

(2006) 04 KAR CK 0038

In the Karnataka High Court

Case No : Criminal A. No. 1019 and 1163 of 2000

B. Ananda, Mallegouda @ Mallikarjuna and Biligowda @
Ramesh

APPELLANT

Vs

State of Karnataka
 Jagannath @ Dharmaraju Gowda
Vs State

RESPONDENT

Date of Decision : 06-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 148, 149, 302, 324

Citation : (2008) 1 KarLJ 155

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : A.H. Bhagawan and Maheshwodeyar, for Criminal A. No. 1019/2000 and H.P. Leeladhar, for Criminal A No. 1163/2000, for the Appellant; N. Rudramuni, AGA, for the Respondent

Judgement

K. Sreedhar Rao, J.—A.1 is convicted for an offence u/s 326 IPC. A.2, A.3 and A.5 are convicted an offence u/s 324 IPC. A.4 was dead at the time of trial. The accused are acquitted of the offence u/s 143, 148, 302 r/w. Section 149 IPC.

2. The prosecution case discloses that for some time before the incident during night hours there used to be stone pelting on the house of A.2. In that connection the accused suspected the deceased. Hence on 4-11-1993 at 8 p.m. all the accused carrying clubs and other weapons went to the house of deceased and questioned him. The deceased denied his role. The accused got enraged saying that by polite enquiries, he is not going to budge thus the accused persons assaulted the deceased with clubs on the neck, legs and on the face. P.W.7 is the wife of deceased a witness to the incident. P.W.1 and 2 sons of the deceased have gone to rescue. A.3 assault P.W.1. On the next day morning the deceased is admitted to hospital. It is found that the deceased had sustained fracture of both bones of left leg. P.W.1 had sustained simple abrasion injuries. The statement of the deceased is recorded by the police and registered as FIR marked at Ex.P.1. In the course of the treatment on account of fat embolism, the

deceased succumbs. The FIR serves as dying declaration for the prosecution.

3. P.W.1 to P.W.7 testified to the incriminating circumstances narrated above. The evidence of the said witnesses proves beyond reasonable doubt the occurrence of incident. Besides the P.M. report and wound certificate Ex.P.21 corroborates the prosecution version.

4. The accused were also charged for offence of unlawful assembly u/s 148 r/w. Section 149 IPC. The contents of the FIR disclose that A.1, A.2 assault the deceased with clubs. A.4 with iron chain and A.5 with club. A.3 assaults P.W.1. It is in evidence that all accused come, armed with weapons and each one actively participated in the assault of the deceased which proves the sharing of common object and the evidence adduced is sufficient to warrant conviction of all the accused u/s 148 r/w. Section 149 IPC. The accused indulged in indiscriminate assault on the non-vital parts, therefore no intention or knowledge to cause death could be inferred. The cause of death is not the one which could be comprehensible by the accused, therefore the accused have to be convicted only for an offence u/s 326 IPC and cannot be convicted for an offence u/s 302 IPC, but all the accused deserve to be convicted for an offence u/s 326 r/w. Section 149 IPC but the trial court strangely comes to the conclusion that the offence of unlawful assembly is not proved. The conviction is recorded on the basis of individual overt acts of each of the accused which is bad in law. The State has not filed any appeal challenging the conviction of A.2, A.4 and A.5 for lesser offence in respect of offence u/s 326 IPC. Therefore in an appeal filed by the accused this Court cannot alter the conviction for higher offence nor can impose any higher sentence. In that view, the conviction of A.1 for an offence u/s 326 IPC and the conviction of A.2 and A.5 for an offence u/s 324 IPC is confirmed.

5. The FIR allegation discloses that A.3 assaults only the P.W.1 and causes simple injury. Hence A.3 can be held liable only for an offence u/s 323 IPC and not 324 IPC. A.3 is sentenced to R.I. for a period of one month and to pay a fine of Rs. 1,000/-in default to undergo S.I. for a period of one month.

6. The conviction of A.1 for an offence u/s 326 IPC and A.2 and A.5 for an offence u/s 324 IPC is confirmed. The sentence imposed by the trial court is also confirmed.