

CASE NO.:
Appeal (crl.) 1097 of 2006

PETITIONER:
Bathula Nagamalleswara Rao & Ors

RESPONDENT:
State rep. by Public Prosecutor

DATE OF JUDGMENT: 22/04/2008

BENCH:
P. P. Naolekar & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T
REPORTABLE

CRIMINAL APPEAL NO. 1097 OF 2006

Lokeshwar Singh Panta, J.

1. Bathula Nagamalleswara Rao, Bathula Laxminarayana, Bathula Seshaiyah, Narne Subba Rao and Morakonda Bapa Rao have filed this appeal against the judgment and order dated 10th April, 2006 passed by the Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 942 of 2004 confirming their conviction and sentences imposed upon them by the trial court.

2. In all, 12 accused, namely, B. Nagamalleswara Rao (A-1), B. Laxminarayana, (A-2), B. Gopalan, (A-3), B. Subba Rao (A-4), B. Sreenu (A-5), B. Venkateswara Rao (A-6), Jonnalagadda Ramu (A-7), Jonnalagadda Suresh (A-8), B. Kotaiah (A-9), B. Seshaiyah (A-10), Narne Subba Rao (A-11) and Morakonda Baparao (A-12) were charged and tried by Additional Sessions Judge, Guntur, for offences under Sections 148/449/302/302 r/w 149/302 /302 r/w 149 and 427 of the Indian Penal Code [for short 'IPC'] for committing murder of two persons namely, Marchavarapu Venkatarao (deceased no.1) and Thalluri Sambasiva Rao (deceased No.2) in village Uddandarayunipalem.

3. The VII Additional Sessions Judge, Guntur, by judgment dated 31st May, 2004 convicted all the accused (except A-3) and sentenced them as under:-

Accused
Nos.
Conviction by Trial Court

Sentence Imposed by Trial Court

A-1
U/s. 302 r/w. 149, 302, 148 & 449
Life Imprisonment

A-2
302 r/w. 149, 302, 148 & 449
Life Imprisonment

A-4

302 r/w. 149 & 449
Life Imprisonment

A-5
302 r/w 149 & 449
Life Imprisonment

A-6
302 r/w 149, 302 & 449
Life Imprisonment

A-7
302 r/w 149 & 449
Life Imprisonment

A-8
302 r/w 149 & 449
Life Imprisonment

A-9
302 r/w 149 & 449
Life Imprisonment

A-10
302 r/w 149, 302 & 449
Life Imprisonment

A-11
302 r/w 149, 302 & 449
Life Imprisonment

A-12
302 r/w 149, 302 & 449
Life Imprisonment

4. The accused were also imposed a fine of Rs. 500/- each on each count and in default of payment of fine, to suffer S.I. for six months and they were also sentenced to suffer R.I. for a period of five years and to pay a fine of Rs. 1000/- each for the offence under Section 449 of the IPC and in default of payment of fine to undergo S.I. for a period of six months. All the substantive sentences were ordered to run concurrently.

5. The trial court, however, acquitted A-4, A-5, A-7 to A-9 for the offences under Section 427, IPC. A-3 died during the pendency of the trial and trial against him, accordingly, stood abated.

6. Brief facts necessary for disposal of this appeal are as follows:-

All the accused, deceased no.1, deceased no.2 and other material witnesses are all residents of village Uddandarayunipalem within the jurisdiction of Thulluru Police Station. In the last panchayat elections held in the village area, deceased No. 1 was elected as Sarpanch of the village as a candidate of Telugu Desam Party by defeating his rival Congress Party candidate namely, Puli Babu who had the support of Bathula Venkateswara Rao (A-6). It was alleged that one Tadikoda Venkateswara Rao s/o Pedalakshmi Narayana approached deceased No. 1 for settlement of the pending land dispute between him and A-6. Deceased No. 1 alleged to have advised both the parties to approach the village elders and if their dispute still remained unsettled, then they could approach the competent court of law. It was alleged

that A-6 bore grudge against deceased no.1 as the latter was trying to support Tadikolana Venkateswara Rao in the said matter.

7. On the day of occurrence i.e. 18th July, 1996 around 6:30 p.m. Rama Mohan Rao, son of A-6 was murdered at the outskirts of the same village. The accused persons believed that Tadikolana Venkateswara Rao might have murdered the son of A-6. On the same day at about 7:30 p.m. M. Shakuntala (PW-1), wife of deceased no.1, was standing on the verandah of their house, while deceased no. 1 and deceased no.2 were chit-chatting with M. Srihari (PW-2) and B. Sathyanarayana (PW-3) - both friends of deceased no.1, in front of the house of deceased no.1, they noticed a group of men armed with dangerous weapons moving towards the house of deceased no.1. On the advice of PW-3, deceased no.1 and his wife PW-1 rushed inside the house and bolted its door from inside. In the meanwhile, all the twelve accused trespassed into the house and committed mischief by breaking the telephone and other valuable articles lying in the house of deceased No. 1 and in the process, the accused noticed deceased no.1 concealing himself in the bedroom. The accused attacked deceased no. 1 indiscriminately with lethal weapons. It was the case of the prosecution that A-3 stabbed deceased No.1 with a crow bar thrice below stomach and in left side of his abdomen. A-1 assaulted deceased no.1 with a knife on both sides of the neck and chest. A-2 hacked on the right upper arm and A-3 cut the right wrist of deceased no.1 with a crow bar. Thereafter A-1 to A-3 continued inflicting injuries on other parts of the body of deceased no.1 in the presence of his wife PW-1 and as a result of severe injuries, Venkateswara Rao deceased No.1 died at the spot. It was alleged that the remaining accused chased Thalluri Sambasiva Rao deceased No. 2 who tried to escape from the scene of occurrence when A-6, A-10, A-11 and A-12 attacked deceased no.2 with axe, spears and crow bars. As a result of multiple injuries suffered by deceased No. 2 upon his body, he died in the bathroom of the house of deceased No.1. The whole incident was witnessed by P.Ws. 1, 2 and 3. On seeing the accused persons mercilessly attacking and assaulting deceased No. 1 and deceased No. 2 with dangerous weapons, both P.Ws-2 and 3 got frightened and they escaped from the scene of occurrence by jumping over the wall of the house. A-4, A-5, A-7, A-8 and A-9 in the process damaged the doors, window glass panes of the house, motorcycle, television, etc. of deceased no.1. All the accused thereafter left the scene of occurrence.

8. On receiving the information about the incident, P. Maqbool Khan (PW-11) Sub-Inspector of Thulluru Police Station, rushed to the scene of occurrence and noticed the dead bodies of deceased No. 1 and deceased No. 2 lying in the house of deceased No.1. He recorded the statement of P.W. 1 at about 9:00 p.m (Exhibit P-1). On the basis of Exhibit P.1, PW-8 \026 Head Cosntable P. Mallikarjuna Rao of Thulluru Police Station registered First Information Report (F.I.R.) in Crime No. 63/1996 under Exhibit P-5. Thereafter, K. Babu Rao (PW-13), Circle Inspector of Police, took up investigation and conducted Panchnama (Exhibit P-2) of the scene of occurrence in the presence of B. Subba Rao (PW-5), held inquest over the dead bodies of both the deceased in the presence of M. Subba Rao (PW-6) and Puli Sambayya (PW-7) and prepared a joint Inquest Report (Exhibit P-4). Then, P.W. 13 got the scene of occurrence photographed through J. Rambabu (PW-9). On receipt of requisition from the Police on 19th July, 1996, Dr. K.

Mahipal Reddy (PW-12) held autopsy over the dead bodies of deceased nos. 1 and 2 and issued post mortem certificates [Exhibits P9 and P10] respectively. He opined that both the deceased appeared to have died due to multiple injuries. On 6th August, 1996 at about 8:00 a.m. P.W. 11 arrested A-7, A-8 and A-9. On 23rd August, 1996, he arrested A-2 and A-11 whereas A-1, A-3, A-4, A-6 and A-10 were arrested by PW-11 on 8th September, 1996.

9. After completion of the investigation and after receipt of the post mortem report, charge sheet was filed against the accused persons in the Court of Additional Munsif Magistrate, Mangalagiri. Additional Munsif Magistrate committed trial to the learned Sessions Judge, Guntur who, in turn, made over the trial of the case to the court of 2nd Additional Sessions Judge, Guntur. The learned Additional Sessions Judge, Guntur framed charges under Section 148 IPC against A-1, A-2, A-4 to A-12 and under Section 449 of IPC against A-6, A-10 to A-12 and under Section 302 read with Section 149 IPC against A-4, A-5, A-7 to A-9. All the accused persons pleaded not guilty to the charges and claimed to be tried. Subsequently, the trial of the case was transferred to VII Additional Sessions Judge, Guntur.

10. The prosecution in support of its case examined as many as 13 witnesses. In their statements recorded under Section 313 of the Code of Criminal Procedure [for short 'Cr.P.C'], the accused denied their involvement in the crime and pleaded false implication on suspension. In defence, the accused have examined Thummala Veeraiah Chowdary (D.W.1), Machiraju Koti Surya Prakasharao (D.W. 2), Yethirajula Srinivasarao (D.W.3) and Garji Rambabu (D.W. 4). The trial court, on scrutiny of the evidence on record, held the accused guilty of the aforesaid offences and, accordingly, convicted and sentenced them.

11. Being aggrieved, the accused filed the appeal under Section 374 Cr.P.C. before the High Court and the High Court, confirmed the conviction and sentence imposed upon A-1, A-2, A-10, A-11 and A-12 by the trial court. The High Court, however, has acquitted A-4, A-5, A-6, A-7, A-8 and A-9 of all the charges levelled against them. Now, A-1, A-2, A-10, A-11 and A-12 are appellants before us in appeal.

12. We have heard the learned counsel for the parties and with their assistance examined the judgment of the High Court and re-appraised the entire material evidence placed on record. Mr. P.S. Patwalia, learned senior Advocate appearing on behalf of A-1, A-2, A-9, A-11 and A-12, assailed the judgment of the High Court inter alia contending :-

(i) that the High Court erred in not considering the fact that there is unconscionable delay of 16 hours in sending the FIR (Ex. P5) to the Magistrate especially when the Police had taken the statement of PW-1 at 7.30 p.m. itself regarding the commission of the offences on the basis of which the FIR was recorded at 9.00 p.m. in the Police Station. According to him, the unexplained delay in sending the FIR to the Magistrate created a serious doubt about the correctness and truthfulness of the prosecution case. He emphasized that the FIR on the face of it indicates that the same was prepared after due deliberation and consultation between PW-1, and other interested witnesses in connivance of the police. He submitted that if FIR was in existence at 11:00 p.m. on 18.07.1996 in which the

names of A-8 and A-9 were mentioned as assailants, they could have been arrested by the Investigating Officer on the spot itself as the evidence shows that they were present at the scene of occurrence when police reached the place and this circumstance would also prove that the FIR was a tainted, anti-timed and anti-dated document prepared by the police around 3:00 p.m. on 19.07.1996.

(ii) that the testimony of PW-1, wife of deceased No.1 is wholly unreliable, unbelievable and inherently improbable and has been wrongly believed by the Courts below. If she was shocked into silence at the time of incident of murder it could not have been possible for her in the normal course to have given precise details of the injuries being inflicted by each of the accused with a particular weapon on different parts of the body of deceased No. 1. According to the learned counsel, PW -1 is not an eye witness to the incident of murder and she has been projected later on by the Investigating Officer after receipt of the injuries statements from the doctor who conducted the post mortem over the dead bodies of both the deceased, otherwise PW-1 could not have accurately detailed the precise injuries on the body of deceased No.1 in her statement (Ex. P1)

(iii) that the High Court has disbelieved the testimony of PW-3 in regard to the presence of A-4 to A-9 at the scene of occurrence and their participation in the commission of crime and, therefore, they were given benefit of doubt. The conviction of A-1, A-2, A-10, A-11 and A-12 relying upon the same set of evidence of P.W. 3 being one of the accused in FIR No. 64/1996 for the murder of A-6, therefore, is not proper and sustainable as PW-3 is positively an interested witness to frame the appellants in a false case.

13. Mr. R. Sundaravardhan, learned senior counsel for the respondent-State on the other hand contended that the reasons given by the trial court as well as by the High Court for recording the order of conviction of the appellants are based upon proper appreciation of evidence led by the prosecution in the case. According to the learned counsel, the courts below have accepted the explanation of the prosecution for causing delay in submitting the FIR to the Magistrate and therefore, this Court shall not be obliged to disturb the finding of facts recorded by Courts below. He then submitted that merely because P.W. 1 and P.W. 3 the two eye witnesses are relative and friend respectively of deceased no.1, their testimony cannot be disbelieved and discarded on this premise only as their evidence corroborated by other evidence is cogent, clear and satisfactory with the hypothesis of the guilt of the appellants and this Court should be slow to interfere in the well-reasoned and well-merited judgments of the courts below.

14. We have given our anxious consideration to the rival contentions of the learned counsel for the parties. The arguments put forward by Mr. Patwalia although are extremely attractive, yet we find ourselves unable to agree with the same. It is no doubt true that FIR (Ex. P5) came to be recorded at 11:00 a.m. on 18.07.1996 in the Police Station by Head Constable P. Mallikajunarao (PW-8), who was posted at the relevant time at Police Station, Thulluru. The incident of murder of deceased No. 1 and deceased No. 2 took place at 7:30 p.m. on 18.07.1996 as per Complaint (Ex. P1) made by

PW-1 to Sub-Inspector Maqbool Khan (PW-11), which was sent to Police Station, Thulluru, through PC No.2896 for registration of the FIR. It has come in the cross-examination of PW-8 that the distance between Police Station, Thulluru, and Mangalagiri where the Magistrate holds court is about 20 kms. PW-8 categorically stated that FIR (Ex. P5) was registered by him at 11:00 p.m. on 18.07.1996 and even if the copy of the FIR was to be sent to the Magistrate during the mid-night, it was not possible for the Police Constable to take the FIR and deliver the same to the Magistrate at Mangalagiri on the intervening night of 18/19.07.1996 as there was no bus service available during the night time between the two places. The trial court in its judgment observed that the FIR was received by the Magistrate at 4.00 p.m. on 19.07.1996. The trial court has noticed but not accepted the contention of the learned counsel for the accused persons that in these circumstances the statement of PW-1 (Ex. P1) might have been recorded at 3.00 p.m. on 19.07.1996 at village Uddandayunipalem and from the village itself the statement might have been sent to Mangalagiri in a police vehicle and therefore, the same was received by the Magistrate at 4.00 p.m. on 19.07.1996. We have independently scrutinized the evidence of PW-1 and PW-11, the Investigating Officer. It is their clear and consistent testimony that statement (Ex. P1) was recorded at 9.00 p.m. on the night of 18.07.1996 after the incident of murder had occurred at 7.30 p.m. It is undisputed fact that one Ramamohanarao, son of A-6, was murdered on the same evening at about 6.00 or 6.30 p.m. at the outskirts of village Uddandayunipalem. It is the evidence of PW-11, Sub-Inspector of Police, that about 7.15 p.m. M. Venkatarao informed him that his rival group of men armed with deadly weapons was moving towards their village and on receiving the information he along with other police personnel had immediately proceeded to village Uddandayunipalem in a private jeep for maintaining law and order. PW, Head Constable, in cross-examination, corroborated the version of PW, Sub-Inspector of Police, that on 18.07.1996 around 7.15 p.m. on receipt of the information in regard to some incident of violence in the village, P.W. 11 along with five staff members left the Police Station for maintaining law and order in the village. PW-8 sent FIR (Ex. P5) to the Magistrate through PC No.2896 who brought statement of PW-1 [Ex. P-1] at 11:00 p.m. to the Police Station. PW-13, Circle Inspector of Police, stated that on the mid night of 18/19.07.1996 at about 00.15 hours he received a copy of express FIR through PC No.2896 disclosing the incidents of murder of three persons in village Uddandayunipalem. The endorsement made on FIR (Ex. P5) by the Magistrate on its bare perusal would reveal that he received a copy of the F.I.R. through PC No.1293 and not through PC No.2896 as deposed by P.W. 8. It appears from the record that PC No.2896 handed over a copy of express FIR to PW-13, Circle Inspector of Police, at village Uddandayunipalem at 00.15 hours on the intervening night of 18/19.07.1996 and then constable PC No.1293 might have been deputed to deliver the FIR (Ex. P5) to the Magistrate at Mangalagiri. The trial court in its judgment observed that keeping in view the serious and tense situation in the village because of the murder of three persons on the same evening, the entire staff of Police Station was deputed to maintain law and order problem there. Out of the victims, one was the son of A-6, ex-Sarpanch of the village, whereas deceased No.1 was the sitting Sarpanch of the same village. Taking these circumstances into consideration, the trial court held that there was no delay in lodging the FIR with the police and delay in sending a copy of the FIR to the Magistrate was a result of

shortage of police personnel who could not be deputed to deliver the same to the Magistrate during the night of 18.07.1996 or in the early hours of 19.07.1996. The High Court has re-examined the evidence on record and held that the delay in sending FIR to the Magistrate was not deliberate or intentional, but because of some technical errors committed by the Investigating Officer during the course of investigation of the case which could not be found fatal to the case of the prosecution, especially when the Investigation Officer was not cross-examined on this point.

15. Mr. Patwalia, in support of the submission that the FIR (Ex. P5) was anti-timed and anti-dated and delay of 16 hours in sending the FIR to the Magistrate would cast a serious doubt of its correctness, has relied upon the decisions of this Court in *Thulia Kali v. The State of Tamil Nadu* [(1972) 3 SCC 393]; *Arjun Marik & Ors. v. State of Bihar* [(1994) Supp. (2) SCC 372]; *Meharaj Singh (L/Nk.) v. State of U. P.* [(1994) 5 SCC 188]; *Thanedar Singh v. State of M. P.* [(2002) 1 SCC 487] and *Kunju Muhammed Alias Khumani & Anr. v. State of Kerala* [(2004) 9 SCC 193].

16. It is not in dispute that this Court in series of judgments has repeatedly and consistently emphasized that First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the time of trial. The importance of the report can hardly be over-estimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence and requirement of sending the FIR to the Magistrate forthwith is to enable the Magistrate concerned to have a watch on the progress of the investigation. In *Thulia Kali v. State of Tamil Nadu* (supra), it is held that delay in lodging the First Information Report often results in embellishment which is a creature of after-thought. On account of delay the report not only gets benefits of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account of connected story as a result of deliberation and consultation. It is held that in order to avoid all criticisms of the defence, it is therefore essential that the delay in lodging of the First Information Report should be satisfactorily explained.

17. In *Arjun Marik & Ors. v. State of Bihar* (supra), this Court held that Section 157 of Cr.P.C. mandates that if, from information received or otherwise, an officer in charge of Police Station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157, Cr.P.C. thus, in other words, directs the sending of the report forthwith, i.e. without any delay and immediately. Further, Section 159 Cr. P.C. envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in Section 157,

which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 Cr.P.C. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.

18. In Meharaj Singh (L/Nk.) v. State of U. P. (supra), this Court held that delay in sending special report to the Magistrate or failure to send copy of the FIR to the Medical Officer along with dead body for post mortem and absence of its reference in inquest report can give rise to an inference that the FIR had been anti-timed and had not been recorded till the inquest proceedings were over at the spot by the Investigating Officer.

19. Again in Thanedar Singh v. State of M. P. (supra), this Court held on facts that failure of the prosecution to clear doubt regarding the date and time of recording of the FIR and delay in sending FIR to Magistrate cast a serious doubt on the correctness of the FIR.

20. In Kunju Muhammed Alias Khumani & Anr. v. State of Kerala [(2004) 9 SCC 193], this Court reiterated that the delay in sending the FIR to the Magistrate without giving satisfactory explanation creates a serious doubt about the prosecution case. In that case it was found: (a) the statement of PW-1 that the complaint was signed on the mid night of 3.11.1991; (b) FIR reaching the Jurisdictional Magistrate more than 36 hours after the incident in question though the court is situated in the same town; (c) the evidence of the doctor as to the presence of rigor mortis on the body of the deceased indicating death must have occurred much earlier than 8.15 to 8.30 a.m. on 03.11.1991 and (d) recording in the inquest report (Ex. P6) that the body of the deceased when examined was found to be cold and frozen. In the circumstances noticed above, the Court held that, delay of more than 36 hours in sending the FIR to the Magistrate created a serious doubt about the prosecution case and had found the accused persons entitled for benefit of doubt.

21. We have earlier pointed out that in the present case there was a delay of about 16 hours in sending the FIR (Ex. P5) to the Magistrate, but the explanation as recorded by the trial court that the majority of the police personnel were deputed in village Uddandarayunipalem for maintaining the law and order situation which was too tense in view of the murder of three men of the village on the same evening, we do not find any cogent and convincing reason for doubting the correctness and truthfulness of the FIR which was promptly lodged in the Police Station at 9:00 p.m. in relation to the murder of deceased No.1 and deceased No.2 at about 7:30 p.m. The Investigating Officer in cross-examination denied the suggestion of the defence that Ex. P1 was brought into existence around 2:35 p.m. or 3:00 p.m. on the next day, i.e. 19.07.1996, after a good deal of consultations and confabulations with the leaders of rival group of the accused and particularly after observing the injuries on the dead body of deceased No. 1. He categorically stated that he recorded the statement (Ex. P1) made by PW-1 between 9:00 p.m. to 10:00 p.m. on 18.07.1996 and on completion thereof, the same was sent through P.C. No. 2896 to the Police Station for registration of the FIR and after registration on the same

constable brought the copy of the FIR to the scene of occurrence at about 12:00 mid night and thereafter PW-11 took up further investigation of the case. A suggestion of the defence that his superiors also aided in fabrication of Ex. P1 and under their instructions he had not only anti-timed but also anti-dated the FIR and planted witnesses and having done so he deposed falsely against the accused persons, has categorically been denied by him.

22. The evidence of PW-1 was attacked by A-1, A-2, A-3, A-10, A-11 and A-12 on the ground that her presence at the relevant time on the spot on the day of occurrence was doubtful as in the morning she had gone to the house of her daughter at Vijayawada and was summoned after the incident of murder for making the statement (Ex.P1) on the basis of which FIR came to be registered. We have independently scrutinized the evidence of PW-1, wife of deceased No.1. It is her clear and consistent evidence that on 18.07.1996 at about 7:30 p.m. while she was standing at the verandah of her house and her husband along with Talluri Sambasivarao (deceased No.2), M. Srihari (P.W. 2), B. Satyanarayana (P.W. 3) and some more persons were chit-chatting in front of their house, she saw about 40 persons armed with dangerous weapons rushing to their house and on seeing them, P.W. 3 asked her and her husband Venkatarao to conceal themselves inside the house otherwise they would be killed by the rival group men. According to her, A-1, A-2, A-4 to A-12 along with A-3 came to the verandah of their house and after breaking open the doors, they caused damage to the T.V. and other articles lying in the rooms. A-3 was armed with crow-bar, A-1 was armed with knife, A-2 was having an axe in his hand. They entered into their bedroom through the bottom portion of the door. When her husband was standing at the corner of the bedroom, she requested A-1 to A-3 not to harm her husband. A-1 pulled her aside and A-3 stabbed her husband thrice with the crow-bar. A-2 assaulted him on the right arm. When her husband fell down on the floor, A-1 to A-3 indiscriminately inflicted more injuries on his body. Thereafter, her mother-in-law knocked at the door of the house and on opening the door she was informed by her mother-in-law that A-6, A-10, A-11 and A-12 had murdered Talluri Sambasivarao (deceased No.2) in their bathroom with crow-bars and axes. The trial court as also the High Court both have accepted the evidence of PW-1 in its entirety without any suspicion and embellishment. The deceased No.1 sustained as many as 26 injuries on his body as noticed by Dr. K. Mahipal Reddy (PW-12) in post mortem certificate (Ex. P10). The cause of death of deceased No.1 in the opinion of the doctor was due to multiple injuries sustained by him with sharp-edged weapon. Ex. P1, which was the earliest version of the incident of murder narrated by PW-1 to the police would reveal that she had categorically named A-1, A-2, A-3 (A-3 died during the pendency of the trial), A-10, A-11 and A-12 as assailants who mercilessly inflicted multiple injuries on almost every part of the body of her husband with lethal weapons resulting in his death. The evidence of PW-1 finds corroboration from the medical evidence. Despite lengthy cross-examination, nothing has been elicited to discredit and discard her testimony, which has remained unshattered and consistent. A suggestion of the defence that A-10 was unable to walk without assistance of any person as he, at the relevant time, was aged about 70 years, has been denied by her. She categorically reasserted that firstly A-1 to A-3 encircled her husband and then A-1 assaulted him thrice with knife, while A-2 assaulted him on the right fore-arm with an axe and again A-1 and A-3 one after

the other inflicted more severe injuries on the body of her husband with the weapons they were holding in their hands. A series of suggestions were put to her by the defence: (a) that on the morning of the day of the incident of murder of her husband she had gone to Vijayawada to look after her daughter Vasavi who was sick, (b) she was not present in the village and that about 10:00 p.m. or 11:00 p.m. she was called from Vijayawada, (c) after due deliberation and consultation among her well-wishers and relatives, she got complaint (Ex. P1) fabricated at about 2 0' clock in the intervening night of 18/19.07.1996, (d) the contents of Ex. P1 were not stated by her and she only subscribed her signatures thereon and (e) the police also contributed their role in fabricating her statement (Ex. P1) have emphatically and categorically been denied by her. She, however, admitted that A-6 is a leader of one group in her village, but she denied that on account of ill-feelings between two rival groups of the people in the village, a false case was foisted against the appellants by her. She also denied the further suggestion that none of the appellants was responsible for causing death of her husband or the death of Sambasivarao, deceased no.2.

23. The testimony of this witness has been corroborated by PW-3, another eye-witness of the occurrence and PW-11, the Investigating Officer. The presence of PW-3 on the scene of murder has fully been established. It is the evidence of PW-3 that on 18.07.1996 at about 7.30 p.m. he along with PW-2, deceased No.2 and few more people was present in the house of deceased No. 1 and when they were chit-chatting in front of the house, all the accused persons armed with crow-bars, spears, axes and knives rushed to the house of deceased No.1 and on seeing them, he advised deceased No.1 and his wife PW-1 to conceal themselves inside their house as he apprehended some danger to the life of deceased No. 1. PW-1 and deceased No. 1 went inside their house and bolted the door from inside. He saw that out of twelve accused persons half of them had surrounded the house of deceased No.1 and the remaining accused chased deceased No.2, who was running to his house, which is at a distance of 10 yards from the house of deceased No.1. He saw A-6, A-10, A-11 and A-12 breaking open the door of the bathroom of deceased No. 1 where they killed deceased No.2 with crow-bars, axes and spears. In his presence, the police conducted inquest over the dead body of both the deceased persons. The High Court found that deceased No.2 sustained more than 22 injuries on his body as noticed by doctor in post mortem certificate (Ex. P9). According to the opinion of the doctor, the cause of death of deceased No.2 was due to multiple injuries. The High Court has given the details of the injuries sustained by both the deceased at pages 8 to 14 of the judgment. We do not think it necessary to reproduce the details of those injuries again in this judgment for unnecessarily burdening the record as the death of both the deceased due to the injuries sustained by them on their bodies is not in dispute. PW-3 also stated that inquest on the dead bodies of deceased No. 1 and deceased No. 2 was conducted by the police in his presence. In spite of lengthy cross-examination, his testimony has not been shattered or impeached by the defence. A suggestion of the defence that for the past four days from the date of recording of his statement in the court, he was tutored to give evidence against the accused persons has categorically been denied by him. He has admitted that he was framed as an accused in the murder of the son of A-6.

24. PW-2 in his deposition stated that at about 7.30 p.m.

on 18.07.1996 he along with PW-3, deceased No.1, deceased No.2 and some persons were chit-chatting in front of the house of deceased No.1. PW-1, wife of deceased No.1, was sitting on a cot in the verandah. At that time, a group of men had gathered on the road side raising slogans near the house of deceased No. 1. PW-3 requested deceased No. 1 and his wife PW-1 to conceal themselves inside the house. They both went inside the house and bolted the door of their house from inside. On seeing the accused persons armed with dangerous weapons, he along with PW-3 made good their escape from the scene of occurrence by jumping over the northern side compound wall of the house of deceased No.1. On coming to know about the arrival of police, he went to the house of deceased No.1 and found deceased No. 1 and deceased No.2 lying dead in a pool of blood. The inquest report of the dead bodies of deceased No.1 and deceased No.2 was conducted and prepared by the Investigating Officer in his presence.

25. The evidence of PWs-6 and 7 would go to show that they were present on 19.07.1996 at about 3.00 a.m. when the police conducted inquest on the dead body of deceased No.1 under Ex. P3 and on the same day at about 5.30 a.m., inquest on the dead body of deceased No.2 was conducted under Ex. P4. Both these witnesses are mediators. They stated that deceased No.1 and deceased No.2 died as a result of fatal injuries sustained by them. Both these witnesses have categorically stated about the descriptive particulars of the scene of occurrence at the house of deceased No. 1.

26. D. Sivanagendramma (PW-4) is the wife of deceased No.2. It is her evidence that on receiving the information of her husband's death, she went to the house of deceased No.1 where she spotted her husband lying in a pool of blood in the bathroom. Nothing substantial has been elicited from her cross-examination by the defence to disbelieve and discredit her evidence.

27. PW-11 is the Investigating Officer. It is his evidence that on 18.07.1996 around 7:15 p.m. he was informed on telephone by M. Venkatarao (deceased No. 1), the then Sarpanch of village Uddandarayunipalayem that a group of men raising slogans and carrying dangerous weapons in their hands was moving towards his house with clear intention to commit offence and requesting the police to come to the village to defuse the tense situation. He, in turn, informed the Inspector of Police, Amaravathi, through VHF and himself alongwith staff members proceeded to the village to maintain law and order problem. The Inspector of Police, Amaravathi, later on came to the village. When he reached at the house of M. Venkatarao, he found his dead body lying in a room and also spotted the dead body of deceased No.2 in the bath room of the house of deceased No.1. On receiving necessary instructions from Inspector of Police, P.W. 11 recorded the statement (Ex. P-1) of P.W. 1 at about 9.00 p.m. and obtained her signatures thereon. He sent the said statement through PC No.2896 to Police Station, Thulluru, and instructed PW-8, who was in charge of Police Station, to register the case. He handed over the investigation to the Inspector of Police. He arrested some of the accused persons on different dates. On examination of the evidence of this witness, it stands proved that he read over the statement (Ex. P1) to PW-1, who admitted the contents thereof to be correct.

28. The High Court, on re-examination and re-appraisal of the evidence of PW-3, PW-11 and other evidence on record, held that the presence of A-4 to A-9 on the scene of occurrence

has not been proved by the prosecution by leading cogent, satisfactory and convincing evidence to prove that the said accused persons were the members of unlawful assembly and shared common object with the other accused with an intention to eliminate deceased No. 1 and deceased No.2. The evidence of P.W. 10 the then SDPO, Guntur, who partly conducted the investigation of the case, would prove that on the day of incident of murder, A-5 attended to the work of general laboratory of Water Treatment Unit of VTPS situated at a distance of 40 kms. from the scene of occurrence. His evidence would also disclose that A-5 was present in the Thermal Power Station from 4.30 p.m. to 8.30 p.m. on the day of occurrence which, according to the prosecution, took place at about 7.30 p.m. In these circumstances, the possibility of A-5 participating in the commission of the crime has been rightly ruled out by the High Court. We find not an iota of evidence on record to prove that A-7 and A-8 had shared the common intention to eliminate deceased No.1 and deceased No.2. Nothing has been brought on record to show that they were inimical against deceased No.1 and deceased No.2 so as to cause their death. The evidence against A-5 to A-9 was not satisfactory and convincing to connect them both the commission of the crime and, therefore, we have no hesitation to accept the reasoning recorded and finding arrived at by the High Court in acquitting A-4 to A-9 by giving them benefit of doubt.

29. It is by now well-settled that mere relationship of the witnesses cannot be the sole basis to discard or disbelieve their evidence if it is otherwise found to be believable and trustworthy. However, when the Court has to appreciate the evidence of any interested witness it has to be very careful in weighing their evidence. In other words, the evidence of an interested witness requires greater care and caution while scrutinizing his evidence. The Court has to address to itself whether there are any infirmities in the evidence of such a witness; whether the evidence is reliable and trustworthy and whether the genesis of the crime unfolded by such an incident is probable or not. If the evidence of any interested witness or a relative on a careful scrutiny is found to be consistent and trustworthy, free from infirmities or any embellishment there is no reason not to place reliance on the same (see *Arjun Marik & Ors. v. State of Bihar* [(1994) Supp. (2) SCC 372]).

30. In *Mehraj Singh v. State of U. P.* (supra), this Court held that testimony of interested witness cannot be rejected on the sole ground of interestedness but should be subjected to close scrutiny.

31. In *Anil Sharma & Ors. v. State of Jharkhand* [(2004) 5 SCC 679], this Court reiterated and re-emphasised that the testimony of related witness, if after deep scrutiny found to be otherwise truthful and credible, cannot be discarded on the sole ground of interested witnesses. Again, in *Bhimappa Chandappa Hosamani & Ors. v. State of Karnataka* [(2006) 11 SCC 323], it has been held that credibility of the witness is to be tested by reference to the quality of his evidence which must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on that basis.

32. In a recent decision, this Court in *S. Sudershan Reddy & Ors. v. State of A. P.* [(2006) 10 SCC 163] held that relationship is not a factor to affect the credibility of a witness.

It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible.

33. Again this Court in *Salim Sahab v. State of M. P.* [(2007) 1 SCC 699] held that mere relationship is not a factor to affect credibility of a witness. To the same effect are the decisions in *State of Punjab v. Jagir Singh* [(1974) 3 SCC 277], *Lehna v. State of Haryana* [(2002) 3 SCC 76] and *Gangadhar Behera v. State of Orissa* [(2002) 8 SCC 381].

34. The High Court no doubt has disbelieved some portion of the evidence of P.W. 3 in regard to the presence of A-4 to A-9 at the scene of occurrence on the grounds that A-5 was present in the Thermal Power Station from 4.30 p.m. to 8.30 p.m. on the day of occurrence, therefore the possibility of A-5 participating in the commission of the offence could not be ruled out. The High Court has found no evidence against A-7 and A-8 on record to hold them guilty for the murder of deceased No.1 and deceased No.2. It is well-settled that the Court can rely upon that part of the statement of the witness which is cogent, trustworthy, consistent and believable for the purpose of holding the accused guilty of the offence. Simply because the name of P.W. 3 finds mentioned in FIR for the murder of son of A-6, the cogent and credible testimony of PW-3 holding A-1, A-2, A-10, A-11 and A-12 responsible for the murder of deceased No.2 cannot be lost sight of on that ground alone. The presence of PW-3 on the scene of occurrence has been fully established by the evidence of PW-1 and PW-2 and his name also finds mentioned as an eye witness in the FIR which was lodged by P.W. 1 immediately after the incident of murder. The High Court has found a portion of the evidence of P.W. 3 deficient in regard to the involvement of A-1, A-2, A-10, A-11 and A-12 for committing the offences levelled against them and accordingly given them benefit of doubt. It is settled that even if a major portion of the evidence is found to be deficient, in case the residue is sufficient to prove guilt of an accused, conviction can be maintained. It is the duty of the court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence of some of the witnesses has been found to be deficient. Falsity of a particular material witness or material particular would not ruin it from the beginning to the end. The maxim "*falsus in uno falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars [see *S. Sudershan Reddy and Ors. v. State of A. P.* [(2006) 10 SCC 163].

35. Lastly, it was urged by Mr. Patwalia that the case of B. Seshiah (A-10) is an extremely hard case, who is now aged about 87 years and is suffering from Parkinson's disease Hypertension, Diabetes with severe Calcific AV Stenosis, Mild AR, Moderate MR and Anemia of some degree. This apart, A-10 has already undergone jail suffering for about three years and, therefore, taking all these factors into consideration, his sentence may be reduced to the period already undergone by him. We are afraid to accept this submission of the learned counsel, because A-10 has been held guilty for being a member of unlawful assembly and sharing common intention with A-1, A-2, A-10, A-11 and A-12 to commit the murder of deceased No.2.

36. Having given our careful consideration to the submissions made by the learned counsel for the parties and

in the light of the evidence discussed hereinabove and tested in the light of the principles of law highlighted above, it must be held that the evaluation of the findings recorded by the High Court do not suffer from any manifest error and mis-appreciation of evidence on record. Hence, we agree with the finding of the High Court that the A-1, A-2, A-10, A-11 and A-12 are the real culprits and their conviction and sentences for the offences punishable under Section 302 read with Section 149, Section 302 and Section 449 of the IPC are wholly sustainable and justifiable.

37. In the result, there is no merit in this appeal and it is, accordingly, dismissed.

38. B. Sessaiah (A-10) is on bail pursuant to the order of this Court passed on 30.10.2006. His bail bonds are cancelled and surety is discharged. He is directed to surrender before the trial court within one month from the date of this order. The learned trial court shall remand him to jail for serving out the remainder part of the sentences. On failure of B. Sessaiah to appear before the trial court within the stipulated period, the learned trial court shall take appropriate steps against A-10 in accordance with law.