

(2007) 06 AP CK 0036

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1559 of 2004

Keesara Santhosh Reddy and Another

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 15-06-2007

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 107
Explosive Substances Act, 1908 — Section 3, 4, 5
Penal Code, 1860 (IPC) — Section 109, 120B, 148, 149, 302

Citation : (2007) 2 ALD(Cri) 435

Hon'ble Judges : Nooty, J; Bilal Nazki, J

Bench : Division Bench

Advocate : E. Ayyapu Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—11 persons were tried for different charges in Sessions Case No. 183 of 2002 by the II Additional Sessions Judge, Nalgonda. A-3 to A-11 were acquitted of all the charges, whereas A-1 and A-2 were convicted for the offence u/s 302 read with 34 of IPC. They have been sentenced to undergo imprisonment for life and each of them are fined Rs. 2,000/-, in default, they should suffer simple imprisonment for six months.

2. First charge was against all the accused for the offence u/s 148 of IPC, second charge was also against all the accused for the offence u/s 302 read with 149 of IPC for causing the death of one Yelimineti Malla Reddy, the third charge was against all the accused for the offence u/s 302 read with 149 of IPC for causing the death of one Thandu Malsoor, fourth charge was against all the accused for the offence u/s 5 of the Explosive Substances Act, the fifth charge was against A-6 to A-11 for the offence u/s 120B of IPC and the sixth charge was for the offence u/s 109 read with 302 of IPC, as an alternative charge against A-6 to A-11.

3. Briefly stated, the case of the prosecution was that two deceased persons namely Yelimineti Malla Reddy and Thandu Malsoor and PWs. 1 to 9 and A-1, A-6 to A-11 belonged to the same village namely Namavaram. There were factions in the village Namavaram between the political groups. A-6 to A-11 belonged to CPI (ML) Janasakthi group. The deceased were supporters of OPDR group. A-1 was leader of the Congress party of Namavaram village and he had alliance with CPI (ML) group of Namavaam village. According to the prosecution, A-5 Amrutha Reddy was shot dead by the Police in the same transaction in which the two deceased died. He belonged to CPI (ML) Janasakthi Rajanna group. A-2, A-3 and A-4 belonged to Utkur village. Even according to the prosecution, A-2 to A-5 were not involved in factions.

4. Long before the occurrence, RDO, Surpayet had initiated proceedings u/s 107 Cr.P.C. against some members of Janasakthi group and some members of OPDR group. The occurrence took place on 28.04.2000 in Suryapet. It was alleged that both groups had to attend the RDO's office in connection with proceedings u/s 107 Cr.P.C. Both the groups left the office of RDO at 2.30 p.m. to return to their village. PWs. 1 and 2 and two deceased persons were walking together. When they reached Navodaya Bookstall, A-1 to A-5 attacked Malla Reddy and Malsoor with talwars. A-1 hit on the head of the deceased Malla Reddy with talwar and A-2 to A-5 also attacked him with talwars. The deceased Malla Reddy died on the spot. PW-1 ran and hid himself behind a pan shop. The deceased Malsoor was running in another direction. After he ran to a distance of 20 yards, A-1 to A-5 attacked him with talwars. He also died on the spot.

5. A-6 to A-11 were also present at the scene and shouted "success, success". Then A-1 to A-5 ran in one direction and A-6 to A-11 in another direction. Thereafter, PW-1 went to the Police Station and gave a written complaint Ex. P-1 at 3 p.m. A crime was registered in Crime No. 109 of 2000 for the offences under Sections 148, 302 read with 149 of IPC and u/s 27 of the Indian Arms Act. Thereafter, the investigations were made and a charge sheet was filed.

6. The learned Counsel for the appellants submits that the whole case of the prosecution would reveal that the investigation was a concoction and as a matter of fact, there was no credible evidence with the investigating agency to book the accused persons. He has further submitted that the charge u/s 302 read with 34 of IPC was not proved and all the accused were acquitted of this charge and since accused were not held to be the members of an unlawful assembly, therefore, conviction u/s 302 read with 34 of IPC could not be sustained.

7. The prosecution examined 20 witnesses and exhibited 24 documents. Ex. P-1 is the report given to the Police by PW-1. He stated in this report which was given on 28.04.2000 at 1500 hours that on that day, he alongwith Yelimineti Malla Reddy, Thandu Malsoor, Sarasani Venkat Reddy and five other villagers belonging to UCCRI (MC) party, went to the RDO office at Suryapet to attend in the case filed against them u/s 107 Cr.P.C. After attending the office of RDO, they were returning back to their village. At about 2.30 p.m., when they reached

Navodaya bookstall, some of their party people went ahead of them and he, Yelimineti Malla Reddy, Thandu Malsoor and Sarasani Venkat Reddy reached near the book stall, Sarasani Venkat Reddy was coming behind them. Having political grudge, Keesara Santhoshreddy, Aella Amruthareddy, Vemula Bixam and two others, together, with an intention to kill three of them, came to them holding swords and axes. Santhosh Reddy beat with sword on the head of Yelimineti Malla Reddy and the remaining persons also beat Malla Reddy indiscriminately with swords and axes they were holding. Malla Reddy fell down and died. He and Malsoor fled away. Then all the persons attacked Malsoor, cut his hands with swords and axes, cut his head and killed him and fled away.

8. The contention of learned Counsel for the appellants is that neither the FIR gives the names of the witnesses, who were later on examined as eyewitnesses, nor it gave the names of 11 people who were prosecuted. PW-1 has only named Keesara Santhosh Reddy, Aella Amrutha Reddy (not an accused), Vemula Bixam (A-2) and two others. So, according to the FIR, there were only five accused and two of them were tried. Names of two persons are not known, Aella Amrutha Reddy was not made an accused. Therefore, the learned Counsel for the appellants submits that the whole case appears to be a concoction. He further submitted that this report was given at 1500 hours on 28.04.2000, but it reached the Magistrate 11 hours thereafter. He submits that one fails to understand where did the Police get the names of accused other than A-1 and A-2.

9. Now, coming to the testimony of PW-1, he stated that he was the Sarpanch of the village. He knew all the accused and deceased. Some of the accused belonged to his village. They were A-1, A-6, A-7, A-8, A-9, A-10 and A-11.

10. He stated that deceased Malla Reddy and Malsoor were murdered at Suryapet Town on 28.04.2000. He belonged to UCCRI (ML). Both the deceased belonged to his party. Some of the accused belonged to the Congress party and Janasakthi group.

11. There was political rivalry between the groups and proceedings were pending u/s 107 Cr.P.C. between the two groups before the RDO, Suryapet. On 28.04.2000, both the groups went to RDO office to attend the proceedings. After appearing before the RDO, the deceased and other members of their group left the RDO office at 2.30 p.m. to return to their village. The opposite group had also appeared before the RDO and they also left RDO's office. While he, deceased Nos. 1 and 2, Sarasani Venkat Reddy (PW-2) were walking together and when they reached near Navodaya bookstall at City Cable Centre, the accused attacked Malla Reddy. The deceased was just four yards in front of him and Venkat Reddy was seven or eight yards behind him while another deceased Malsoor was by his side.

12. The accused attacked with talwars. A-1 to A-5 were armed with talwars. A-1 Santhosh Reddy hit on the head of the deceased Malla Reddy with a talwar and

A-2 to A-5 also attacked the deceased Malla Reddy with talwars and caused injuries.

13. Deceased Malla Reddy died on the spot. The accused tied to attack him and Malsoor. Both of them ran away from the scene. He ran away and hid behind a pan shop. Malsoor was running in another direction. Twenty yards away from the place where Malla Reddy had been attacked, Malsoor was attacked by the same accused. A-1 to A-5 attacked the deceased Malsoor, hacked his two hands and cut the throat and left the place. The second deceased died on the spot. He witnessed the incident of murder of Malsoor from a distance of about 12 yards. 15 minutes after the accused left the place of occurrence, their supporters reached the scene. Till that time he was hiding himself behind a pan shop. He went along with his supporters to the Police Station and filed a written complaint. One Jan Reddy scribed the complaint. At the time of filing of the complaint, he did not know the names of two accused who are A-2 and A-4. He came to know about their names later. He was examined by the Police.

14. In his cross-examination he stated that Ex. P-1 was a written complaint and it was signed by him. He filed Ex. P-1 before the Police after the dead bodies were taken to postmortem. They took the dead bodies to mortuary in a tractor. After shifting the dead bodies, he filed Ex. P-1. His party sympathizers about 7 in number, attended the criminal case in Munsif Court at 11 a.m. They stayed before the Munsif Court till 12 Noon and then came to RDO's office. The case was called in RDO's office at about 2.30 p.m. They were nine persons to attend the proceedings u/s 107 Cr.P.C. There were 7 to 8 persons from the opposite party who were to attend the RDO's office. 8 or 9 persons attended on their behalf. He denied the suggestion that only three persons had attended the RDO's office from the opposite party. A-1 to A-5 were not parties to 107 Cr.P.C. proceedings. Ex. P-1 was scribed on his instructions. According to Ex.P-1, eight persons attended in 107 Cr.P.C. proceedings. He admitted that he had mentioned the names of three accused and two others in Ex. P-1. He also admitted that he did not mention in Ex. P-1 that he had hidden by the side of a pan shop. He denied the suggestion that he had not stated to the Police the names of the accused who attacked the deceased Malsoor. He could read, but he could not write Telugu. He further admitted that Navodaya Book Centre at Suryapet is a busy locality and there was sufficient traffic. He has also admitted that to reach the bus stand from RDO's office, one need not go to Navodaya Bookstall road. The distance between two dead bodies was about 20 yards. The dead body of Malsoor was in the open place, but he did not know the name of the owner of the said place. He did not also know how many shops were existing at the scene of offence. He did not try to apprehend the assailants.

15. After the incident, the shops got closed. Malla Reddy was in a pant and shirt. He could not say the colour of the clothes wore by Malla Reddy. Same was the case with Malsoor the deceased No. 2. Except A-2 to A-4, all other accused belonged to his village. He came to know the names of A-2 to A-4 after the

occurrence. A-2 was brought to the Police Station. He disclosed the names of A-3 to A-4 and then only he came to know about their names. He admitted that he came to know the name of Bixam when he was brought to the Police Station. After seeing the three dead bodies and shifting them to postmortem, they came to know about the names of A-2 to A-4. He came to know that Amrutha Reddy died in Police firing near Ambedkar statue. Amrutha Reddy died in firing 15 minutes after the death of Malsoor and Malla Reddy. He came to know that Amrutha Reddy belonged to Janashakthi group. He did not know who was Rajanna. There was news in the newspaper about the murders. He also read the news. He did not know whether the news item in "Vaartha" disclosed that Malsoor and Malla Reddy were murdered by Janashakthi group (Rajanna). There were 7 to 8 criminal cases against him and his party workers. Since 1998 there were rival criminal cases against their groups. He did not remember the date on which he was examined by the Police. He denied the suggestion that Ex. P-1 contained names of only five accused, who participated in the crime. He also denied the suggestion that he was not the eyewitness to the occurrence. He signed in the RDO office in 107 Cr.P.C. proceedings. Rival party members have also signed the proceedings. He denied the suggestion that there was open fight between Janashakthi group and his party workers near Khammam Cross roads at Suryapet and in that fight, Malsoor and Malla Reddy sustained injuries and Amrutha Reddy died. He denied the suggestion that A-2 was in no way concerned with the occurrence. He also denied the suggestion that during Police chase and firing, Malla Reddy and Malsoor fell down and received injuries. He also denied the suggestion that the dead body of Amrutha Reddy was also found nearby the dead bodies of Malsoor and Malla Reddy. He denied the suggestion that FIR was created on the next date of occurrence. He did not know the name of the owner of the pan shop where he hid himself.

16. The learned Counsel for appellants submits that although this witness gave the names of some of the accused persons in the FIR, but he admitted in his statement that he came to know about those names only in the Police Station and he was categorical that at the time of filing the complaint, he did not know the names of two accused i.e. A-3 and A-4 and these two names were disclosed by A-2 in the Police Station. Therefore, he suggests that this witness is not creditworthy and even the FIR itself is not creditworthy and since the report reached the Magistrate after 11 hours, one can presume that this report was filed after some of the accused were arrested and examined by the Police. The counsel further submits that according to the FIR and the evidence of PW-1, the occurrence took place at 2.30 p.m. Thereafter, they went, took the bodies to the postmortem, then went to the Police Station and in such circumstances, it was not possible to file the complaint at 3 p.m.

17. PW-2 stated that he was a resident of Namavaram village and A-1, A-7, A-8, A-9, A-10 and A-11 belonged to his village. A-2 belonged to Gorantla village, A-3 was from Thummala Penpahad village, A-4 was from Elkaram village. He did not know the name of A-4 on the date of incident. A-5 belonged to Thummala

Penpahad village. He died in the Police firing on the date of occurrence. Some of them belonged to Congress party and some of them belonged to CPI (ML) Janashakthi group. On the date of occurrence he, the deceased Nos. 1 and 2, PW-1 and some other witnesses and some of the accused attended the RDO's office in connection with proceedings u/s 107 Cr.P.C. While they were returning at 2.30 p.m., and when they reached the City Cable Centre, A-1 to A-5 came armed with talwars and attacked the deceased Malla Reddy. He himself was ten yards behind Malla Reddy. On receiving injuries, Malla Reddy fell down and died. The witness, PW-1 and deceased No. 2 Malsoor started running back as they got scared. A-2, A-3 and A-5 Amrutha Reddy caught hold of the second deceased Malsoor and A-1 hit with a talwar on the head of Malsoor. A-1 to A-5 attacked Malsoor with talwars and hacked his two hands and caused injuries on his neck and throat.

18. Malsoor died on the spot. Then A-6 to A-11 met with A-1 to A-5 and raised slogans "success, success" and ran away towards LIC road. He took shelter in a welding shop for about 15 minutes. He was at a distance of 15 to 20 yards on the back of the deceased Malsoor while he was attacked by the accused. 15 minutes after the 2nd incident, Police came to the scene and he was examined by the Police. Half an hour later, he came to know that A-5 had died in Police firing. Since 1997, there were criminal cases between both the groups. The disputes arose for political reasons. In 1997, their party member Sanjeeva Reddy was murdered by the accused group. On the same day, Somireddy Venkat Reddy and Pandiri Ram Reddy belonging to the accused group were also murdered.

19. LW-2 Ura Venkanna was also murdered in the village. In the cross-examination he stated that they had lunch before going to the RDO office on that day. Case was called at about 2.30 p.m. The distance between the scene of offence and RDO office is about half kilometer. Malsoor was beaten on the road and he was dragged into a corner. Police came to the scene of offence within ten minutes after the incident.

20. Again the statement of this witness was challenged by the learned Counsel for the appellants on the ground that the case was called before the RDO office at about 2.30 p.m. Two deaths took place, Police came to the scene, another person was killed in Police firing, but still, the report could be filed by about 3 p.m.

21. PW-3 stated that he was the sympathizer of UCCRI (ML) group. He knew all the accused. Some of them belonged to his village. He did not know the village to which A-2, A-3 and A-4 belonged. A-5 was from Thummala Penpahad village. A-1 belonged to Congress party, A-2 to A-5 are the followers of A-1. A-6 to A-11 belonged to Janashakthi group. He also stated the same story that they had gone to the RDO's office at Suryapet to attend the proceedings under 107 Cr.P.C. and while returning from RDO's office at about 2.30 p.m. and reached City Cable Centre, he, LW-2 Venkanna, LW-5 Janaki Ramulu and LW-6 B. Venkanna were proceeding ahead of deceased Malla Reddy and Malsoor. PWs. 1 and 2 and the

deceased were coming behind them at a distance of 10 yards. Then he heard sounds of commotion and when he turned his head back, he found A-1 to A-5 attacking the deceased Malla Reddy with talwars. They attacked Malla Reddy on the head and hands. By seeing the said incident, with fear, he ran away. The another deceased Malsoor was also running along with them. Same five accused persons i.e. A-1 to A-5 caught hold of Malsoor and hacked his two hands and caused injuries on his head and throat with talwars. He ran away to a distance of one kilometer. A-6 to A-11 were running away towards LIC office shouting "success, success". He saw them at a distance of 15 to 20 yards. He again returned to the scene of offence and saw two dead bodies. He stayed at the place of occurrence till Police came there. He was examined by the Police. The murders were committed due to political rivalry.

22. In his cross-examination he stated that he also came to know about the names of A-2 and A-4 one week after the incident. He was examined by the Police half an hour or one hour after the incident. When he was examined by the Police, he do not know the names of A-2 and A-3. He was convicted for life in a counter murder case. He was also an accused in a case of arsenizing. The deceased No. 1 Malla Reddy was one of the accused in the case of arsenizing. He admitted that he was an accused in four criminal cases. All the criminal cases registered against him were registered at the behest of the accused party members.

23. This witness stated that A-6 to A-11 had to attend the RDO office in connection with proceedings under 107 Cr.P.C. A-1 to A-5 were not the persons who had to appear before the RDO office in the proceedings under 107 Cr.P.C. This witness had, according to the learned Counsel for the appellants, is annexed to bribe, he was also convicted in a murder case and four other criminal cases were pending against him at the behest of the accused persons.

24. PW-4 is also a sympathizer of UCCRI (ML) party. He also stated that he went to attend the proceedings u/s 107 Cr.P.C. before the RDO, Suryapet. He also says that A-6 to A-11 were only to appear before the RDO office and at about 2.30 p.m., when they were returning, five accused attacked. He named them as A-1, A-2, A-3, A-5 and another person. He identified them subsequently and he came to know that another assailant was A-4. In his cross-examination he stated that he knew the names of A-1 and his uncle Ram Reddy. He did not know the names of other accused at the time of incident. The names of said accused were came to be known by him through Police. The Police gave a list of accused in writing to him. By seeing the said chit, he revealed the names of accused persons.

25. The learned Counsel for the appellants submitted that the whole case as revealed from the testimony of PWs. 1 to 4 suggests that A-1 to A-5 were not at all involved in the proceedings u/s 107 Cr.P.C. and they had not attended the RDO's office on the date of occurrence and even the persons who were accused of killing two persons namely Malla Reddy and Malsoor, were not known to these witnesses. If the statements of these witnesses are read carefully, it becomes

clear that what PW-4 stated was true about other witnesses as well, that the Police gave the list containing the names of accused in writing to them and by seeing the said list, they revealed the names of accused.

26. PW-5 is again a sympathizer of UCCRI (ML) party. He also knew the deceased. He again stated the same thing that A-6 to A-11 attended 107 Cr.P.C. proceedings and when they reached near Navodaya bookstall, the deceased were killed by A-1 to A-5. He stated in his cross-examination, "I could not state before the Police about overt acts of A-1 to A-4 as I was in confusion and all the accused attacked all of a sudden. It is true I did not state about the overt acts of accused while causing injuries to deceased Malsoor."

27. PW-6 stated that while he was in his house at about 3 p.m., he came to know that his brother Malla Reddy had been murdered at Suryapet by the gang of A-1. On that day, deceased Malla Reddy and his supporters went to RDO office to attend a criminal case. Malla Reddy was Upa-Sarpanch for about 20 years in their village. There was political rivalry between the deceased and the accused.

28. There were 5 to 6 criminal cases against each group. There were arson cases between the two groups. On the same day, another person Malsoor was also murdered along with his brother. In his cross-examination, he stated that he was brother of Malla Reddy and he himself was a life convict in Sessions Case No. 634 of 1999 on the file of I Additional Sessions Court, Nalgonda.

29. PW-7 is the wife of deceased Malla Reddy. She stated that after knowing of the incident, she went to Suryapet and saw two dead bodies. PW-8 is the wife of Malsoor, the 2nd deceased. She stated that on the day of occurrence, her husband had gone to RDO's office, Suryapet to attend a case. At about 2.30 p.m., she was informed that her husband had been murdered by A-1 and his supporters. Her husband was an accused in three criminal cases. Her husband was one of the accused in the murder case of A-1's father.

30. PW-9 knew all the accused persons and also the deceased persons. This witness was examined to prove the conspiracy, which has not been proved and therefore, his testimony need not be discussed. PW-10 is a panch witness to the scene of offence and the seizures made thereunder. He stated that a panchanama was prepared in his presence and he signed the said panchanama which was Ex. P-2. He also identified M.O. 1 pair of leather chappals, M.O. 2 two pieces of talwar, M.O. 3 Leather bag and M.O. 4 spectacles frame without glasses. He also testified to the seizure of M.Os.1 to 4. He also identified his signature on the panchanama. The Police also seized bloodstained earth and controlled earth under Ex. P-5. He was also a witness to the inquest panchanama. The panchanamas were prepared in his presence. They observed the injuries over the dead body of Malla Reddy and the panchas concluded that the deceased Malla Reddy was murdered. He identified his signature on Ex. P-6. The inquest panchanama over the dead body of Malsoor was also made in his presence and he identified his signature on Ex. P-7. In his cross-examination he

stated that the names of accused persons mentioned in the scene of offence panchanama and in the inquest panchanama, were mentioned after making enquiries from the persons who had gathered at the scene. He admitted that three assailants' names and two un-identified assailants' names were mentioned in the panchanamas.

31. PW-11 is the Deputy Civil Surgeon, who conducted postmortem on the dead bodies.

32. He stated that he had commenced autopsy at 9.30 a.m. over the dead body of Malla Reddy and found the following injuries-

External injuries:

1. A deep cut injury on back of the head measuring 10 cm x 2 cm & fracturing the skull bones caused by sharp chopping weapon.
2. A deep cut injury across top of head 9 cm x 2 cm, fracture skull bones, brain matter seen outside, caused by sharp cutting weapon.
3. A cut injury on left parietal area of head, measuring 8 cm x 2 cm x bone deep caused by sharp weapon.
4. A cut injury on right parietal area of head measuring 6 cm x 2 cm x bone deep caused by sharp weapon.
5. A cut injury on right temporal area of head measuring 9 cm x 5 cm x bone deep skin flap is lost, caused by sharp weapon.
6. A cut injury across right ear and face measuring 10 cm x 1 cm causing fracture of right maxilla caused by sharp weapon.
7. A deep cut injury on left occipital area across the back of the neck measuring 10 cm x 4 cm x 8 cm cutting neck muscles caused by sharp weapon.
8. A cut injury on right arm, outer aspect measuring 5 cm x 2 cm x 2 cm caused by sharp weapon.

Skull : Meninges cut over occipital area and brain is cut, blood clots are present over brain.

Stomach : Contains food material about 200 ml.

33. The cause of death, according to him, was due to shock and hemorrhage and due to injuries over the head. He exhibited Ex. P-8 as the postmortem report. He stated that all the injuries were possible with the sharp-edge of a sword.

34. On the same day he conducted postmortem on the body of Malsoor and found the following injuries-

1. A deep cut injury on right parietal area of head measuring 10 cm x 2 cm x fracture skull bones - brain seen outside, caused by sharp cutting weapon.

2. A cut injury 2 cm above the right ear on the head measuring 6 cm x 2 cm x bone deep, caused by sharp weapon.
3. A laceration on forehead measuring 5 cm x 4 cm x bone deep caused by blunt weapon.
4. A cut injury on right side face across ear measuring 10 cm x 2 cm x causing fracture of right maxilla caused by sharp weapon.
5. A cut injury on left cheek measuring 6 cm x 2 cm fracture left maxilla caused by sharp weapon.
6. A cut injury across throat measuring 15 cm x 6 cm cutting larynx and carotid vessels on both sides of neck caused by sharp weapon.
7. A cut injury on front of neck 2 cm below injury No. 6 measuring 4 cm x 2 cm, caused by sharp weapon.
8. Amputation at rt. fore arm 6 cm below the elbow caused by sharp chopping weapon.
9. Amputation at lt. wrist caused by sharp weapon.
35. On opening the skull, meninges were cut over right parietal area and brain was cut, blood clots were present. Stomach contains food material about 200 ml.
36. The cause of death, according to him, was due to injuries over head and neck, caused by a sharp weapon.
37. In his cross-examination, he stated that Mos. 2, 5 and 6 were the swords which were shown to him. The swords can be used for chopping injuries. Injury No. 3 in Ex. P-10 was a lacerated wound. PW-12 is a Photographer who took photos in Exs.P-12 and P-13. PW-13 is the witness, who was working as a Car driver. He turned hostile and stated that two years ago he was called to the Police Station by the Police and asked to sign on a white paper. Accordingly, he signed. None of the accused were interrogated in his presence and no material objects were seized in his presence. Same is the case with PW-14. He also turned hostile. PW-15 stated that in the year 2000, he was called to the Police Station, Suryapet. At that time, two persons were present in the Police Station. PW-13 was also present along with him. In their presence, the said two persons confessed and stated that they will show the knives, talwars which were used in the murder of human beings. Police recorded their statements. They led them to by-pass road of National Highway.
38. The said two persons brought two talwars from the thorny bushes and the same were bloodstained. The witness identified M.Os. 5 and 6 as two talwars that were produced by the accused, but he stated that he could not identify the accused as three years had lapsed. He could not identify the persons at whose disclosure the talwars were recovered, as three years had passed. He could not also say whether those two persons were present in the Court hall or not. The

persons present in the Police Station had disclosed the names and their identity had been written in the panchanama. He was also declared hostile and then the Public Prosecutor cross-examined him. He denied that he could identify A-1 and A-4, but he was not doing so because of fear. In his cross-examination by the defence counsel, he stated that he had acted as a panch in two or three criminal cases.

39. PW-16 is the Assistant Sub-Inspector of Police. He stated that he received Ex. P-1 complaint from PW-1 on 28.04.2000 at 1500 hours, endorsed it and registered a case in Crime No. 109 of 2000. Ex. P-19 was the express FIR. He examined and recorded the statement of PW-1. He informed the commission of offence and registration of crime to the then SDPO through wireless set as the Sub-inspector was engaged in some other crime investigation and Circle Inspector was out of Station. On the directions of SDPO, he handed over the case file to S.I. of Police LW-32. In the cross-examination he stated that immediately after registering the complaint, he sent the FIR through Head Constable 227 to the Court. Their Police Station was at a distance of one furlong from the Court building. The distance between the Police Station, Court building and the residential quarter of the Magistrate was within a furlong and it will take 10 to 15 minutes even on foot to reach the Magistrate's office or his quarter, from the Police Station.

40. PW-17 was the Sub-inspector of Police at the relevant point of time who made further investigations in the case. He stated that on the instructions of SDPO, he received the case file from PW-16 and took up further investigation. During his investigation, he examined the witnesses and recorded their statements, visited the scene of offence and conducted scene of offence panchanama in the presence of panchas. He seized bloodstained earth, controlled earth and two pieces of talwars, one pair of leather chappal, one leather bag and one broken spectacles under the cover of panchanama in the presence of panchas. He also conducted scene of offence panchanama near the body of Malsoor and exhibited the documents. He also conducted inquest panchanama over both the dead bodies and shifted the dead bodies to the Government hospital, Suryapet and got the postmortem done. On 28.04.2000, at 11 p.m., the then S.I. of Police, Suryapet (Rural) produced A-2 before him after recording his confession. Originally he was caught hold by LW-31 and handed over to LW-30. He affected the arrest of A-2. On his transfer, he handed over the case file to the Circle Inspector of Police on 14.05.2000.

41. PW-18 was working as C.I. of Police at the relevant point of time. He took up the investigation of the case from S.I. PW-17. He stated that he affected the arrest of some of the accused persons, seized material was sent by him to the FSL. He handed over the case file to his successor LW-34 who completed the investigation and filed the charge sheet.

42. PW-19 was working as S.I. of Police, Surpayet (Town). He stated that on 28.04.2000 at about 2.55 p.m., he got telephonic information that murders had

taken place. He was on investigation of another case, but went to the scene of offence with a Home-guard and a Police Constable and saw two dead bodies. He received information that accused were running away on 60 feet road towards Khammam. He rushed to Khammam Cross roads and found five culprits running away.

43. One of the culprits threatened him with a talwar. When he chased the culprits, one of the culprits attacked him with talwar and he received an injury on the left fore arm. He asked the culprits to surrender, but they were not yielding.

44. Then he fired two rounds in air with his pistol. One of the culprits tried to snatch away the rifle of P.C.1537. During the struggle between the P.C. and the culprit, the rifle was damaged. Expecting the danger, he fired on the culprits with his pistol and the bullet hit the culprit A-5 Palla Amruth Reddy and he died on the spot. The witness, the Police Constable and Home-guard caught hold the culprits, who tried to snatch away the gun from P.C. The apprehended culprit was A-2 Bixamaiah. He interrogated A-2 and gave information to the then D.S.P. On the instructions of D.S.P., LW-30 Penchalaiah, S.I. of Police, Suryapet (Rural) came to the scene and he handed over A-2 to him and he also sent written complaint to the Police Station through Home-guard Srinivas Reddy.

45. On his written complaint, a case was registered in Crime No. 110 of 2000 u/s 307 of IPC, Section 27 of the Arms Act and under Sections 3 and 4 of the Explosive Substances Act against the deceased Palla Amrutha Reddy, A-2 and three others. Ex. P-23 is the FIR in Crime No. 110 of 2000, Ex. P-24 was the written complaint filed by him, which bears his signature. Ex. P-24 only mentions that there were five people who were running and on this witness asking them to surrender, they tried to attack him but it does not disclose anything about the incident which is the subject matter of the present case.

46. PW-20 is the Sub-Inspector of Police concerned, who was asked to go to the place of occurrence at 4 p.m. on 28.04.2000 by the SDPO. The arguments made by the learned Counsel for the defence have been narrated hereinabove. It is also submitted that highly improbable versions have been given by the witnesses in the Court. The whole case revolves round the presence of accused and deceased persons before the RDO in proceedings u/s 107 Cr.P.C. Ex. X-1 is the 107 Cr.P.C. proceedings of Revenue Divisional Officer, which were summoned by the Court on a petition filed by the defence. Under Ex. X-1, the deceased Nos. 1 and 2, PWs. 1, 2, 4 and 5 and others, in all ten persons, were party-B and accused Nos. 6 and 7 and their party members were party-A and on 28.04.2000, the deceased Nos. 1 and 2, PWs. 1, 2, 3 and 4 only were present before the RDO in the proceedings u/s 107 Cr.P.C. With regard to other issues, it may be beneficial to reproduce the findings of trial Court in para 23 of its judgment, which reads as under 23. Defence contention is that there is delay in sending F.I.R. Therefore there is every possibility of implicating the names of accused, as the accused are the rival members. The incident was occurred at 2.30 p.m. on 28.4.2000.

47. Whereas the F.I.R. received by Magistrate 1-00 "o" clock in the night on 29-4- 2000 and the court is situated in the same town. The defence further contention is that on the date of incident there was a meeting of Janashakti group at Khammam cross roads at Suryapet and there was free quarrel in between Janashakti group and OPDR (U.C.C.R.I) and in the said free fight A5 and deceased 1 and 2 were murdered and these accused are falsely implicated. Admittedly there is no Test Identification Parade is conducted for A3 and A4 as the A3 and A4 names are not known to the eye witnesses P.Ws.1 to 5 at the time of incident. The witnesses themselves admitted in their cross examination that they do not know the names of A2, A3, A4 at the time of incident, and they came to know the said persons names through Police. The court is situated in the same town at Suryapet. The Police took (11) Eleven hours time to send the F.I.R. to Magistrate in the same town. The delay in sending the F.I.R. and not explained the delay in sending the F.I.R. and the evidence of eye witnesses P.Ws.1 to 5 is that they do not know the names of A2, A3, A4 gives suspicious shadow about A3 and A4 names might be implicated after thought, because there is no Test Identification Parade held for A3 and A4. A1 is known to P.Ws.1 to 5 as he belongs to their village. A5 is murdered at the scene by the P.W. 19 B. Ramulu Naik Sub-Inspector of Police, A2 was apprehended by P.W. 19 on the spot.

48. Therefore, identification of A1, A2 and A5 by the eye witnesses is undoubtedly acceptable. Not holding the Test Identification Parade of A3 and A4 and not knowing the names of A3 and A4 by P.Ws. 1 to 5 at the time of incident gives reasonable doubt about the identification of A3 and A4. A4 name is not mentioned in the statements of P.Ws. 1 to 5. Hence, it is clear that there is doubt about the presence of A4 at the time of commission of offence. P.Ws. 1 to 5 are the eye witnesses, their evidence cannot be thrown away for the murder of deceased Malla Reddy and deceased Malsoor by A1, A2 and A5 and some others.

49. Therefore, the prosecution is failed to prove beyond reasonable doubt that A3 and A4 participated in the commission of offence. But the prosecution is proved that A1, A2 and A5 caused the injuries to deceased No. 1 and 2 and murdered them on the spot.

50. The learned Counsel for the appellants, therefore, submits that PW-1 admitted that he did not know the names of A-1 to A-4, no Test Identification Parade was ever conducted, these names came to be known to the witnesses only in the Police Station when a slip prepared by the Police, was given to them. Whether the accused persons appeared before the RDO or not, no evidence was led and even the RDO concerned was not examined. One of the witnesses, who is a Police Officer and who was responsible for killing of one of the accused, stated that he arrested A-2, but it was not stated as to what A-2 was doing at that time. Was he attacking anybody or not and in any case, that evidence does not show his role in the occurrence with which we are concerned. Nothing was recovered from any of the accused.

51. The learned Public Prosecutor, however, submits that non-mentioning of the

names of eyewitnesses would not be a ground for throwing away the prosecution case and in this case, he relies on the judgments of Supreme Court in P. Venkateswarlu Vs. State of A.P. and Others, . But in the present case, the case of the prosecution is not being disbelieved on the ground that the names of the eyewitnesses were not mentioned in the FIR, but for all reasons given hereinabove, including the reason that the names of many of the eyewitnesses were not mentioned. Four persons were projected as eyewitnesses, but only two names were mentioned in the report.

52. Besides, the names of accused persons were also not given and we need not reiterate that the names of accused persons were not known even to the prosecution witnesses until they were told to them by the Police.

53. For these reasons, we allow the appeal. The conviction and sentence imposed on the appellants/accused Nos. 1 and 2 by the trial Court, is set aside. They shall be released forthwith, if not required in any other case. The appellants are entitled for refund of fine amount paid, if any.