not mention the name of P.W. 5 to the police. He denied the suggestion that he told the police that P.W. 1 alone came there with tomato baskets in a cart while the deceased and the appellant were altercating. He stated in the cross-examination that his brother Raghunatha Reddy was stabbed by A2 in front of the Gopi tea stall on the mud portion of the road.

29. The evidence of P.W. 2 would disclose that on his way to Gurramkonda, he got down from the bus at Tarigonda. It is admitted in the cross-examination that after the said incident and until he was examined in the Court i.e. about three years, he did not go to any Doctor though he is stated to be suffering from heart ailment. According to him, he had seen his deceased brother inside the Gopi tea stall and

appellants came to the deceased and had talks with him. He does not speak about any altercation. He does not speak about Appellant No. 2 stabbing the deceased twice. He merely says that appellant No. 2 took out a knife from his pocket and stabbed his brother. It is very difficult to appreciate as to why P.Ws. 1 and 2 could not run towards the deceased to save him if they were really present nearby the scene of offence. According to both of them, they have witnessed the incident from 20 or 30 baras. It is not as if suddenly appellant No. 2 took out the knife from his pocket and stabbed the deceased. According to P.W. 2, he found his brother (deceased) inside the Gopi tea stall. Both the appellants were to his brother and had talks with his brother. He states this fact as if he was witnessing the whole of the incident commencing from the presence of the deceased in the tea stall and both the appellants talking to him. Admittedly, there is a previous enmity between the family of the deceased and the appellants. It is not explained as to why they could not reach the deceased particularly when the appellants were altercating with the deceased. There is inconsistency in the version given by P.Ws. 1 and 2 about the altercation itself. According to Ex. P1, the altercation had taken place in front of the bus stand. In the evidence, P.W. 1 did not state anything about the altercation. P.W. 2 says that there was no altercation but the appellants were talking to the deceased in the Gopi tea stall. The evidence of P.W. 2 would read as if the incident had taken place inside the Gopi hotel itself. These are the material contradictions in the evidence of P.Ws. 1 and 2 and as to what is stated in Ex. P. 1 by P.W. 1.

30. Be that as it may, according to the evidence of P.Ws. 1 and 2, the incident had taken place at about 11.00 a.m. in the broad day light in one of the busiest areas of a small town. P.W. 1 as well as P.W. 2 admitted the presence of others in the hotel and in the bus stand. The prosecution did not examine any of those witnesses. Non-examination of independent witnesses in the instant case acquires some significance since the crucial witnesses are the interested witnesses. The evidence of crucial witnesses viz., P.Ws. 1 and 2 is not at all consistent and trustworthy. There is a total and complete deviation from what is stated in Ex. P. 1 complaint.

31. In the circumstances, we are inclined to agree with the submission made by the learned senior counsel that P.Ws. 1 and 2 are the chance witnesses. We are of the considered opinion that it would not be safe to place complete reliance upon the evidence of P.Ws. 1 and 2 in order to record the guilt of appellants 1 and 2.

32. P.W. 3 is the mother of the deceased-Raghunatha Reddy. She stated in her evidence that on the date of the incident, her son left the house at 7.30 a.m. She came to know about the murder of her son by 9.00 or 10.00 a.m. It is evident from her evidence that the incident according to her had taken place even by 9 or 10 a.m., within a short span of two hours of the deceased leaving the house. According to the evidence of P.Ws. 1 and 2, the incident has taken place at about 11.00 a.m. but whereas it is in the evidence of P.W. 3 that she came to know about the incident even by 9.00 or 10.00 a.m. The village where she resides is admittedly about 3 or 4

miles away from the scene of offence.

33. We need not discuss the evidence of P.W. 5 since he did not support the case of the prosecution and was declared hostile. Even otherwise, there is nothing in his evidence that would support the case of the prosecution.

34. Then what remains to be considered is the evidence of P.W. 7.

35. Heavy reliance is placed upon the evidence of P.W. 7 by the prosecution. The learned Sessions Judge believed the evidence of P.W. 7 and, therefore, we propose to consider the evidence of P.W.7 also in somewhat detail.

36. He also stated in his evidence that there were land disputes between the family of the deceased and the appellants. It is in his evidence that the deceased-Raghunath Reddy was murdered "in the bus stand premises" at Tarigonda in front of Gopi hotel. On the date of the incident, he took Tomato baskets at Tarigonda market from his village and after selling the tomato baskets, he came to the bus stand at about 10.30 a.m. He noticed the appellants and the deceased were altercating in front of Gopi hotel. At this stage, we may notice that P.W. 1 in his evidence has stated that the appellants and the deceased were talking with each other in front of Gopi hotel. P.W. 2 in his evidence stated that he found his deceased-brother inside the Gopi tea stall. The appellants were found talking to the deceased. In Ex. P.1, First Information Report, it is stated that the appellants were altercating with the deceased at Tarigonda bus stand. There is any amount of contradiction in the evidence of P.Ws. 1, 2 and 7 and the contents found in Ex. P. 1 about the place of occurrence and the factum of altercation. P.W. 7 in his evidence stated that appellant No. 1 caught hold of the deceased from backside and appellant No. 2 stabbed him with the knife on the chest twice. P.W. 7 also stated to have witnessed the incident just from about 30 feet distance. What is interesting to notice in this particular case is neither P.Ws. 1 and 2 who happened to be the blood relations nor P.W. 7 made any attempt whatsoever to rush to the scene of offence and protect the deceased from the criminal assault by the appellants. It is required to notice that P.Ws. 1 and 2 claim to have witnessed the incident just from a distance of 20 or 30 baras and P.W. 7 witnessed the incident just from a distance of 30 feet. None of them in their evidence stated that they have made any attempt to rush to the scene of offence.

37. In the cross-examination, P.W. 7 admits that he did not see the deceased sitting in Gopi hotel at all. P.W. 2 in his evidence states as if the incident has taken place inside the Gopi hotel. P.W. 7 in his evidence states that the deceased did not receive any injuries inside the Gopi hotel.

38. The presence of P.W. 7 is not stated in Ex. P.1. Neither P.W. 1 nor P.W. 2 stated anything in their evidence about the presence of P.W. 7 at the scene of offence. It is further evident from the record that Investigating Officer examined P.W. 7 after 10 days of the examination of P.Ws. 1 and 2. P.Ws. 1 and 2 do not refer to P.W. 7's

presence at all. P.W. 12 in his evidence clearly admitted that there is no mention or reference to the name of P.W. 7 in any of the records of the investigation done by him and P.W. 13. He further admitted in the evidence that he did not mention in the case diary as to how he could fix up P.W. 7 as a relevant witness in the case.

39. In the circumstances, we do not have any doubt whatsoever in our mind to accept the submissions made by the learned senior counsel that P.W. 7 is a planted witness.

40. For the aforesaid reasons, we are not inclined to place reliance upon the evidence of P.Ws. 1, 2 and 7, the star and crucial witnesses on whose evidence the prosecution has placed heavy reliance in order to establish the charges framed against the appellants.

41. Now we will proceed to discuss the evidence of another crucial witness - the medical officer, P.W. 4. P.W. 4 at the relevant time was working as Civil Assistant Surgeon in the hospital at Madanapale. On the requisition of the S.H.O. Gurramkonda Police Station, P.W. 12, he conducted post-mortem examination on 27-5-1994 on the body of the deceased at Community hospital. He notified the following external injuries on the body of the deceased.

1) Lacerated injury over right upper limb 10 cm. x 5 cm. with signs of inflammation present.

2) Lacerated injury over the right lower limb over right thigh on its back 10 cms. x 5 cm. signs of inflammation present.

3) Stab (incised transverse) injury over the left 6th inter costal space just lateral to midclavicular line (left) 3/4th x 1/4" x 3" of depth blood clots emerging from the wound. Signs of inflammation present.

4) Vertical incised wound over the 6th I.C.S. just lateral to injury No. 3 1/2" x 1/4" with signs of inflammation present.

42. It is in his evidence that all the above mentioned injuries are ante-mortem in nature. Ex. P.2 is the post-mortem certificate issued by him. In his evidence it is categorically stated that injuries 3 and 4 could possibly be caused with a weapon like knife, which is shown to him. It is MO. 12 (pen knife). He opined that injury No. 3 is vital and sufficient to cause death in the ordinary circumstances. In his cross-examination, he said that injuries 1 and 2 can be possible only if a person falls on the rough object forcibly. Falling merely on the rough surface will cause abrasion. In the case of injury Nos. 1 and 2, the object that has come into contact with the body must be at least 10 cms. in length and 5 cms. in width. It is further stated in his evidence that injury, Nos. 1 and 2 can be possible only if a person falls on rough object forcibly. None of the prosecution witnesses in their evidence stated that the deceased was forcibly pushed as such and on account of such pushing he had fallen on any rough object. There is no explanation whatsoever forthcoming from the

prosecution about injuries 1 and 2 found on the body of the deceased.

43. For the aforesaid reasons, we are not inclined to place any reliance upon the evidence of P.Ws. 1, 2 and 7. P.Ws. 1 and 2 are undoubtedly chance witnesses. Their interested testimony cannot be relied upon particularly in the facts and circumstances of the case viz., that there has been previous enmity between the family of the deceased and P.Ws. 1 and 2. It is not possible to place any reliance upon the evidence of P.W. 7 since we have already observed that he is a planted witness. The prosecution miserably failed to explain injury Nos. 1 and 2 found on the body of the deceased. We have also noticed the discrepancy in the evidence with regard to the place of occurrence.

44. For all the aforesaid reasons, we find it difficult to accept the findings recorded by the learned Sessions Judge. We accordingly hold that the appellants are not guilty of any offence punishable u/s 302, I.P.C. Appellant No. 1 is accordingly found not guilty of the offence punishable u/s 302 read with Section 34, I.P.C. Appellant No. 2 is not found guilty of the offence punishable u/s 302, I.P.C. We accordingly set aside the conviction and sentence imposed on them by the learned Sessions Judge.

45. In the circumstances, we do not propose to go into the alternative submission made by the learned senior counsel that A. 1 at any rate cannot be found guilty of the charge of the offence punishable u/s 302, I.P.C. read with Section 34, I.P.C. It is not necessary to go into the said question.

46. For the aforesaid reasons we allow the appeal.

47. The appellants shall be released forthwith unless"they are required to be in jail in any other case.