

M. NAGESWARA REDDY

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v.

THE STATE OF ANDHRA PRADESH AND OTHERS

(Criminal Appeal Nos. 72-73 of 2022)

MARCH 07, 2022

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[M. R SHAH AND B. V NAGARATHNA, JJ.]

Appeal: Appeal against acquittal – In the instant case, eleven accused were tried together for the offences under ss.147,148, 324, 326, 307, 427 and 302 r/ws.149 IPC– Trial Court convicted accused no.1 to 3 u/ss. 148 and 302 of IPC and acquitted accused no.4 to 11 – High Court reversed conviction of accused no.1 to 3 and confirmed the acquittal of accused no.4 to 11 – State and complainant filed appeal against acquittal – Held: With respect to accused no.1 to 3, they were identified by PW1, PW3 & PW6 – They were main assailants – The depositions of the eye-witnesses and injured eye-witnesses showed no major/material contradictions – Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded – Delay of 7 hours in filing FIR was not fatal to the prosecution case – Even FIR was sent to magistrate within 24 hours as per the provisions of Cr.P.C. – PW6 was an injured eye-witness and his presence cannot be doubted and being an injured eye-witness, his deposition was reliable – High Court committed error in reversing the conviction of accused no.1 to 3 – In respect of accused no.4 to 11, the findings recorded in respect of their acquittal were on appreciation of evidence on record and the view taken by the trial Court acquitting Accused Nos. 4 to 11, which was affirmed/confirmed by the High Court, was a plausible view – Roles attributed to Accused Nos. 1 to 3 and Accused Nos. 4 to 11 were different – Therefore, case of Accused Nos. 4 to 11 was not comparable with the case of Accused Nos. 1 to 3 – No interference called for with concurrent findings of acquittal against accused no.4 to 11.

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Allowing the appeals against the acquittal of accused nos. 1 to 3 and dismissing the appeals against the acquittal of accused nos.4 to 11, the Court

HELD: 1. In the present case the prosecution examined five important and relevant witnesses – PW1, PW3, PW5, PW6

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- A & PW7, out of which PW1, PW3 & PW5 were the eyewitnesses and PW6 & PW7 were the injured eye-witnesses. Accused Nos. 1 to 3 were identified by PW1, PW3 & PW6. Though, the learned trial Court has disbelieved PW5, the High Court has not at all discussed and/or re-appreciated the evidence/deposition of PW5, which as a first appellate Court, the High Court was required to.
- B Having gone through the deposition of the relevant witnesses – eye witnesses/injured eye-witnesses, this Court is of the opinion that there are no major/material contradictions in the deposition of the eye-witnesses and injured eye-witnesses. All are consistent insofar as accused Nos. 1 to 3 are concerned. The High Court
- C has observed that PW1, PW3 & PW5 were planted witnesses merely on the ground that they were all interested witnesses being relatives of the deceased. Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW1, PW3, PW5 & PW6 and even PW7. [Paras 9, 10][510-D-H]

- 2. One another reason given by the High Court is that the FIR was not registered at the time as claimed by the prosecution, but it was registered many hours after the occurrence and sent to the Magistrate with unexplained delay and according to the High Court, this facilitated the police to falsely implicate the accused after PW1 arrived at the police station. However, the FIR was lodged within seven hours. As per the prosecution, it was lodged immediately. The interpolation of the time of the incident, 0.30 a.m. to 9:30 p.m., could not be explained as the same was not raised before the trial Court. No question on the same was asked to the concerned witnesses. Even otherwise, in the facts and circumstances of the case, the delay of seven hours cannot be said to be fatal to the prosecution case. Even the FIR was sent to the Magistrate within 24 hours, as required under the provisions of the Cr.P.C. [Para 11][511-B-D]

- 3. The High Court has unnecessarily given weightage to some minor contradictions. The contradictions, if any, are not

material contradictions which can affect the case of the prosecution as a whole. PW6 was an injured eye-witness and therefore his presence ought not to have been doubted and being an injured eye-witness, as per the settled proposition of law laid down by this Court in catena of decisions, his deposition has a greater reliability and credibility. The High Court has committed a grave error in reversing the judgment and order passed by the learned trial Court convicting Accused Nos. 1 to 3 for the offences under Sections 148 & 302 IPC and the High Court has erred in acquitting Accused Nos. 1 to 3. [Paras 12, 14][511-E-F; 512-A-B]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 72-73 of 2022.

From the Judgment and Order dated 21.02.2018 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Appeal Nos.611 and 659 of 2011.

With

Criminal Appeal No. 74 of 2022.

A. Sirajudeen, Sr. Adv., Sanjeev Kumar, Mahfooz Ahsan Nazki, Polanki Gowtham, Shaik Mohamad Haneef, T. Vijaya Bhaskar Reddy, K. V. Girish Chowdary, Ms. Rajeswari Mukherjee, Advs. for the Appellant.

Guntur Prabhakar, D. Ramakrishna Reddy, Mrs. D. Bharathi Reddy, M. A. Chinnasamy, C. Rubavathi, M. Veeraragavan, C. Raghavendren, Ch. Leela Sarveswar, V. Senthil Kumar, P. Rajaram, K. Ethiraj, Goli Ramakrishna, Sumanth Nookala, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 21.02.2018 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Appeal No. 611/2011 and Criminal Appeal No. 659/2011, by which the High Court has allowed Criminal Appeal No. 611/2011 preferred by original accused Nos. 1 to 3 (respondent Nos. 2 to 4 herein in Criminal Appeal No. 72 of 2022) and has acquitted

- A original accused Nos. 1 to 3 and by which the High Court has dismissed Criminal Appeal No. 659/2011 preferred by the original complainant – appellant in Criminal Appeal No. 73/2022, challenging the judgment and order passed by the learned trial Court acquitting the rest of the accused, i.e., accused Nos. 4 to 11, the original complainant has preferred the present appeals bearing Criminal Appeal Nos. 72-73/2022.
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 - 1.1 Against the impugned judgment and order passed by the High Court acquitting original accused Nos. 1 to 3, the State has also preferred a separate appeal being Criminal Appeal No. 74 of 2022.
 - 2. As per the case of the prosecution, on 18.01.2007 at about 8:30
- C p.m., all the accused formed an unlawful assembly armed with hunting sickles, came from behind the sumo vehicle and surrounded it near Dr. Kabir Clinic at Gayithri Estate, Kurnool, in which the deceased Rajasekhar Reddy and his brother M. Nageswara Reddy (PW1) and other supporters Shaik Akbar Basha (PW3), P. Sekhar (PW7) and S. Venkagamuni (PW8) were travelling, and S. Rajesh (PW6) was the driver. Accused Nos. 1 to 3 forcibly opened front left side door and dragged out the deceased by saying that “*Ee Naqkodukulaganni Narakandir Raa*” and immediately hacked him with hunting sickles indiscriminately while Accused Nos. 8 to 11 hit the glass windows of the sumo vehicle with hunting sickles and broke the glasses. Accused Nos. 9 & 11 hacked the driver Rajesh (PW6) and he sustained bleeding injuries on his right shoulder, hand and side ribs, while Accused Nos. 4 to 7 chased PW1, PW3, PW7 & PW8 and when they were fleeing injuries were caused to PW7 and later all they fled away. The deceased Rajasekhar Reddy died on the spot whereas PW6 & PW7 were taken to Government General Hospital, Kurnool. On the report of LW1 (Nageswara Reddy) a case being Crime No. 7 of 2007 was registered against the accused for the abovesaid offences.
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 - 2.1 The investigating officer during the course of investigation recorded the statements of the concerned persons – witnesses. He also collected documentary evidences including medical evidence. During the course of the investigation, the investigating officer arrested all the accused. On conclusion of the investigation, the investigating officer filed a chargesheet against all the eleven accused for the offences under Sections 147, 148, 324, 326, 307, 427 and 302 read with 149 IPC in the Court of learned Magistrate, Kurnool. As the case was exclusively triable by the learned Court of Sessions, the learned Magistrate committed the

case to the District & Sessions Judge's Court, Kurnool. The accused A pleaded not guilty and therefore all of them came to be tried by the learned Sessions Court.

2.2 To bring home the charge, the prosecution examined in all seventeen witnesses and brought on record the relevant documentary evidences through the aforesaid witnesses. According to the case of the prosecution, PW1, PW3 & PW5 were the eye witnesses to the incident and PW6 & PW7 were the injured eye witnesses who sustained injuries during the incident. B

2.3 As per the case of the prosecution and the eye witnesses/ injured eye witnesses, all the accused persons attacked. Accused Nos. 1 to 3 dragged out the deceased and hacked him with hunting sickles indiscriminately, while Accused Nos. 8 to 11 hit the glass windows of the sumo vehicle with hunting sickles and broke the glass. Accused Nos. 9 & 11 hacked the driver Rajesh, PW6 and he sustained bleeding injuries on his right shoulder, hand and side ribs, while Accused Nos. 4 to 7 chased PW1, PW3, PW7 & PW8 while they were fleeing injuries were caused to PW7 and later they ran away. After closure of the prosecution side witnesses, the statements of the accused were recorded under Section 313 Cr.P.C. The case on behalf of the accused was that of total denial and that they were falsely implicated in the case because of their political rivalry and past enmity. However, the accused did not adduce any evidence in support of their defence. C

2.4 On appreciation of evidence, the learned trial Court held Accused Nos. 1 to 3 guilty of the offences punishable under Sections 148 & 302 IPC and sentenced them to undergo life imprisonment for the offence under Section 302 IPC and one year R.I. for the offence under Section 148 IPC. However, the learned trial Court acquitted Accused Nos. 4 to 11 of all the charges levelled against them. D

3. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned trial Court, Accused Nos. 1 to 3 preferred Criminal Appeal No. 611/2011 before the High Court. The complainant also preferred Criminal Appeal No. 659/2011 before the High Court against acquittal of the rest of the accused, i.e., Accused Nos. 4 to 11. E

3.1 By the impugned common judgment and order, the High Court has allowed Criminal Appeal No. 611/2011 preferred by original Accused F

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- A Nos. 1 to 3 and has acquitted the accused of the offences punishable under Sections 302 and 148 IPC. The High Court has dismissed Criminal Appeal No. 659/2011 preferred by the complainant, confirming the acquittal of accused Nos. 4 to 11.
 - 4. Feeling aggrieved and dissatisfied with the impugned common
- B judgment and order acquitting Accused Nos. 1 to 3, both, the original complainant as well as the State have preferred Criminal Appeal Nos. 72/2022 and 74/2022. Against dismissal of the appeal preferred by the complainant confirming the acquittal of original accused Nos. 4 to 11, the complainant has also preferred Criminal Appeal No. 73/2022.
- C 5. Learned counsel appearing on behalf of the original complainant as well as the State have vehemently submitted that the impugned judgment and order passed by the High Court acquitting Accused Nos. 1 to 3 is not sustainable.
 - 5.1 It is submitted that in the present case, the High Court has erred in acquitting accused Nos. 1 to 3.
 - 5.2 It is submitted that in the present case the High Court has unnecessarily given weightage to the alleged interpolation in the FIR with respect to the time of lodging the FIR. That as such the said question was neither raised before the learned trial Court nor any question of such alleged interpolation, if any, was put to the Investigating Officers – PW16 & PW17. It is submitted that even the High Court has specifically observed in the impugned judgment and order that it is true that no such question on the alleged interpolation of the time was asked to the Investigating officers – PW16 & PW17.
 - 5.3 It is vehemently submitted that the High Court has doubted the complaint/FIR given by PW1 mainly on the ground of alleged interpolation of time of lodging the FIR and on the ground that there was a delay of seven hours in lodging the FIR and that the FIR was sent to the learned Magistrate at 4:30 a.m. on the next morning. It is further submitted that the High Court has not properly appreciated and considered the fact that the FIR was sent to the learned Magistrate within a period of 24 hours as required under the law.
 - 5.4 It is submitted that in the present case as per the FIR and even as per the deposition of the Investigating Officer, the FIR was lodged at 9:30 p.m. on 18.01.2007, i.e., before he reached the police station at 10:30 p.m. That the High Court has suo motu raised the said

issue which was not even framed by the learned trial Court and even it was also not the case on behalf of the accused before the learned trial Court.

5.5 It is contended that as such in the present case the prosecution has proved the case against Accused Nos.1 to 3 by examining the relevant witnesses, more particularly PW1, PW3, PW5, PW6 & PW7. That PW1 & PW3 are the eye witnesses to the incident and PW6 & PW7 are the injured eye witnesses whose testimony is consistent.

5.6 It is submitted that the High Court has disbelieved PW1 & PW3 who were the eye witnesses on some minor contradictions between the two versions of PW1 & PW3. However, it is required to be noted that those contradictions are not material contradictions which may create a doubt about the trustworthiness and credibility of PW1 & PW3.

5.7 It is further submitted that the High Court has also doubted the credibility and trustworthiness of PW1 & PW3 on the ground that they are interested witnesses. However, it is required to be noted that merely because PW1 is the brother of the deceased and PW3 is the driver, that by itself cannot make them interested witnesses and their evidence cannot be discarded on that ground.

5.8 It is also submitted that in the present case even PW5 is also an eye witness. However, the High Court has not reappreciated the evidence of PW5 on the ground that the learned trial Court has held that PW5 is not an eye witness but a planted witness. It is submitted that however the High Court being the first appellate Court was required to reappreciate the entire evidence on record including the deposition/evidence of PW5.

5.9 It is further contended that the High Court has not at all appreciated and considered the fact that PW6 & PW7 are the injured eye witnesses. That their injuries have been supported by the medical evidence and the doctor who treated PW6 & PW7. It is submitted that therefore there was no reason to doubt the credibility and trustworthiness of PW6 & PW7.

5.10 Making the above submissions, it is prayed to set aside the impugned judgment and order passed by the High Court insofar as acquitting accused Nos. 1 to 3 are concerned.

5.11 Now so far as acquittal of accused Nos. 4 to 11 by the learned trial Court as well as by the High Court is concerned, it is vehemently

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- A submitted that the prosecution has established and proved the presence of accused Nos. 4 to 11 at the time of incident and a specific role/overt act has been attributed to them. It is submitted that when accused Nos. 4 to 11 were charged for the offences under Section 302 read with Section 149 IPC and when it has been established and proved that they participated in the commission of the offence and they were the part of the unlawful assembly, the learned trial Court ought to have convicted accused Nos. 4 to 11 also.

6. The present appeals are vehemently opposed by learned counsel appearing on behalf of the original accused.

- C 6.1 It is vehemently submitted by learned counsel appearing on behalf of the original accused that having found the interpolation/correction in the FIR and when it has been found that 0.30 a.m. has been converted to 9:30 p.m. and having found that even the FIR was received by the learned Magistrate at 4:30 a.m. on 19.01.2007, though the distance between the police station and the Magistrate Court is hardly four kilometres and there was a delay of seven hours in sending the FIR to the learned Magistrate, the High Court has rightly disbelieved the FIR given by PW1 and has rightly observed that there are all possibilities of implicating the accused falsely.

- E 6.2 It is further submitted that as such cogent reasons have been given by the High Court doubting the credibility and trustworthiness of PW1, PW3, PW6 & PW7. That the entire case of the prosecution rests on PW1, PW3, PW5, PW6 & PW7. It is submitted that therefore on reappreciation of the evidence and by giving cogent reasons, the High Court has disbelieved PW1 & PW3 (so called eye witnesses) and PW6 & PW7 (so called injured eye witnesses). It is submitted that the High Court has not committed any error in acquitting Accused Nos. 1 to 3 and confirming the acquittal of Accused Nos. 4 to 11.

6.3 Making the above submissions, it is prayed to dismiss all the appeals.

- G 7. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that there were eleven accused who were tried together for the offences under Sections 147, 148, 324, 326, 307, 427 and 302 read with 149 IPC. The learned trial

- H Court convicted accused Nos. 1 to 3 for the offences under Sections

148 & 302 IPC and sentenced them to undergo life imprisonment. However, the learned trial Court acquitted accused Nos. 4 to 11. The conviction of Accused Nos. 1 to 3 has been reversed by the High Court by the impugned judgment and order and even accused Nos. 1 to 3 are acquitted for the offences for which they were convicted. The High Court has affirmed/confirmed the acquittal of Accused Nos. 4 to 11.

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7.1. It is required to be noted that so far as the State is concerned, the State has preferred the present appeal being Criminal Appeal No. 74 of 2022 challenging the impugned judgment and order passed by the High Court insofar as acquitting Accused Nos. 1 to 3 and it is the original complainant who has preferred the appeals being Criminal Appeal Nos. 72 & 73 of 2022 challenging the reversal of conviction and acquitting Accused Nos. 1 to 3 as well as dismissing his appeal which was against the judgment and order passed by the learned trial Court acquitting Accused Nos. 4 to 11.

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8. Having heard learned counsel for the respective parties and having gone through the judgment and order passed by the learned trial Court acquitting Accused Nos. 4 to 11, which has been affirmed/confirmed by the High Court and the appeal preferred by the complainant challenging the acquittal of Accused Nos. 4 to 11 is concerned, as such, there are concurrent findings recorded by both, the learned trial Court as well as the High Court holding Accused Nos. 4 to 11 not guilty. The findings recorded in respect of acquittal of Accused Nos. 4 to 11 are on appreciation of evidence on record and the view taken by the learned trial Court acquitting Accused Nos. 4 to 11, which has been affirmed/confirmed by the High Court, is a plausible view and therefore the same are not required to be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India. Accordingly, Criminal Appeal No. 73/2022 preferred by the original complainant against acquittal of Accused Nos. 4 to 11 is hereby dismissed.

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9. Insofar as Criminal Appeal No. 72/2022 preferred by the original complainant and Criminal Appeal No. 74/2022 preferred by the State challenging the impugned judgment and order passed by the High Court acquitting Accused Nos. 1 to 3, reversing the judgment and order of conviction and sentence passed by the learned trial Court are concerned, while acquitting accused Nos. 1 to 3, the High Court has summarised the discussion as under:

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- A “(i) The FIR was not registered at the time as claimed by the prosecution, but it was registered many hours after the occurrence and sent to the Magistrate with unexplained delay, which facilitated the police to falsely implicate the accused, obviously after PW1 arrived at the police station;
- B (ii) PWs 1,3,5 and 8 were planted witnesses;
 (iii) PWs 6 and 7 could not identify the assailants;
 (iv) The accused, being the members of the rival faction, were the natural suspects and accordingly, they have been implicated on mere suspicion, without any clear evidence;
- C (v) The Court below has completely failed to comprehend the aforementioned aspects and erroneously convicted accused nos. 1 to 3, while acquitting accused Nos. 4 to 11; and
 (vi) In our opinion, the same reasoning, which was adopted by the Court below for acquitting accused Nos. 4 to 11, is equally applicable to accused Nos. 1 to 3.”

- However, it is required to be noted that in the present case the prosecution examined five important and relevant witnesses – PW1, PW3, PW5, PW6 & PW7, out of which PW1, PW3 & PW5 were the eye-witnesses and PW6 & PW7 were the injured eye-witnesses.
- E Accused Nos. 1 to 3 were identified by PW1, PW3 & PW6. Though, the learned trial Court has disbelieved PW5, the High Court has not at all discussed and/or re-appreciated the evidence/deposition of PW5, which as a first appellate Court, the High Court was required to.

10. Having gone through the deposition of the relevant witnesses
- F – eye-witnesses/injured eye-witnesses, we are of the opinion that there are no major/material contradictions in the deposition of the eye-witnesses and injured eye-witnesses. All are consistent insofar as accused Nos. 1 to 3 are concerned. As observed hereinabove, PW6 has identified Accused Nos. 1 to 3. The High Court has observed that PW1, PW3 & PW5 were planted witnesses merely on the ground that they were all interested witnesses being relatives of the deceased. Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW1, PW3, PW5 & PW6 and H even PW7.

10.1 It is true that PW7 could not identify the assailants. However, A
the prosecution has been able to prove the incident from the deposition/ evidence of PW7 and the manner in which the incident took place.

11. One another reason given by the High Court is that the FIR was not registered at the time as claimed by the prosecution, but it was registered many hours after the occurrence and sent to the Magistrate with unexplained delay and according to the High Court, this facilitated the police to falsely implicate the accused after PW1 arrived at the police station. However, the FIR was lodged within seven hours. As per the prosecution, it was lodged immediately. The interpolation of the time of the incident, 0.30 a.m. to 9:30 p.m., could not be explained as the same was not raised before the trial Court. No question on the same was asked to the concerned witnesses. Even otherwise, in the facts and circumstances of the case, the delay of seven hours cannot be said to be fatal to the prosecution case. Even the FIR was sent to the Magistrate within 24 hours, as required under the provisions of the Cr.P.C. PWs1, 3 & 6 are all consistent in their testimony and they have fully supported B
the case of the prosecution. We see no reason to doubt their presence C
and their deposition.

12. Having gone through the reasoning given by the High Court, E
we are of the opinion that the High Court has unnecessarily given weightage to some minor contradictions. The contradictions, if any, are not material contradictions which can affect the case of the prosecution as a whole. PW6 was an injured eye-witness and therefore his presence ought not to have been doubted and being an injured eye-witness, as per the settled proposition of law laid down by this Court in catena of decisions, F
his deposition has a greater reliability and credibility.

13. Now so far as the finding recorded by the High Court in the final conclusion that the same reasoning which was adopted by the court below for acquitting accused Nos. 4 to 11 will also be equally applicable to accused Nos. 1 to 3 is concerned, it is to be noted that the roles attributed to Accused Nos. 1 to 3 and Accused Nos. 4 to 11 are different. G
Accused Nos. 1 to 3 are the main assailants. They are identified by the eye-witnesses/injured eye-witnesses. The overt acts of Accused Nos. 1 to 3 are different than that of Accused Nos. 4 to 11. Therefore, the case of Accused Nos. 4 to 11 is not comparable with the case of Accused Nos. 1 to 3.

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- A 14. In view of the above discussion and for the reasons stated above, the High Court has committed a grave error in reversing the judgment and order passed by the learned trial Court convicting Accused Nos. 1 to 3 for the offences under Sections 148 & 302 IPC and the High Court has erred in acquitting Accused Nos. 1 to 3. Therefore, the impugned judgment and order passed by the High Court insofar as acquitting Accused Nos. 1 to 3 deserves to be quashed and set aside and the judgment and order passed by the learned trial Court convicting Accused Nos. 1 to 3 for the offences under Sections 148 & 302 IPC and sentencing them to life imprisonment is to be restored.
- B 15. Accordingly, Criminal Appeal No. 72/2022 preferred by the original complainant and Criminal Appeal No. 74/2022 preferred by the State, challenging the impugned judgment and order acquitting Accused Nos. 1 to 3 are allowed and the impugned judgment and order dated 21.02.2018 insofar as acquitting Accused Nos. 1 to 3 for the offences under Sections 148 & 302 IPC is hereby quashed and set aside. The judgment and order passed by the learned trial Court convicting Accused Nos. 1 to 3 for the offences under Sections 148 & 302 IPC and sentencing them to life imprisonment is hereby restored. Accused Nos. 1 to 3, namely, Kasireddy Ramakrishna Reddy, S/o Venkata Reddy, Kasireddy Rambhupal Reddy, S/o Kasireddy Pulla Reddy and Kasireddy Venkateswara Reddy, S/o Sankarananda Reddy are hereby directed to surrender to undergo the remaining sentence, within a period of four weeks from today.

Insofar as Criminal Appeal No. 73/2022, preferred by the original complainant challenging the acquittal of Accused Nos. 4 to 11 is concerned, as observed hereinabove, the same stands dismissed for the reasons stated hereinabove.

Devika Gujral

Appeals disposed of.