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(2010) 12 AP CK 0053

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 809 of 2007

Kopireddy Nageswara Rao @ Nagayya — APPELLANT

Vs

State of A.P. — RESPONDENT

Date of Decision : 27-12-2010

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 161(3), 302, 307, 313, 320
Evidence Act, 1872 — Section 145, 32, 32(1), 47

Citation : (2010) 12 AP CK 0053

Hon'ble Judges : N.R.L. Nageswara Rao, J;K.C. Bhanu, J

Bench : Division Bench

Advocate : Naseeb Afsan, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—This Criminal Appeal u/s 374(2) of Code of Criminal Procedure, 1973 (for short ''Code of Criminal Procedure '') is directed by the Appellant-sole accused against the judgment, dated 28-02-2007 in Sessions Case No. 292 of 2005, on the file of the VI Additional Sessions Judge, (Fast Track Court), East Godavari District at Rajahmundry, where under and whereby the Appellant-accused was convicted and sentenced to undergo imprisonment for ten years and to pay a fine of Rs. 300/- in default to undergo simple imprisonment for two months of the offence punishable u/s 307 of the Indian Penal Code, 1860 (for short ''IPC''); further convicted and sentenced to undergo Imprisonment for five years and to pay a fine of Rs. 100/-, in default to undergo simple imprisonment for one month of the offence punishable u/s 326 IPC; further convicted and sentenced to undergo imprisonment for life and also to pay a fine of Rs. 500/-, in default to undergo simple imprisonment for six months of the offence punishable u/s 302 IPC and also convicted and sentenced to undergo imprisonment for one year of the offence punishable u/s 323 IPC and all the sentences were directed to run concurrently

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2. Brief facts, that are necessary for disposal of the present appeal, may be depicted as follows:

P. Ws.1 to 10, 17 and Pedireddy Kondayya (hereinafter referred to as ''the deceased'') are residents of same neighbourhood. P.W.1 is the wife of the deceased. It is suspected that both the deceased and P.W.1 were encouraging the wife of the accused to go with other male persons to commit illegal activities and they were also responsible for the spoiling of his marital life. As such, the accused bore resentment against he accused and P.W.1. On 23-02-2005 at about 4.00 P.M., when P.W.1 was purchasing eggs from P.W.4, the accused armed with a knife, which is used to cut coconuts, came there shouting that he will kill her. On seeing him, she got frightened and ran towards the cement road. The accused came behind her. At that moment, P.W.2 was coming on his motorcycle. He stopped the accused and asked him as to why he was chasing P.W.1 and also advised him not to do so as she is a lady. Then the accused attacked P.W.2 on his back, due to which, he fell down along with his bike. When he got up himself, the accused again battered him on his back and hands. Thereafter, P.W.2 ran away with bleeding injuries to his house and got his wounds bandaged. P.W.1 observed the attack on P.W.2 and again started running. When she reached the backside of the house of P.W.17 (brother of P.W.2) she slipped and fell down. Then the accused hacked her indiscriminately and gashed injuries to on her back, breast, abdomen, shoulder, nose, wrist etc., P.W.9 cousin brother of the deceased was going towards his fields and when he reached Puntha Road, he saw the deceased was coming on a motor bike along with Vasamsetti Vanamayya and Tekumudi Surayanarayana. On seeing the accused, they tried to turn their bike, but failed and all of them fell down in the fields along with bike. Then the accused hacked the deceased on his head and also on his abdomen. At that moment, P.W.9 interfered and caught hold of the neck of the accused. Then the accused bite with teeth his left hand and escaped in the opposite direction towards Venkanna Temple. Thereafter, with the assistance of some villagers, the deceased and P.W.9 were being shifted in an auto to the hospital. At that time, P. Ws. 1 and 2 were already present in the auto and all of them accompanied by some villagers were taken to the Area Hospital at Ramachandrapuram. P.W.14-Doctor treated P. Ws. 1 and 2 and the deceased and sent intimation to police under Ex.P34. P.W.15-Head Constable, who received Ex.P34 came to the hospital and recorded the statement of the deceased under Ex.P36. Before recording the statement, he did not ascertain the mental condition of the deceased with the doctor and P.W.14 made an endorsement on the statement as Ex.P35 with regard to fit state of mind. As the deceased lost considerable blood, he was not able to speak. The statement of the deceased was recorded with the assistance of an attendant. By the time the statement of the deceased was recorded, he was already under treatment and under the influence of the sedatives. Though endorsement was made by P.W.14 on Ex.P36, he was not present while recording the statement of the deceased. P.W.14 referred all the injured and the deceased to Government General Hospital, Kakinada. P.W.18-Sub Inspector of Police received Ex.P36

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statement of deceased and registered the same as Cr. No. 13 of 2005 u/s 307 IPC and issued F.I. Rs to all concerned. He took up investigation, reached the scene of offence and prepared Exs.P42 to 44 rough sketch of the scene of occurrence. He got photographed the scene of occurrence through P.W.11. He examined the witnesses on the same day. He secured the presence of mediators and arrested the accused and seized M.O.1 at the instance of the accused. On 26-02-2005, he received Ex.P40-death intimation of the deceased from the hospital. Then he altered the section of law to 302 IPC. L.W.33 conducted inquest over the dead body of the deceased and sent the dead body to post mortem examination. P.W.13-doctor conducted autopsy over the dead body of the deceased and issued Ex.P31 post mortem certificate. After receipt of RFSL report and post mortem report, P.W.19 laid charge sheet.

3. The learned Sessions Judge, framed the following charges against the accused:

Firstly: That you on or about the 23rd day of February, 2005 at about 4.00 P.M. in the lane situated by the side of the house of Vattikuti Anantha Lakshmi attempted to kill Janikamma @ Baby w/o Pediredddy Kondayya, the deceased herein by hacking her with the knife indiscriminately and consequently she received bleeding injuries on the right side of her face, right side of abdomen, both hands, on the back and right side breast and thereby committed an offence punishable u/s 307 IPC.

Secondly: That you on the same date, time and place as mentioned in charge No. 1, voluntarily caused grievous hurt to Rambala Venkateswara Rao by hacking him with a knife on his right shoulder, the back, right fore-arm and right hand fingers and thereby committed an offence punishable u/s 326 IPC.

Thirdly: That you on or about the 23rd day February, 2005 at the Puntha road near the fields of Kondayya of Someswaram village while Kondayya, Vasamsetti Vanamayya and Tekumudi Suryanarayana @ Suri coming on the moor cycle and on seeing you, the driver of motorcycle tried to take a turn, all of them fell down and taking it an opportunity, you immediately attacked Kondayya with the knife while using filthy language and he fell down and you again hacked him indiscriminately and succumbed subsequently and committed murder intentionally causing the death of ''Pedireddi Kondayya'' and thereby committed an offence punishable u/s 302 IPC.

Fourthly: That you on the same date, time and place as mentioned in charge No. 1, voluntarily caused hurt to Pedireddy Pullayya by biting him on his left fore-arm and thereby committed an offence punishable u/s 324 IPC.

When the above charges were read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

4. To bring home the guilt of the accused, the prosecution examined P. Ws. 1 to 19 and got marked Exs.P1 to 46 besides case properties, M. Os. 1 to 8.

5. After closure of the prosecution evidence, the accused was examined u/s 313

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Code of Criminal Procedure with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same and reported no evidence.

6. The trial Court after considering the oral and documentary evidence available on record, convicted and sentenced the Appellant as indicated above. Challenging the same, the Appellant preferred this appeal.

7. Now the point that arises for consideration in this appeal is whether the prosecution has proved its case against the Appellant of the offences with which he was charged beyond all reasonable doubt?

8. Learned Counsel appearing for the Appellant-accused contended that the presence of P. Ws. 9 and 10 at the scene of occurrence is doubtful, that there is no need for them to pass through the scene of occurrence and in such a case, they are planted by the prosecution, that their evidence is full of contradictions and improvements, that it is not safe to place an implicit reliance on their evidence, that when P.W.9 allegedly caught hold of the neck of the accused, there is no possibility for the accused to bite with teeth on the elbow of P.W.9, that the oral dying declaration said to have been made by the deceased to P.W.1 has not been spoken to by other witnesses, that at the time of recording the statement by P.W.15, the deceased was unconscious, that the doctor did not specifically state whether the deceased was in a position to speak or not, that therefore the statement Ex.P36 cannot be acted upon, that the other witnesses who are natural witnesses to be present at the scene of occurrence did not support the case of the prosecution, that therefore, the entire case is foisted against the accused with the help of one Nagadevara Suryanarayana, and he is the person who was attending the trial Court during trial and he has got enmity against the accused, that at his instance, police foisted a case, that P.W.9 who went to the hospital did not get himself examined by the doctor and no explanation was given by him as to why he was not treated in the hospital especially when he accompanied P.W.1 to the hospital, that admittedly the doctor examined him two months after the incident and therefore, the evidence of P.W.9 that he sustained bite injury at the time of incident from the accused cannot be accepted, that there are several residential houses located on the either side of the road while P.W.1 was proceeding and also near the place of attack on the deceased, but none of them was examined by the police to show that the accused is the assailant of the deceased, that almost in all houses, telephone facility is available and none of the villagers telephoned to police about the incident and therefore, she prays to set aside the convictions and sentences recorded against the Appellant.

9. On the other hand, counsel representing the learned Public Prosecutor contended that the presence of P. Ws.9 and 10 at the time of incident is quite probable and there is no grouse or enmity for them to foist a false case against the accused especially for P.W.10 who is an independent witness, that P.W.15 after receipt of hospital intimation went to the hospital and recorded the

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statement of the deceased and the doctor made an endorsement in Ex.P36 that the patient was conscious and coherent, that therefore Ex.P36 can be used as evidence so as to base a conviction, that Ex.P36 is very clear that it is the accused who caused injuries with a knife and the medical evidence is completely in corroboration with ocular testimony, that some minor omissions or improvements made by the witnesses do not in any manner affect the main fabric of the prosecution case, that the evidence of P. Ws. 9 and 10 coupled with the recitals in Ex.P36 would clearly go to show that it is the accused and none else, who caused the injuries to the deceased, that the evidence of P. Ws. 1 and 2 coupled with the evidence of P.W.14 would clearly go to show that those injuries were sustained at the hands of the accused, that the trial Court after an elaborate consideration of evidence on record rightly convicted and sentenced the accused and absolutely there are no grounds to interfere with the same.

10. P.W.12 is one of the inquest mediators who was present when police held inquest over the dead body of the deceased. They noticed several injuries on the dead body. Their opinion as to the cause of the death was due to the injuries sustained by the deceased.

11. P.W.13 is the doctor who conducted neeropsy over the dead body of the deceased on 27-02-2005, found the following injuries:

1. A surgically sutured wound of 3 cms in length approximated with two white thread stitches is present on the top of the head on the frontal area of scalp in the midline extending obliquely on to left side. It is 8 cms above the inner and of left eyebrow and 17 cms above the upper attachment of right ear. Reddish brown scab present. On opening the stitches the approximated edges are partly united with organizing blood clots in the wound.

2. A muscle deep spindle shaped incised wound of 4 x 1cm size is present on the inner aspect and back of right forearm 9 cms above the right wrist and 15 cms above the right elbow. Blood clots present in the wound.

3. A skin deep incised wound of 1.5 x 1/2 cm size is present 1/2 cm inner and above the lower end of injuryNo. 2. Blood clots present in the wound.

4. A skin deep incised wound of 12 x 1 cm size is present on the front of right side abdomen at 9 o clock position. 6 cms away from the umbilicus. Obliquely placed. Blood clots present in the wound.

5. A skin deep incised wound of 10 x 1 cm size is present 4 cms above and parallel to injury No. 4. Blood clots present in the wound.

6. An abrasion of 4 x 3 cms size is present. On the front chest in the mid line, 10 cms below supra sternal notch and 6 cms above the xiphoid process and 11 cms inner to the left nipple. Reddish brown scab present.

7. An abrasion of 3 x 3 cms size is present on the middle of back of right buttock. Reddish brown scab present.

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8. An organising haematoma of 11 x 8 cms size is present under scalp on mid frontal region corresponding to external injury No. 1.

9. A penetrating depressed triangle shaped fracture of 2 x 1/2 cms size is present in the frontal bone of vault of skull and it is 7 cms above the left eyebrow. 14cms above the upper attachments of left ear and 16 cms above the upper attachments of right ear. The base of the triangle shape of fracture facing towards the top of head and pointed end towards downwards. The same size of bone chip is missing from the place. The cut fractured bone edges are stained with organizing blood clots.

10. A radiating fissured fracture of 6 cms in length is present on the frontal bone of vault of skull extending obliquely down wards on to the left side of frontal bone. The fractured bone edges are stained with organising blood clots. The fissured fracture is starting from the pointed end of the triangular shaped depressed fractured as described in injury No. 9.

11. A radiating fissured fracture of 6 cms in length is present on the right parietal bone of vault of skull extending obliquely upwards from the base of triangular shaped depressed fracture described in injury No. 9. The fractured bone edges are stained with organising blood clots.

12. Corresponding cut (corresponding to injury No. 9) of dural membrane of brain associated cut laceration left frontal lobe is present. Organising blood clots are present in the wound.

13. Diffused subdural and subaraechnoid haemorrhages are present on both the hemisphere of brain with organising sub dural blood clots.

He opined that the ante-mortem injuries can be possible by hacking with a knife like M.O.1. The opinion as to the cause of the injuries was due to depressed fracture of vault of skull on frontal bone with corresponding injury to dura and cut laceration of left frontal lobe of brain and he issued Ex.P31 post mortem certificate. Therefore, from the evidence of P.W.13 and the recitals in Exs.P31, it is established beyond reasonable doubt that the death of the deceased is homicidal in nature. Even the accused is not seriously disputing the cause of death of the deceased.

12. Now it has to be seen whether the accused is the assailant of the deceased or not?

13.P. Ws. 9 and 10 are the witnesses to speak about the incident besides the statement of the deceased recorded by P.W.15 as in Ex.P36. Apart from attacking the deceased by the accused, he also said to have attacked P.W. 1 who is none other than the wife of the deceased. Both P.W.1 and the deceased were encouraging the wife of the accused to go with another male person to commit illegal activities and they were responsible for the breaking of the marital life of accused. In order to wreak vengeance against them, the incident is alleged to have taken place according to the case of the prosecution.

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14. P.W.1 is the injured witness. According to doctor-P.W.14, who examined P.W.1 on 23-02-2005 found the following injuries:

1. An incised cut injury on right side of face measuring 10 x 4 x bone deep red in colour obliquely situated with clear cut margins spindle shaped.

2. An incised cut injury on right side of abdomen measuring 12 x 4 x 2 cms size obliquely situated.

3. An incised cut injury on left wrist joint exposing tendons and bones measuring 6x 4 x bone deep obliquely situated red in colour.

4. An incised cut injury on left arm measuring 4 x 2 x bone deep obliquely situated red in colour.

5. An incised cut injury on back o chest and right side measuring 6 x 4 x 2 cms, 4 x 2 x 1 cms size.

According to the doctor, the injuries 1 and 3 are grievous in nature and injuries 2, 4 and 5 are simple in nature and he issued Ex.P32 wound certificate. As far as sustaining of injuries by P.W.1 is concerned, nothing has been elicited in the cross-examination of P.W.14 to discredit his testimony and the recitals in Ex.P32. So, from the evidence of P.W.14 and the recitals in Ex.P32, it is clear that P.W.1 received grievous as well as simple injuries.

15. On 23-02-2005 while P.W.1 was purchasing eggs from Kadiyala Kantham, the accused came there with a knife proclaiming that he will kill her. Then she started running away and the accused chased her. At that time, P.W.2 was coming on his motorcycle. He stopped his motorcycle and asked the accused as to why he was chasing her and advised the accused that it was not proper on his part to chase a person like woman. Then the accused hacked P.W.2 on his back and also on his both hands. Thereafter, she ran away raising cries. While running from the scene of occurrence, she skid and fell down near the house of P.W.17. Then the accused came there and attacked her indiscriminately causing bleeding injuries all over the body namely, backside, breast, on the abdomen, on the shoulder, on the nose and also on the wrist. Then P.W.2 and P.W.1 boarded an auto and they were proceeding to hospital via Venkanna Babu Temple in Someswaram Village. On the way to hospital, the husband of P.W.1 who was having bleeding injuries boarded the auto and all of them were proceeding to Ramachandrapuram Government Hospital. P.W.1 enquired her husband as to how he sustained injuries and her husband informed her that the accused attacked him with a knife and as a result, he sustained injuries. If the statement of P.W.1 is to be accepted as true, it falls under the ambit and scope of Section 32(1) of the Indian Evidence Act, 1872, but at the same time, the said oral dying declaration has not been spoken to by P. Ws. 2 and 9 who are admittedly travelling along with deceased and P.W.1 to the hospital from the scene of occurrence. Therefore, the statement of P.W.1 that on questioning her husband as to how he sustained injuries, the deceased informed her that the accused is

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the assailant and caused injuries with knife cannot be accepted because it appears to be a clear improvement and the statement of P.W.1 lends no support from P.W.2 and P.W.9. Insofar as attack on P.W.1 is concerned, nothing has been elicited in the cross-examination to discredit her testimony. According to her, her statement was also recorded by the Magistrate. But as seen from the record, no requisition was sent to the Magistrate by the hospital authorities so as to record the statement of P.W.1. Therefore, the inadvertent admission made by P.W.1 cannot be taken advantage by the accused by saying that the statement recorded by the Magistrate was suppressed by the prosecution. In view of the fact that P.W.1 is an injured witness, three important circumstances are relevant for the purpose of evaluating the evidence of an injured witness viz., 1) whether in the circumstances of the case, the injuries are caused by the accused, 2) whether P.W.1 received those injuries in the course of same transaction and 3) whether there is strong enmity or hostility for her to implicate the accused. It is not the case of the accused that she received those injuries at some other place, in some other manner and at the hands of some other person. Similarly, there cannot be any mistake of identity or false identity of the assailant of P.W.1 because the incident is alleged to have taken place in a broad day light at 4.00 P.M., Therefore, the possibility of implicating the accused does not arise unless P.W.1 entertained a serious grievance against the accused. In the entire cross-examination of P.W.1, nothing has been elicited so as to disbelieve her statement except eliciting some facts, which are not relevant in issue. Some improvements said to have been made by P.W.1 in the cross-examination are not shown to be fatal to the case of prosecution or in any manner affect the core of her statement. .

16. According to P.W.18, P.W.1 did not state before him that P.W.2 questioned the accused as to why he was chasing her and advised the accused not to chase her as she being a lady; that she received injuries on her nose; that the accused bite P.W.9 with his teeth on his hands; that the accused pulled the deceased from the motorcycle and that her eldest son accompanied them to the Area Hospital, Ramachandrapuram. These omissions are very innocuous and they do not go to the root of the prosecution case. The fact in issue is whether the accused has caused injuries to P.W.1 on the date of incident and whether those injuries can be possible by hacking with a knife like M.O.1. The evidence of P.W.14 is very clear that those injuries can be possible by hacking with a knife like M.O.1. The evidence of P.W.1 is also very clear that it is the accused who hacked her with a knife M.O.1. Further her clothes namely M.O.2-black and red colour saree, M.O.3-blouse in brown colour and M.O.4- petty coat green in colour contain human blood. According to her while she was running away at the first attack, she raised cries and while she was running away from that place, number of residential houses are located on either side of the road, but the prosecution has not examined the persons who are residing in and around the scene of occurrence. But she stated that at the time of the incident while she was running away, nobody was present. Even otherwise some persons of the locality were examined

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by the prosecution to speak about the incident.P. Ws. 3 to 8 are the persons residing in and around the scene of occurrence. But P. Ws. 5 to 8 who allegedly witnessed the incident did not support the case of the prosecution. They have given a total go-by to their earlier version recorded by the police during the course of investigation. There cannot be any dispute that statement recorded by the police during the course of investigation cannot be used for any other purpose except for contradicting the witness in the manner provided u/s 145 of the Evidence Act. Even after cross-examination, the learned Public Prosecutor in the trial Court did not elicit any other relevant facts in the evidence of P. Ws. 5 to 8 so as to connect the accused with the attack on P.W.1.

17. Though P.W.3 turned hostile, but her evidence would go to show that she observed the accused running behind P.W.1. Simply because P.W.3 turned hostile, that does not mean her evidence would be wiped out from the record. But such part of her testimony which inspires confidence can be taken to corroborate the other evidence, if any, available on record. Therefore, the evidence of P.W.3 to the extent that the accused running after P.W.1 can be used for corroboration. Further, though P.W.4 turned hostile, his evidence would go to show that P.W.1 sustained injuries on the same date at the time of incident. Therefore, the evidence of P. Ws. 3 and 4 to the extent of their evidence with regard to P.W.1 sustaining injuries and accused running after P.W.1 can be used to corroborate the evidence of P.W.1. Even after lengthy cross-examination, nothing substantial was elicited from the evidence of P.W.1 to discredit her testimony as to why she has to speak false against the accused. Admittedly, P.W.1 has no grouse or enmity against the accused so as to implicate him falsely leaving the real assailant. It is the case of the accused that on the encouragement given by one Nagadevara Suryanarayana who entertained a animosity against the accused, P.W.1 got self inflicted those injuries and foisted a false case against the accused. Even the doctor who examined P.W.1 categorically stated that she sustained grievous injuries. It is not suggested to P.W.14 that those injuries could be possible by self-infliction. Therefore, the injuries were not shown to be caused by some other person and it is not the case of self-inflicted injuries. The accused also attacked her husband. But, she did not know how her husband sustained the injuries. Therefore, in our opinion, P.W.1 is a witness of truth and she was testifying the facts, which are exclusively within her knowledge. Her evidence is in full corroboration with the evidence of P.W.2, who was going on the motorcycle at the time of incident. When he reached the house of P.W5, he noticed the accused chasing P.W.1. Then he stopped the accused. Being enraged, the accused hacked on his back, as a result, he fell down with bike. When he stood himself, the accused again hacked him with the knife on his back and on his hand. Thereafter, he ran away to his house with bleeding injuries. He did not speak about the attack on P.W.1 because he was going through the scene of offence on his motorcycle after the accused made first attack on P.W.1 and thereafter, while P.W.1 was running away from the scene of occurrence, the accused was chasing and at that time, he interrupted the accused. Similarly, he

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has no grievance or enmity against the accused. Though he is a chance witness, but at the same time, his presence at the time of incident is found to be quite acceptable because he also sustained injuries at the hands of accused. The doctor who examined him might not have been available and therefore, the person who knows the signature of the doctor was examined as P.W.16. Section 47 of Evidence Act deals with question of identification of hand writing. By it handwriting may be proved by the opinion of any person who is acquainted with the hand writing of the man alleged to have written the document. Section 32 of the Evidence Act inter alia provides that statements written or verbal of relevant facts made by a person who cannot be found or who has become incapable of giving evidence or whose attendance can not be procured without any amount of delay or expense which under the circumstances of the case, appears to the court unreasonable are relevant, when the statement was made by such person in the discharge of professional duty. Dr. Imran who worked as Casuality Medical Officer and who examined P.W.2 is not examined. Through P.W.16 who knows hand writing and signature of D. Imran identified the issuance of Ex.P37 wound certificate relating to P.W.2. As seen from Ex.P37, P.W.2 sustained a lacerated wound 10-12 inches over back right scapular region, lacerated wound 3 inches over back of right middle finger with fracture dislocation and laceration over dorsum of wrist right side 2 inches long. Those injuries are grievous in nature. Therefore Ex. P37 is proved through P.W.16 and nothing was elicited to discredit his testimony. The recitals in Ex.P37 are not challenged. Therefore, from the recitals in Ex.P37, it is clear that P.W.2 is also an injured witness who sustained grievous injuries.

18. It is contended by the learned Counsel for the Appellant that the evidence of P.W.2 shows that he received injuries on the back side, but as seen from Ex.P37, doctor found only one injury and therefore, the evidence of P.W.2 cannot be accepted. He might have exaggerated the version by saying that after he got up from the road, the accused attacked on his back twice, but that exaggeration or improvement cannot be taken advantage of by the accused so as to discredit the entire evidence especially when P.W.2 has no reason to implicate the accused falsely leaving the real assailant. Therefore, the presence of P.W.2 at the relevant point of time of the incident is apparently probable and he speaks about the injuries caused to him by the accused and nothing more than that. Therefore, the trial Court rightly placed an implicit reliance on his evidence. His evidence is not only relevant for the purpose of causing injuries by the accused but also the accused chasing P.W.1 at that point of time. Therefore, the evidence of P. Ws. 1 and 2 can safely be taken so as to find the accused guilty of the offence punishable u/s 307 IPC for causing injuries to P.W.1 and also u/s 326 IPC for causing grievous injuries to P.W.2. The evidence to constitute an offence u/s 307 IPC must disclose that the death of a human being was attempted and that death was attempted to be caused by or in consequence of the act of the accused and such act was done with intention of causing such bodily injury as the accused knew to be likely to cause death or that the accused had attempted to cause

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death by doing an act known to him to be so imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury. The essential ingredients of voluntarily causing grievous hurt by dangerous weapons or means u/s 326 IPC are i) grievous hurt as described in Section 320 IPC must first be caused ii) the offender intended or knew himself to be likely to cause grievous hurt, iii) the hurt was caused voluntarily and iv) the hurt must be caused by dangerous weapons or means. The weapon of offence used is curved knife. P.W.14 stated that the injuries 1 and 3 in Ex.P32 are sufficient to cause the death of P.W.1. Therefore, the evidence establishes the charges under Sections 307 and 326 IPC against the accused.

19. Coming to the charge u/s 302 IPC, the evidence of P. Ws. 9 and 10 is relevant. Learned Counsel for the Appellant contended that the evidence of P.W.9 cannot be accepted in view of the fact that he has not taken treatment when admittedly he went to the hospital, but he was examined by the doctor two months after the incident and that there is absolutely no need for him to pass through the scene of occurrence. The evidence of P.W.9 would go to show that on the date of incident after completion of work in the fields, he returned to home. Some time later, he started to go to field and when he reached Venkanna Babu Temple, he observed gathering and further he noticed the accused running with a knife. There is every impetus for this witness to dog him as he knows accused armed with knife. Then he started running at a distance of 30 feet behind the accused. At that time, he noticed the deceased, Vanamayya and Tekumudi Suryanarayana coming on the motorcycle. The accused obstructed them, as a result, all of them fell into the fields with the motor bike. Then the accused pulled the deceased and hacked him on his head and also on his abdomen. Then he reached there and caught old of the neck of the accused. Then the accused gave a bite with teeth on his left hand and escaped from the scene of occurrence in the opposite direction. He is no other than the cousin brother of the deceased. No doubt, P.W.9 ought to have got himself examined by the doctor when he admittedly went to the hospital along with P.W.1 and the deceased in the same auto. As P.W.1 and deceased sustained severe injuries, the doctor might have taken much care on them instead of examining P.W.9 in view of the fact that he received only teeth bite injury on the elbow. Therefore as the doctor not examined P.W.2 cannot be a sole ground to discredit his testimony. According to the learned Counsel for the Appellant, it is not possible for the accused to bite with teeth on the forearm especially when P.W.9 caught hold of the neck of the accused. There is nothing improbable because after removing the hand of P.W.9 from the neck, possibility of the accused biting P.W.1 with teeth can be possible. It is not the case of P.W.9 that while he was holding the neck, the accused bite with teeth on the left fore arm. Accused would not be static whn P.W.9 caught hold of his neck. This aspect of the case as testified by P.W.9 cannot be said to be highly improbable or unnatural.

20. It is contended by the learned Counsel for the Appellant that two months

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after the incident, P.W.9 was examined by a doctor and if really there was a teeth bite, there should have been a semi circle injury on the hand, but the doctor who examined him did not find any such semi circle injury. It depends upon the part of the body and the manner of biting and the manner of force used by the accused in biting. The teeth bite injury varies in different modes. There cannot be any fixed set of injuries caused in a case of teeth biting. Therefore, that cannot be a ground to discredit the testimony of P.W.9 especially when he stated that he sustained injuries when the accused gave teeth biting. That was corroborated from the evidence of P.W.14 who examined P.W.9 and issued Ex.P33 wound certificate. According to the doctor, the injury found in Ex.P33 can be possible with a teeth bite. Therefore, the evidence of P.W.9 coupled with the evidence of P.W.14 would clearly reveal that it is case where P.W.9 sustained injury through bite. It is one of the contentions of the learned Counsel for the Appellant that P.W.9 is a chance witness. Trustworthiness of a chance witness is dependent upon the intrinsic quality of his evidence. Merely on the ground that he happened to be present at the place of occurrence by sheer co-incidence to witness the incident, his testimony cannot be jettisoned for the sole reason that he is only a chance witness. On this aspect, it is pertinent to refer to a decision reported in Rana Partap and Others Vs. State of Haryana, , wherein it was held thus:

THERE were three eye-witnesses. One was the brother of the deceased and the other two were a milk vendor of a neighbouring village, who was carrying milk to the dairy and a vegetable and fruit hawker, who was pushing his laden cart along the road. The learned Sessions Judge and the learned Counsel described both the independent witnesses as ''chance witnesses'' implying thereby that their evidence was suspicious and their presence at the scene doubtful. We do not understand the expression ''chance witnesses''. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passers by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that that they are mere ''chance witnesses''. The expression chance witnesses'' is borrowed from countries where every man''s home is considered his castle and every one must have an explanation for his presence elsewhere or in another man''s castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are ''chance witnesses'', even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence.

21. It is elicited in the cross-examination of P.W.9 with regard to certain omissions viz., that he was proceeding through the scene of occurrence, or that on observing the running of the accused with a knife, he followed him at a distance of 30 feet, or that when the deceased was returning on motor cycle

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along with Vanamayya and Tekumudi Suryanarayana, the accused obstructed them and thereupon all of them fell into the fields. The above omissions have not been stated to police by P.W.9 when he was examined u/s 161(3) Code of Criminal Procedure . P.W.18, the Investigating officer has also admitted that the aforesaid omissions have not stated before him when he examined P.W.9. It is well settled that an innocuous omission is inconsequential. Omissions amounting to contradictions that militate against the essence or core of the prosecution case are alone material. An omission of innocuous nature would not discredit the evidence of a witness. The evidence of a witness will have to be assessed or evaluated by its intrinsic worth. These omissions do not necessarily demolish testimony. As seen from the evidence of P.W.9, there were no omissions or contradictions insofar as the attack made by accused on the deceased near the field of Dasaradha Ramayya. The scene of occurrence as in rough sketch Ex.P44 and as observed in Ex.P2 observation report are not specifically denied or disputed. The presence of P.W.9 at the scene of occurrence was spoken to by an independent witness namely P.W.10.

22. The evidence of P.W.10 would go to show that while he was coming from the fields, he noticed the deceased and two other persons coming on motorcycle. He observed the accused obstructing them when they reached near the field of Dasaradha Ramayya and on the said obstruction, all of them fell down from the bike. Then the accused went there and hacked the deceased with a knife. Then P.W.9 raised cries not to kill him. In the meanwhile the accused hacked the deceased with a knife. The persons who were present there ran away. Then P.W.9 came there and caught hold of the neck of the accused and raised cries and on hearing cries of P.W.9, several persons of that locality gathered there. No doubt, that statement has not been spoken to by P.W.9 about raising the cries or ''baboi champestunnadu randi'', but it can be an improvement made by P.W.10 and much importance cannot be given to such improvement. But the core issue is whether he was present or not. No doubt in the cross-examination, he admitted that his lease hold lands are situated near the land of Nagadevara Suryanarayana rice mill and he did not have any fields on either side of Talupulammalova road. According to him he reached his fields through the way which is situated at the scene of occurrence. He has to pass through that fields. So proper explanation was given by P.W.10 as to why he has to pass through the scene of occurrence. Learned Counsel for the Appellant stated that according to P.W.9, the incident had taken place on the road adjacent to the fields, but that appears to be incorrect because as seen from the rough sketch and the observation report insofar as the scene of occurrence of the deceased is concerned, it is the field which is situated at a distance of two yards from the road. Such a minor variation with regard to the scene of occurrence cannot be a sole basis for throwing away the entire evidence of P.W.9. Nothing has been elicited in the cross-examination of P.W.9 so as to speak false against the accused. If the entire evidence of P. Ws. 9 and 10 is evaluated in a proper perspective, it can be said that the possibility of their presence at the relevant point of time of incident can

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be acceptable and they have no grouse or enmity to foist a case against the accused. Therefore, false implication of the accused cannot be accepted and it is wholly devoid of merit and untenable.

23. It is contended by the learned Counsel for the Appellant that there was delay of 13 hours in sending the First Information Report to the Court and that the time taken is with a view to implicate the accused. But the delay by itself is not a ground to throw away the entire prosecution case. At least it can be taken as one circumstance to doubt the case of prosecution. Prosecution would not get any advantage in sending report to Court with delay. As the case is originally registered initially u/s 307 IPC, there was some inaction on the part of Investigating officer. Besides this evidence, the evidence of P.W.15 who is the Head Constable of the Police Station would go to show that he went to the hospital and recorded the statement of the deceased as in Ex.P36, which reads as follows:

On 23-02-2005 at 4.00 P.M. when I was present in the fields, i.e., at the cattle and heard cries of Koppireddy Nageswara rao and when myself and R.M.P. doctor Vanamayya are coming together, he came in opposite direction and uttered ''chavara lanjakodaka, neevalla neebhrya valla maa kapuram poyindi'' and so saying first he hacked your wife and so saying he pounced upon me and hacked with a knife. When I fell down again he hacked me. I received cut injuries on my left hand thumb, two cut injuries on the abdomen, on right hand elbow and on the head. In the meanwhile the p0eople gathered there. He uttered that he cannot allow me to live and came towards me and when Peddireddy Pullayya who is present in the gathering interfered he had bite him below the left hand elbow. In the meanwhile my wife, Peddireddy Baby and Rambala Venkateswara rao who were hacked by Koppireddy Nageswara rao prior to me and received injuries were brought on the road and they also mounted me on the vehicle and brought to Ramachandrapuram hospital.

If the above statement is to be accepted, it falls u/s 32(1) of the Evidence Act. If the statement is found to be true and trustworthy and not an outcome of tutoring or prompting by any of the relatives of the deceased, then it can be a sole basis for convicting the accused even without any corroboration. On this aspect, it is appropriate to refer to a decision reported in Khushal Rao Vs. The State of Bombay, wherein it was held thus:

ON a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (a) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence that other pieces of evidence; (4) that a dying declaration

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stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as for as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the lying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

No doubt it is stated that the doctor who made endorsement on the statement has not clearly stated that the patient was in a talking position. The doctor who made an endorsement has categorically stated that he was present at the time when the police recorded the statement of the deceased. Though he was not actually present at the deceased while recording the statement, but he was present in the same room. He has to attend the other patients in the room in which the deceased was kept. The doctor made an endorsement on Ex.P36 to the effect that patient was conscious and coherent. It is the duty of the police officer to satisfy himself before recording the statement that the declarant was in a fit mental state to make the statement.P. Ws. 14 and 15 did not specifically state that the deceased was in a fit condition of mind to make the statement. They simply stated that the deceased was conscious and coherent. P.W.14 has categorically admitted that the deceased was unable to speak though he was conscious. Doctor also observed the condition of deceased was precarious. Further he was not present throughout when P.W.15 was recording the statement of the deceased. It is contended by the learned Counsel for the Appellant that as P.W.15 did not make an endorsement in Ex.P36 that the patient was in a fit state f mind to make the statement, ex.P3 dying declaration could not have been accepted by the trial Court. P.W.15 received Ex.P34 hospital intimation at about 7.15 P.M. on 23-02-2005 within 5 minutes thereafter he proceeded to area hospital and recorded Ex.P36. After recording the said statement, he obtained an endorsement of doctor as in Ex.P35 to the effect that deceased was conscious and coherent. As P.W.14 was not present when P.W.15 recording the statement, his evidence that the deceased was unable to speak cannot be accepted. Unless Ex.P36 is recorded to the narration of deceased, it would not be possible for P.W.15 to scribe the report as to the manner of attack, place of occurrence, name of the assailant etc., Even assuming for a moment that there were some

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suspicious circumstances with regard to giving of statement by deceased, it only puts the Court to be cautious in accepting the same. In such circumstances, the statement of deceased only requires corroboration. Hence Ex.P36 coupled with the evidence of P. Ws.9 and 10, it can be safely said that it is the accused who caused injuries to the deceased. The suggestion given to P. Ws. 9 and 10 is that at the instance of one Nagadevara Suryanarayana Murthy (L.W.4), they are deposing falsely. It is not the case of accused that P. Ws. 9 and 10 entertained animosity or hostility against the accused to implicate him. Further nothing has been elicited in the cross-examination of prosecution witnesses that Nagadevara Suryanarayana Murthy had a rancour or malice against the accused so as to project P. Ws. 9 and 10 as eyewitnesses. Coming to the offence u/s 302 IPC, an act is said to be intentional when it is done with a desire that certain consequences shall follow from a persons physical acts or omissions. A mans intention can only be gathered from his act. A man is presumed by law to intend the ordinary and natural as well as the necessary consequences of his acts. Cause of death was due to depressed fracture of vault of skull on frontal bone with corresponding injury to Dura and cut laceration of left frontal lobe of brain. The knife ''M.O.1'' is a heavy cutting weapon. From the nature of injuries, body of deceased and weapon of offence, it can be safely said that the intention of accused is to kill the deceased. The charge u/s 302 IPC is proved beyond all reasonable doubt. The trial Court after proper appreciation of evidence on record, rightly convicted and sentenced the accused and absolutely, we find no reason to interfere with the same.

24. Accordingly, the Criminal Appeal is dismissed confirming the judgment dated 28-02-2007 in Sessions Case No. 292 of 2005, on the file of the VI Additional Sessions Judge, (Fast Track Court), East Godavari District at Rajahmundry.

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