

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Appeal No. 567 OF 2010**

Between:

Tallapalli Subba Rao & 2 others

... Appellants

And

The State of Andhra Pradesh  
Through Circle Inspector of Police,  
Kasipet, Rep. by Public Prosecutor,  
High Court of Andhra Pradesh,  
Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 24.07.2023

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

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| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments?   | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals       | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

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*K.SURENDER, J*

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ CRL.A. No. 567 of 2010**

% Dated 24.07.2023

# Tallapali Subba Rao & 2 others ...  
Appellants

And

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Through Circle Inspector of Police,  
Kasipet, Rep. by Public Prosecutor,  
High Court of Andhra Pradesh,  
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Respondent

**! Counsel for the Appellant:** Sri Pettam Rajaiah

**^ Counsel for the Respondent:** Sri Public Prosecutor

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.567 OF 2010****JUDGMENT:**

1. The appellants are questioning the conviction for the offence under Section 304-Part I of IPC and being sentenced to undergo rigorous imprisonment for a period of seven years and also to pay fine of Rs.1,000/- each vide judgment in S.C.No.460 of 2009, dated 19.03.2010.

2. Briefly, the case of the prosecution is that the deceased is brother-in-law of A1 and A2, A3 is the father-in-law of deceased. Sister (P.W.3) of A1 and A2 was given in marriage to the deceased. P.W.3 did not conceive. The deceased again married another woman. On the date of incident, P.W.3 was beaten by the deceased forcing her to come and live with him. P.W.3 had deserted him as the deceased performed second marriage, according to the prosecution.

3. The incident happened on 25.05.2007 at 8.00 p.m. P.W.3, who is the 1<sup>st</sup> wife of deceased went to Komatichenu Beedi leaves Khallam. On knowing such information, the deceased went there and forced her to come back to live with him. Though the villagers

intervened, the deceased dragged her to his house. The villagers informed the accused about the deceased beating P.W.3. A1 came to the village with a knife and A2 and A3 were holding chains. A1 stabbed deceased on his chest. On the way to the hospital, the deceased died.

4. The deceased died at 10.00 p.m at Government Hospital, Mancherial.

5. P.W.2 (eye witness) informed to P.W.1 who is her husband about the incident. On the next day, P.W.1 went to the police station and filed complaint at 8.00 a.m, which was marked as Ex.P1.

6. Learned Sessions Judge having examined P.Ws.1 to 21, mainly relied on the evidence of eye witness/P.W.2 to record conviction.

7. Learned counsel appearing for the appellants would submit that the learned Sessions Judge has committed an error recording conviction on the basis of assumptions and presumptions. P.Ws.1 and 4 speak about the incident but they were not eye witnesses. All other witnesses turned hostile to the prosecution case. Learned Sessions Judge found on the basis of suggestions made to the

witnesses, amounts to admission regarding participation of the accused in the crime. Further, the learned Sessions Judge found that the accused may have rushed to the house of the deceased to save her and due to heated discussion; the accused might have lost control and attacked the deceased. Such assumptions cannot be made basis to convict in a criminal trial. In fact, the burden is on the prosecution to prove its case beyond reasonable doubt.

8. On the other hand, learned Public Prosecutor would submit that MO3 knife was recovered at the instance of A1. P.W.2's evidence is convincing and it cannot be said that she was speaking false for the reason of the deceased being her brother-in-law and brother of P.W.1. Since eye witness account is believable, the conviction cannot be set aside.

9. As seen from the record, the incident happened on 25.05.2007 at 8.00 p.m. While the deceased was being taken to the Government Hospital, Mancherial, he died at 10.00 p.m. Though the deceased was taken to the hospital within an hour after the incident happened, however, no police complaint was filed. Even the incident was not reported to the out post in the General Hospital. According to P.W.1, he received telephonic information from P.W.2. If P.W.2 was able to make phone call to P.W.1, there

are no reasons given by the prosecution as to why she has not called the police. There are no reasons given to as to why none of the villagers have called the police or have gone to the police station, though the deceased was taken to the hospital.

10. Learned Public Prosecutor would explain that the police station is at a distance of 7 kms from the village, for which reason, no one had gone to the police station. The said version cannot be believed. When the deceased was taken to the Government Hospital in Mancherial town, which is at a distance of more than 2 kms, the explanation given for the delay is not convincing. The incident was reported to the police with a delay of 12 hours. The explanation that the police station is at a distance of 7 kms away is not acceptable in the present facts of the case. P.Ws.1 and 4 are the witnesses who speak about the incident on the basis of the narration given by P.W.2. P.W.2 is the only eye witness to the incident. All the other witnesses have turned hostile to the prosecution case. P.W.1 and P.W.4's evidence is of no consequence since it is hearsay in nature and on the basis of the information given by P.W.2, the witnesses have spoken before the Court.

11. It has to be seen whether the evidence of P.W.2 is convincing. She is a resident of Srirampur village. Though P.W.2 claims that

she has immediately informed to P.W.1, P.W.1 arrived only on the next day. Further, P.W.2 says that she has intervened in the altercation while the accused were attacking the deceased. In the course of cross-examination, she says that she was pushed aside and she fell on the ground. Her blouse was torn. The said evidence appears to have been made up since the presence of P.W.2 cannot be believed. If at all P.W.2 had called P.W.1, P.W.1 would have immediately come to the village since it is only at a distance of 9 ½ kms or called the police. It is apparent that P.Ws.1 and 2 having arrived at the hospital on the next day, had come up with the complaint and the name of P.W.2 was shown as eye witness to the incident. The conduct of P.W.1 P.W.2 and P.W.4 though conversed on phone but not informing the police on the day of incident casts any amount of doubt regarding their version. They waited for 12 hours before lodging the complaint. Though the deceased was taken to hospital, no efforts were made to inform the police by the villagers. The prosecution case is unconvincing and improbable and P.W.2 is a planted witness. For the said reasons, benefit of doubt is extended to the appellants.

12. In the result, judgment dated 19.03.2010 in S.C.No.460 of 2009 passed by the III Additional Sessions Judge (FTC) at Asifabad

is set aside. Appellants are acquitted. Since the appellants are on bail, their bail bonds shall stand cancelled.

13. Accordingly, the Criminal Appeal is allowed. Consequently, miscellaneous applications, if any, shall stand closed.

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**K.SURENDER, J**

Date: 24.07.2023

Note: LR copy to be marked.

B/o.kvs



**THE HON'BLE SRI JUSTICE K.SURENDER**

**CRIMINAL APPEAL No.567 OF 2010**

**Dt. 24.07.2023**

kvs