

Ramsetty Butchaiah and ors. Vs. State

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Court : Andhra Pradesh

Decided On : Feb-10-1967

Reported in : 1969CriLJ542

Judge : Anantanarayana Ayyar and ;Gopal Rao Ekbote, JJ.

Appellant : Ramsetty Butchaiah and ors.

Respondent : State

Judgement :

Gopal Rao Ekbote, J.

1. This is an appeal by the five accused against their conviction by the Prl. Sessions Judge, Hyderabad under the judgment dated 10th November, 1964.
2. The necessary facts in order to appreciate the contentions raised before us by the learned Advocate appearing for the accused may briefly be stated. Sri M. Lakshminarayana, an advocate of several years practice, owns 115 acres and 38 guntas of lands in Bogaram village known as Mattambavi and Nimmabavi lands. He is alleging that Ramisetti Mallayya and the members of his family have been cultivating these lands on lease. A-1 and A-2 are the sons of Ramisetti Mallayya while accused 3 is his brother, A-4 is the son of A-3 and A-5 is the son-in-law of Ramisetti Mallayya. Ramisetti Mallayya and the members of his family have been disputing the ownership of P.W. 3 and setting up their own title. Because of this

dispute, P.W. 3 instituted several proceedings. He filed an application before the Revenue divisional Officer, Hyderabad district for fixation of fair rent. He filed another application before the Tahsildar Medachal for recovery of some arrears of rent. He filed a suit before the Munsif Magistrate, Hyderabad East for damages alleging inter alia that the accused had cut some of the tamarind trees belonging to P.W. 3. The suit for damages had been decreed and at the time the trial started the appeal against the judgment was still pending.

3. P.W. 3 is about 70 years old and has been ailing since February, 1961. He therefore entrusted the management of his land at Bogaram to his wife's brother's son P. Viswanatham who was also an advocate. Viswanatham was also working as junior to P.W. 3 in the early days of his practice. In the litigation which was going on between P.W. 3 and the members of the accused's family, Viswanatham appeared on behalf of P.W. 3.

4. The accused and Ramiseti Mallayya were since the beginning keen on the settlement of the dispute. Several attempts were made in that behalf but they could not materialise.

5. P.W. 3 entered into an agreement (Exhibit P-1) dated 12.7.1962 with Beshayya (P.W. 1) for the sale of the entire lands at Bogaram village for a consideration of Rs. 15,000. P.W. 1 paid in all Rs. 12,000 in four instalments of Rs. 3000 each. The last payment was made on 12.7.1962. Exhibits P-2 to P-5 are the receipts for these instalments. According to this agreement (Exhibit P-1), the vendee seems to have purchased these lands with full knowledge of the pending litigation. The vendee agreed to bear all the expenses of the litigation. It was agreed that if the vendors did not succeed or get back possession or it was ultimately found that the vendors had no title to the lands, the vendee will not claim refund of the money or any part thereof which he paid since he was purchasing the property at his own risk. It was however agreed that in case the vendors succeeded in the litigation and got possession and possession is not handed over to the vendee by the vendors the vendee will be entitled to the refund of the whole or any part of the money which he had paid. It was further agreed that the vendee will be at liberty to compromise with the said Ramiseti Mallayya and others on any terms. The

vendors agreed to extend full co-operation to the vendee.

6. Ramiseti Mallayya and his eldest son Butchiah (A-1) were visiting the office of Viswanatham the deceased, in regard to the settlement of their dispute with P.W.

3. On 31.7.1964, both of them visited the house of Viswanatham and suggested that instead of talking about settlement at Hyderabad, it would be better if Viswanatham goes over to Bogaram in order to discuss and settle the disputes in the presence of elders. Viswanatham agreed to go over to Bogaram on 2nd August, 1964.

7. On 1.8.1964, when P.W. 1 Bashayya paid a visit to Viswanatham the deceased told him that Ramiseti Mallayya and his son had come and asked him to go over to Bogaram village on 2.8.1964 to settle the dispute and requested him to accompany him. P.W. 1 agreed.

8. On 2.8.1964, as agreed, P.W. 1 went to the house of Viswanatham at 8 A.M. on his motor cycle. Both of them started at about 10 A.M. for Bogaram which is 24 miles away from Hyderabad. They reached Bogaram at 11 A.M. They first went to the house of Mallareddy, the Police Patel (P.W. 6). He was however not in his house. They therefore went to the house of Narayanareddi, mali-patel. He was also not to be found in the house. They therefore went to the house of Kishtareddy (P.W. 4) who is the Sarpanch. He was at his house. A-1 also came to the house of P.W. 4.

9. P.W. 4 asked Viswanatham to sell the lands to him (A-1) and offered that he would purchase the same. Viswanatham showed his disinclination. He however offered 10 to 15 acres of land to Ramiseti Mallayya and the members of his family in order to finally settle the dispute. Thereupon A-1 asked Viswanatham to go over to the lands and show which lands he was willing to give. P.W. 1, left his motor cycle there and he, the deceased and A-1 started from the house of P.W. 4 to go to Mattambavi lands. They were joined by the 2nd accused when they had gone to a distance of about a furlong. These four persons thereafter proceeded further. Accused 3 to 5 joined these persons when they had reached Mattambavi lands. A-3 was having a sickle in his hand while A-5 had a stick. Viswanatham pointed out the lands which he wanted to offer to the accused and which were situated half a

furlong away from the Mattambavi well. A-1 declined to accept that land since it was dry land. He said they would consider if wetland was offered. Viswanatham was not willing to give them wet land. Since the prospects of selecting the lands were not quite bright, P.W. 1 and viswanatham decided to return. They were going ahead followed by the accused who were at a distance of 50 yards behind them. When the deceased and P.W. 1 were at a distance of about 20 to 25 feet to the south of the well, the accused joined them. The 1st accused fell upon the feet of P.W. 1 and the 5th accused fell at the feet of Viswanatham and beseeched them to settle the dispute and then go. Viswanatham said that they would talk over matter further in the village. Accused 1 and 5 thereafter left their legs and all of them started for the village.

10. They had hardly proceeded about 15 yards when A-5 came running bend down and caught hold of the legs of Viswanatham and pulled them. As Viswanatham was falling, A-2 came and caught hold of Viswanatham and then Viswanatham fell on his right side. A-1 pulled up both the hands of Viswanatham and held him down. A-5 was holding the right leg of Vishwanatham. A-2 gave a cut on the left side of the neck of Viswanatham with a sickle. Viswanatham began struggling. The 3rd accused came and held down the left leg of Viswanatham. Viswanatham was appealing to them 'kottakandi, champakandi. P.W. 1, who was standing at about 10 feet away, also implored. Hearing that, A-1 asked A-4. 'Do not let him go, catch hold of him tightly'. A-4 thereupon caught hold of P.W. 1. A-2 went on cutting Viswanatham on his neck indiscriminately. He also inflicted a blow on the left hand at the wrist of the deceased. Viswanatham stopped talking. Accused 1, 2, 3 and 5 lifted Viswanatham and carried the body to a distance of 10 feet, put it down and were coming towards P.W. 1 who was held by A-4. P.W. 1 struggled and escaped from the hands of A-4 and ran for his life towards the village which is said to be two furlongs away from the place where Viswanatham was attacked.

11. P.W. 1 went to the house of P.W. 4. The Sarpanch (P.W. 4) and the police patel (P.W. 6) were sitting and talking. P.W. 1 narrated to them that accused 1, 2, 3 and 5 have killed the Vakil Sab. P.W. 4 was taken on the motor cycle by P.W. 1 to the field where Viswanatham was lying. The accused, in the meanwhile, had run

away and were not seen there. P.W. 1 called out 'Vakil Sab, Vakil Sab'. Viswanatham, who was still alive shook his hand and then died. That was at about 5 or 6 minutes to 2 P.M. In the meanwhile, P.W. 6, the Police Patel came with the patwari, watchers and others.

12. P.W. 1 and the Sarpanch (P.W. 4) left Bogaram on motor cycle and came to Hyderabad. P.W. 1 told P.W. 3 of what all had happened. P.W. 1 leaving P.W. 4 at Mozamzahi Market then went to Shaliibanda where Viswanatham was staying. His son was told about the death of his lather, P.W. 1 then returned picked up P.W. 4 at Mozamzahi Market and both of them returned to Bogaram.

13. P.W. 6 the Police Patel, who, as stated above, had gone to the field where the dead body was lying kept a watch there, returned to Bogaram village and sent a report (Ext. P-8) to the Police Station at Chamirpet through P.W. 7, Venkiah, a Harijan. Chamirpet is 16 miles away from Bogaram village. Exhibit P-8 reached the police station at 7 P.M. The Sub Inspector (P.W. 12) registered the crime as No. 32 of 1964 under Section 302 I.P.C. and issued Exhibit P-36, the first information report.

14. On getting information from P.W. 1, P.W. 2, the clerk of the deceased and the sons of Lakshminarasayya went in a taxi to Bogaram. The Sub Inspector of Police also reached the place at 10 P.M. He went to the field where the dead body was lying.

15. P.W. 12 held inquest (Exhibit P-6). He seized the blood stained soil found at the place, sickle (M.O. 2), the stick (M.O. 1) as well as the blodstained shirt (M.O. 4) and bloodstained banian (M.O. 3) of the deceased under Exhibit P-7, panchnama.

16. After the inquest was over, the dead body was handed over to P.W. 8 by P.W. 12 along with a requisition (Ext. P-9) and he was asked to take it to Gandhi Medical College, Hyderabad, for the purpose of post mortem examination.

17. P.W. 9, the Professor of Forensic Medicine at Gandhi Medical College, conducted autopsy on 3.8.1964 at 11-15 a.m. She found a large number of incised

wounds on and around the neck of the deceased as well as incised wounds above left wrist and on left palm of the deceased besides a number of abrasions and contusions. The doctor was of the opinion that the deceased must have died of shock and hemorrhage as a cumulative result of the injuries sustained by him. She issued Ext. P-10, the post mortem certificate.

18. Despite some attempt, P.W. 12 could not arrest any one of the accused. He, however succeeded in arresting A-5 near the Hillocks village on 7.8.1964. He also arrested A-4 on 11.8.1964 at Samoanbol village in the fields. On the same day A-1 was arrested at Anantharam village. On 23.8.1964 the second accused was arrested at Sipaspalli village in Medak district. The third accused was arrested at his mother-in-law's place at Mahadevpur in Nalgonda district on 25.8.1964.

19. Accused 3 was brought to the police station at Shamirpet, the same day of his arrest. The next day, i.e., on 26.8.1964 morning, he made a statement under Section 27 of the Evidence Act (Ext. P-23) and agreed to point out the dhoti of the deceased Viswanatham hidden by the accused. He took the Circle Inspector, Sub-Inspector and P.W. 10 to the place and took out the bloodstained dhoti from a bush of Udaga plants 200 yards away from the place where the dead body of Viswanatham was found. The dhoti is M.O. 5 and it was seized under Ext. P-24.

20. M.O. 1 the stick, M.O. 2 the sickle, M.O. 3 the banian, M.O. 4 the shirt, and M.O. 5 the dhoti were all sent to the Court with requisition Exhibits P-25 to P-27 requesting the Court to send the same to the Chemical Examiner. The Court sent the same. Exhibits P-31 to P-33 are the reports received from the Chemical Examiner. Exhibits P-34 and P-35 are the reports received from the Serologist. The dhoti (M.O. 5) was found to have human blood on it. In regard to other items, though blood was found on all of them, but since the bloodstains were disintegrated, their origin could not be determined.

21. The final charge-sheet was filed against the accused on 1.9.1964. Before that, a preliminary charge-sheet was already filed on 24.8.1964.

22. The accused pleaded not guilty and denied the accusation made against them. They claimed title to Mattambavi lands. They did not, however, examine any

witnesses.

23. The prosecution examined in all 12 witnesses and marked several documents. Some documents were marked on behalf of the accused also.

24. Upon this material, the learned Sessions Judge found A-1 guilty under Section 302 read with Section 34, I.P.C. He was, however, found not guilty under Section 147, I.P.C. Accused 2 was found guilty under Section 302 read with Section 34, I.P.C. and was acquitted of the charge under Section 147, I.P.C. Accused 3 also was found guilty under Section 302 read with Section 34, I.P.C. and was acquitted of the charge under Section 147, I.P.C. Accused 4 and 5 were similarly found guilty under Section 302 read with Section 34, I.P.C. and were acquitted of the charge under Section 147, I.P.C. All the five accused have been convicted under Section 302 read with Section 34, I.P.C. and were sentenced to undergo rigorous imprisonment for life. It is from this judgment that the present appeal has been filed by the accused.

25. The principal contention of Mr. S. Suryaprakasam, the learned Counsel for the appellants, is that P.W. 1 is interested in Mattambavi lands and his evidence, therefore, cannot be relied upon. He further urged that for other reasons also the evidence of P.W. 1 ought not to have been accepted. He challenged the legality of the recovery of M.O. 5 and submitted that no reliance can be placed upon the recovery of M.O. 5 or the statement made by A-3 in that connection. He also attacked the evidence of P.Ws. 2, 4 and 5. He contended that in any case accused 4 and 5 could not have been convicted under Section 34, I.P.C. His contention in reference to A-0 was that since A-5 is blind, it could not be held that he caught hold of the legs of the deceased and pulled as he could not have spotted the place where the deceased was standing.

26. It is true that the case to a large extent depends upon the evidence of P.W. 1. His evidence, therefore, has to be very carefully scrutinised.

27-30. (After discussing the evidence, his Lordship proceeded.) It can hardly be doubted that P.W. 1 has entered into an agreement with P.W. 3 (Ext. P-1). The agreement was executed as long back as 1962. Under that agreement P.W. 1

would be entitled to the lands if P.W. 3 succeeded in establishing his title and recover possession. He has parted with Rs. 12,000 in pursuance of Exhibit P-1. He is a person who is interested in getting the lands and consequently he is interested in the conduct of the litigation between P.W. 3 and the accused. We do not, however, think that because of his interest in pursuance of Exhibit P-1 his evidence can be rejected. We fail to see how his interest in the land has any bearing upon the question of his evidence in reference to the murder alleged to have been committed by the accused.

It is no doubt true that there are some discrepancies in the statement of P.W. 1. The learned Sessions Judge has dealt with them in paragraphs 15 to 18 of his judgment. After going through the discrepancies carefully, we do not think that they are material and in any way affect the worth of his evidence.

31. We have already referred to the fact that there is no strength in the contention that it is P.W. 1 who must have got rid of the deceased. If he wanted to get rid of him, he would not have brought Viswanatham all the way from Hyderabad to Bogaram and after meeting P.Ws. 4 to 6 would not have carried him to the spot where the deceased was found dead. There was no reason for him to commit the murder. He was not in any case going to get anything out of killing the deceased. His agreement was with P.W. 3 and it was not going to be affected in any manner.

32. We see no force in the contention that the prosecution has failed to adduce the evidence of other person who had occasion to see the incident. Suggestions were undoubtedly made to P.W. 1 and other witnesses that at or about the time when the incident occurred, some people were cutting the rocks and others were ploughing the fields. All these witnesses have, now ever, denied that suggestion and nothing tangible has come out of these suggestions. There is no material to show that there was any other person who had seen the incident. When nobody had seen the incident, it was not possible for the prosecution to cite any such person as witness. Except P.W. 1, we are satisfied that there was no other eye-witness who could have been produced by the prosecution.

33-39. The evidence of P.W. 1 is sub-stantially corroborated by other items evidence on record. (Thereafter his Lordship discussed the evidence of P.W. 2,

P.W. 3, P.W. 4, P.W. 5, P.W. 6 and P.W. 9.)

40. Another incriminating piece of evidence against the accused is the recovery of M.O. 5, the bloodstained dhoti, at the instance of A-3. We have already mentioned that A-3 was arrested on 25.8.1964 at his mother-in-law's place Mahadevpur in Nalgonda district. The same day he was brought to the police station. The next day morning, i.e., on 26.8.1964, he gave a statement under Section 27 of the Evidence Act (Exhibit P-23). To establish that statement P.W. 10 is cited as a witness. According to him, on that day, the police sent for him and he went to the police station at Shamirpat, The Circle Inspector and the sub-Inspector were there. Bandi Ramaiah and Accused 3 were there. One Kumari Narayana also was there. The witness asked A-3 as to what he had to say. Accused 3 said that he had hidden a dhoti at Bogaram. Bandi Ramaiah was taking down the statement. He identified Exhibit P-23. He further stated that A-3 took them to Bogarain, about 16 miles away. P.W. 10 Bandi Bamaiah, A-3, Circle Inspector and Sub-Inspector and constables went. They picked up one Yadagiri at Bogaram and they all went to Padda Marri Bavi. Accused 3 took them there. They were taken therefrom near a bush of Udaga plants which had grown over a man's height. Accused 3 from there took out a dhoti which was in a muddal. This dhoti had a red border. It was bloodstained and had some green grass marks. It was found torn here and there. M.O. 5 is the dhoti. He also had attested Exhibit P-24, the panchanama, for seizing the dhoti. Exhibit P-23 is the admissible portion of the statement of A-3, which runs as follows:

I concealed the above-mentioned dhoti in the bushes of Udugu at Pedda Marri Bavi chelks gettu within the Shiwar of Veenigundem Shiwar in such a way that it might not be visible to anyone.

41. Mr. Suryaprakasam, the learned Counsel for the appellants, strenuously contended that Exhibits P-23 and P-24 and the evidence of P.W. 10 cannot be relied upon firstly because this recovery was 21 days after the incident and was the result of beating given to the accused by the police. We do not find any material to support this contention. It is no doubt true that A-3 stated in his statement under Section 342, Cr.P.C., that the police had beaten him. But there is

nothing to support this statement on record. We have already noticed that the accused was absconding and was arrested only on 25.8.1964. The argument that the recovery was made 21 days after the incident has, therefore, no substance. The fact that the place from where the dhoti was recovered was accessible to all can have no force obviously because it was in fact not found by the police as it was hidden in the bush. It was only when A-3 pointed out that it could be recovered.

42. It was secondly contended that the fact of secreting the dhoti in the bushes by A-3 itself is fantastic and is not probable. It was argued that there was no necessity or the accused to remove the dhoti from the body of the deceased only for the purpose of cleaning his bloodstained hands and assuming that he had removed the dhoti for that purpose he could have thrown the dhoti there as the accused had left the stick and the sickle, more incriminating items at that place, He further contended that the fact that the deceased had no dhoti on his person was not mentioned in the inquest report (Exhibit P-6). We do not think that the argument is valid. It is difficult to say as to why accused behaved in a manner in which he behaved. It seems to us clearly established that the deceased when he was seen for the first time by P.Ws. 1, 4, 5 and 6 had no dhoti on his person. It is also not true to say that Exhibit P-6 is totally silent about this dhoti. (After discussing their evidence his Lordship proceeded to observe:)

We find no infirmity in Exts. P-23 and P-24 or the evidence relating to this incident as discussed above.

43. It was contended that since the preliminary charge-sheet was filed, the investigation must be deemed to have concluded and' any recovery after that in the course of investigations would not be admissible in evidence, In support of this contention no-authority was brought to our notice. Section 173, Cr.P.C, enjoins that every investigation under the chapter in which that section appears shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, setting forth the names of the parties, the nature of the

information and the names of the persons who appear to be acquainted with the circumstances of the case and stating whether the accused (if arrested)-has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties and other things mentioned in the said section. It is obvious that the section deals with the final report of the police which can either amount to a charge or which may contain the recommendation that no offence having been made out, the case should be cancelled. There are three sections in the Code relating to final reports, viz., Sections 169, 170, 173. Section 169 relates to cases in which no person is sent up for trial, Section 170 to cases in which some person is sent up, and Section 173 contains general directions relating to both.

It is evident that the three sections must be read together. It is, however, clear from Section 173 that it deals only with the final report of the police and such a report is submitted only after the entire investigation, is completed. Although a preliminary charge-sheet may have been filed, but that preliminary charge-sheet does not indicate in any manner the termination of investigation. But on the other hand, it indicates that something has further to be investigated in order to enable the police to complete the investigation and file the report as visualized under Section 173. The report under Section 173, it must be remembered, is a report on the results of investigation made under Chap. XIV. The very fact that a preliminary charge-sheet is filed clearly shows that the result of the investigation is not completely found out and that is why ultimately a final charge-sheet is filed. That this is so is well supported by a decision of this Court in *Bandi Kotayya v. State*, A1B 1966 Andh Pra 377. It was held:

Before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(b), he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding, in a particular way, as indicated in the subsequent provisions of Section 207A. The necessary consequence is that until the Magistrate has before him a police report as envisaged by Section 173 of the Code, he cannot take cognizance of the offence in respect of which he is to hold an inquiry.

This would be the position notwithstanding that a preliminary charge-sheet had been Presented to the Magistrate earlier and he had taken the case on file and given it a number for statistical purposes, remanded the accused produced before him, and issued non-bailable warrants in respect of the absconding accused. All these steps are taken with a view to facilitate the completion of the investigation and not because he had taken cognizance of the offence with a view to conduct a preliminary inquiry against the accused named in the preliminary charge-sheet. During this period, the Magistrate cannot be said to have taken cognizance of the offence. He takes cognizance of the offence only when the final charge-sheet is filed by the police and he commences the preliminary inquiry only against such persons as are shown as accused in the charge-sheet, which is in fact and in law a report under Section 173(1), Cr.P.C.

This view gives a free hand to the police to make thorough investigation before putting up a case against any person. By conducting a full and fair investigation on the spot, unhampered and uninhibited by rules of evidence and procedure, the police would be able to discover the truth, and even if upon a cursory investigation, they include one or more innocent persons in the preliminary charge-sheet, they can drop such persons in the final charge-sheet and prevent unnecessary hardship and harassment.

44. Admittedly the final charge-sheet was filed only on 1.9.1964. The recovery of M.O. 5 therefore was previous to the filing of the final charge-sheet. The fact that the preliminary charge-sheet was filed by the prosecution does not deprive the police to continue the investigation and since the recovery is part of the investigation, Exhibits P-23 and P-24 are admissible in evidence. The final report which was filed only on 1.9.1964 is the report within the meaning of Section 173, Cr.P.C. We are, therefore, not inclined to accept the argument of the learned advocate for the appellants in this behalf.

45. The fact that the accused were absconding and were arrested at different places also supports the prosecution case.

46. In regard to motive for the commission of offence, we are satisfied that the accused wanted to get rid of the deceased because in their opinion he was coming

in the way of settlement. They perhaps thought that P.W. 3 since he has become aged and disabled because of his sickness could be won over easily. They, however, found the deceased not siding them to conclude the settlement to their desire. That is evident from the evidence of P.W. 2, the clerk of the deceased. P.W. 3, as stated supra, has stated that he had entrusted the management of the lands to the deceased and that he was authorised to enter into any compromise or settlement with the accused, which he thought fit. The fact that P.W. 1 also was along with the deceased clearly shows that he was also not unwilling to effect a settlement, if possible. When the accused found that they were not getting the wet lands as desired by them, they must have got enraged and by attacking the deceased removed this obstacle from their way. The learned Sessions Judge deals with this question of motive in paragraph 25 of his judgment. We entirely agree with the reasons and the conclusion he has drawn. We hold that the accused were annoyed with the deceased and were not satisfied with the way in which he was dealing with the case. It is evident from the record that he was showing keen interest in the matter. Since he was not willing to sell the lands to the accused nor was willing to part with the wet lands in settlement, the accused must have entertained the idea of doing away with him. There is, therefore, enough evidence to establish motive for the accused to cause the death of Viswanatham.

47. We have already referred to the reports of the Chemical Examiner and the Serologist. M.O. 2, the sickle, M.O. 1 the stick and M.O. 5 the dhoti, together with M.Os. 3 and 4 have been found to contain human blood on them. Although the blood origin could not be determined, even then these articles had bloodstains is clearly established. The fact that M.Os. 3, 4 and 5 belonged to the deceased is clearly established. M.Os. 1 and 2 were found at the scene of offence. This fact also lends considerable strength to the case of the prosecution.

48. On a careful examination of the evidence, oral and documentary, we are satisfied that Ramiseti Mallayya and his eldest son, first accused, persuaded the deceased to go over to the village Bogaram for the purpose of settling the dispute, that the deceased went along with P.W. 1 to Bogaram village on 2.8.1964, that the first accused in the presence of P.W. 4 wanted the deceased to sell the lands but

since the deceased was not inclined to sell and was offering 10 or 15 acres of land in final settlement of their disputes, P.W. 1, the deceased and A-1 went to Mattambavi for the purpose of selecting the lands. In the presence of P.W. 1 the deceased was done away with in the manner in which it is mentioned by P.W. 1 and as stated above. It is also clearly established that A-1 caught the hands of the deceased, A-3 caught the left leg and A-2 put his left hand on the head and inflicted the several injuries on the neck of the deceased as a consequence of which Viswanatham died within a short time after the injuries were inflicted and that A-1 to A-3 are responsible for his death.

49. We are not sure about the guilt of A-5 under Section 302, I.P.C. A-5 is a blind person. The learned Sessions Judge in paragraph 19 of his judgment discusses the evidence in regard to his blindness. He agrees with the evidence of C.W. 1 and finds that A-5 is a blind person, He, however, holds that if A-5 had been alone, it would have been difficult for him to spot Viswanatham and fall at his feet and pull his legs but when he was in the company of four others, it would not have been difficult for him to be led towards Viswanatham by the other accused. He ultimately reaches the conclusion that the fifth accused is also one of those who had taken part in causing the death of Viswanatham. We are not satisfied that it is established beyond any reasonable doubt that A-5 could have played the part assigned to him by the prosecution. Exhibit C-I is the report submitted by the Superintendent, Sarojini Devi Eye Hospital. It is dated 31.10.1964. It appears that the learned Principal Sessions Judge, through his letter dated 30.10.1964, requested the Superintendent, Sarojini Devi Hospital, to examine A-5 and submit a report in regard to his blindness. Dr. M. V. Jagannadharao (C.W. 1), Civil Assistant Surgeon, Sarojini Devi Hospital, examined the accused and submitted the report. According to this report, it is stated that A-5 cannot see any person or object nor can he do ordinary work without anyone's assistance. Dr. C. Sundara Rama Sarma assisted Dr. M.V. jagannadha Rao in his examination.

He found both eyes Nystagma. The pupils of both the eyes were dilated and not reacting to light and 'Fundus oculi' both the eyespots nouritic optic atrophy. Light perception was found absent in both the eyes. In his evidence, the doctor stated identically the same thing as is mentioned in his report. He deposed that the eyes

of the A-5 are dead as far as vision is concerned. He cannot see at all. He cannot see even vague figures or impressions. He cannot see light at all. He, however, stated that in his house or in familiar surroundings, he may be able to move about by force of habit but not outside in the public. In cross-examination he stated that he did not think that a man of that type can do ploughing work. He also thinks that he could not go to the field if he is habituated to go even with the help of a stick. He further stated that he can follow a person by just his voice and that for a long time he has been blind. From his evidence we think it is established beyond any reasonable doubt that A-5 has been blind since a long time and that he could not perceive even objects like persons or hills. The fact that A-5 is blind is also supported by the evidence of P.W. 6. He stated that A-5 is a blind man. In the re-examination he, however, stated that A-5, except ploughing, does all other agricultural work.

He can go by himself to the fields in the usual path with his stick. Since the witness had known A-5, people say that he lost his sight when he was young, Assuming that P.W. 6 is correct even then it is clear that what all A-5 can do is to go to his field with the aid of a stick since he was used to go that path and that he cannot do the act of ploughing. The question naturally arises as to whether it was possible for A-5 to reach the feet of the deceased twice on the day of the occurrence. Once it is said that he fell on the feet of the deceased and beseeched him to compromise, and the next time it is stated that he came running and caught the legs of the deceased and pulled them. There is no evidence to suggest that A-5 was led to the field by anyone of the accused who were present there. It would not be correct to go into realm of imagination in order to find A-5 guilty. There is no evidence that he followed the voice of the deceased on both these occasions. In the absence of any evidence that anyone led him to the feet of the deceased or that he followed the voice of the deceased on both those occasions and could with no difficulty reach the feet of the deceased it becomes highly doubtful to hold that A-5 must have caught the feet of the deceased and pulled his legs.

The fact that he was present throughout the incident. He could not have witnessed the fact that A-3 had a sickle which ultimately came into the hands of A-2 and that he was inflicting the injuries on his neck. We are doubtful whether A-5 could have

caught the feet of the deceased although he was present at the scene of offence. We would, therefore, give him the benefit of doubt. Even if A-5 goes out of the scene, the truth of the attack by A-1 to A-3 is not affected in any manner. P.W. 1 says that Viswanatham did not fall as A-5 pulled his legs but he fell in about a minute. As Viswanatham was falling, A-2 caught his waist and bent him down. Under Section 34, I.P.C. A-5 could have been held guilty only if he had assisted accused 1 to 3 when A-2 inflicted the injuries upon the body of the deceased. In our opinion, it is doubtful whether the part assigned to A-5 could have been discharged by him when he is blind. We do not, therefore, think that he could be held guilty as it is not established beyond reasonable doubt that he participated in the act of the crime although he was present. Even if A-5 had not caught the feet and pulled the legs of the deceased, it can at worst be argued that there is no evidence to show how the deceased fell on the ground. It is, however, in the evidence of P.W. 1 that before Viswanatham fell on the ground A-2 held him and bent him down. It is thus possible that A-2 must have been responsible for felling him on the ground or in the struggle he must have fallen on the ground. It is thus clear that even if A-5 is removed from the picture, the liability of A-1 to A-3 would be clearly established and they would continue to be liable,

50. In regard to A-4, we are satisfied that he cannot be held guilty of murder under Section 302 read with Section 34, I.P.C. P.W. 1 stated in the examination-in-chief that 'I was standing at a distance of about 10 feet away. I said 'Sampakandi, Kottakandri, Thasvicheyistanu', A-1 said 'Don't let him go, catch hold of him tightly'. In the cross-examination referring to this aspect of the case, the witness said 'I was perturbed and was standing. I did not go to the rescue. As I was wanting to go to the rescue A-4 caught hold of me'. He further stated in the cross-examination: 'A-4 was holding me. I was watching till the cutting was over. Viswanatham still had life. Then I wriggled out and ran'. This is the only evidence on the basis of which it has to be decided whether A-4 is guilty of murder under Section 302, I.P.C, read with Section 34, I.P.C.

51. It is now clear that Section 34, I.P.C, lays down a principle of joint liability for acts done by several persons in pursuance of a criminal design or enterprise. Under that section, one of several persons who engages himself in a criminal

enterprise or design may be liable for an act done by another which he never himself intended and perhaps never contemplated. It cannot be in doubt that the mere presence of the accused without anything more can bring him within the purview of Section 34, I.P.C. In order to establish the guilt, it has to be proved that the accused did something in furtherance of the common intention.

The learned Sessions Judge in paragraph 27 of his judgment discussed this aspect of the case. He observed that the common intention appears to have taken shape on the spot at Mattambavi on account of Viswanatham refusing to give them any wet land towards settlement and that it was after his refusal to part with wet land and as he and P.W. 1 were coming away that the incident took place. The fact that there was no common intention prior to that stage of the incident is not seriously disputed.

The intention seems to have suddenly developed to do away with Viswanatham. There is, however, no evidence to show that there was any discussion in which A-4 or A-5 participated or that they were parties to this common intention. It is only from the conduct of the accused that we have to infer their common intention. In so far as A-1 to A-3 are concerned, there can hardly be any doubt about their common intention since while accused 1 and 3 were holding the deceased tightly. Accused 2 went on cutting indiscriminately the neck of the deceased. Their acts, therefore, clearly fall within the ambit of Section 34, I.P.C. That is not the case, however, with regard to A-4 and A-5. Accused 4 merely held P.W. 1 at the instance of A-1. From the evidence extracted above, we have no doubt that there was no attempt on the part of P.W. 1 to interfere with what A-1 to A-3 were doing. In fact, he wanted to run away. He categorically stated that he did not interfere. It is no doubt true that at one stage he stated that he wanted to interfere. But that does not seem to us to be correct because he stated that it was only after all the injuries were inflicted and the body was shifted to another place. P.W. 1 who was not armed could not have thought of interfering when there were as many as five accused and when A-2 was having a sickle in his hand. He could not have attempted to interfere when he had seen the brutal way in which A-2 was inflicting the injuries on Viswanatham. We are, therefore, satisfied that while P.W. 1 was attempting to run away, it is clear he was caught by A-4 with a view that after A-1

to A-3 do away with Viswanatham they could attend to P.W. 1. He wriggled himself out and ran away for his life and it shows that there was no intention on his part to interfere.

In fact, he could not have interfered except risking his own life. We are, therefore, satisfied that A-4 did not catch P.W. 1 in pursuance of the common intention to kill the deceased. He was caught because the accused wanted to deal with P.W. 1 also. They could not do so because P.W. 1 escaped successfully. A-4 therefore cannot be said to have acted in holding P.W. 1 in pursuance of the common intention of killing the deceased so as to bring his case within the mischief of Section 34, I.P.C. We do not agree with the learned Sessions Judge that since P.W. 1 was standing nearby and was wanting to go to the rescue of Viswanatham A-4 caught hold of him. It would not be correct to hold A-4 guilty because of some stray sentence appearing in the evidence of P.W. 1. If his evidence as extracted above is read as a whole, we are not left in doubt that P.W. 1 wanted to escape and that is why he was caught. He never attempted to interfere and he could not have interfered except risking his own life which he never wanted to. We do not think that A-4 can be held guilty under Section 302 read with Section 34 I.P.C.

52. For the reasons which we have given, we hold that A-2 is guilty of murder under Section 302 I.P.C., and hold A-1 and A-3 guilty of murder under Section 302 read with Section 34 I.P.C. We acquit A-4 and A-5 of the charge of murder under Section 302 read with Section 34 I.P.C.

53. We accordingly allow the appeal of A-4 and A-5 and set aside the sentence of imprisonment for life passed by the learned sessions Judge against them and confirm the sentence of imprisonment for life passed by the learned Sessions Judge against A-1 to A-3. The appeal shall stand dismissed as against A-1 to A-3.