

(2013) 01 KAR CK 0163

In the Karnataka High Court

Case No : Criminal Appeal No. 1065 of 2008 (C)

H.C. Karigowda @ Srinivasa and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162, 313
Penal Code, 1860 (IPC) — Section 120B, 149, 302, 341, 427

Citation : (2013) ILR (Kar) 992 : (2013) 3 KCCR 2014

Hon'ble Judges : K.L. Manjunath, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : Hashmath Pasha, for the Appellant; Sampangiramaiah, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

H.S. Kempanna, J.—This appeal by the appellants/accused Nos. 1, 3 to 9 is directed against the judgment and order dated 18/22.9.2008 passed in SC No. 143/2005 by the Addl. Sessions Judge, Fast Track Court-I, Hassan convicting them for the offences punishable under Secs. 143, 147, 148, 341, 302, 427, 120B r/w Sec. 149 of IPC and sentencing each of them to undergo S.I. for three months for the offences punishable under Sections 143, 147, 148 of IPC, to undergo S.I. for one month for the offence punishable under Sec. 341 r/w Sec. 149 of IPC, to undergo imprisonment for life and to pay a fine of Rs. 2000/- each in default to undergo S.I. for six months for the offence punishable u/s 302 r/w Sec. 149 of IPC and to undergo S.I. for three months for the offence punishable u/s 427 r/w Sec. 149 of IPC. Brief facts of the case are:

Appellants along with A-10 & 11 who have been acquitted in the case were tried on the charges for the offences punishable under Sections 143, 147, 148, 341 R/w Sec. 149, 120-B r/w Sec. 149, 302 R/w 149, 307 R/w 149 and 427 r/w Sec. 149 of IPC.

1.1 It is alleged that on 22.5.2005 at about 6-30 p.m. near the new house of

PW-12 Kempegowda situated on Halekote-Kyathanahalli road within the limits of Holenarasipura Police Station in pursuance of the conspiracy hatched the previous day, all the accused formed themselves into an unlawful assembly armed with deadly weapons like choppers, longs and stones the common object of which was to assault and commit the murder of two deceased Krishnegowda and Srinivasa and in furtherance of common object of their unlawful assembly when deceased Krishnegowda and Srinivasa were proceeding on the motor cycle bearing No. KA-13/Q-6888 at the said place waylaid them and committed their murder intentionally by assaulting them with chopper, longs, stones and at that time, when PWs.4 and 18 came to their rescue, they also assaulted them and caused damages to the motor cycle of the deceased in which they were proceeding and thereby committed afore-mentioned offences.

1.2 It is the case of the prosecution that deceased Krishnegowda and Srinivasa are brothers of PW-2 Jayamma, PW-3 Rangaswamy, PW-7 Thammanagowda and PW-13 Revanna. PW-5 Renuka is the wife of deceased Srinivasa. PW-10 Eshwara is the brother-in-law of deceased Srinivasa and younger brother of PW-5 Renuka. PW-11 is the son of PW-3 Rangaswamy. PW-15 Lakshmamma is the aunt of deceased and mother of PW-4, complainant in the case. They are all natives of Kyathanahalli village in Halekote Hobli of Holenarasipura Taluk. Among them, PW-7 is working as Attender in Veterinary hospital at Shravanabelagola and PW-13 is residing at Hassan. It is also the case of the prosecution that the two deceased were also residing at Hassan.

1.3 It is also the case of the prosecution that A-2 who is absconding and A-3 in the case are direct brothers. Likewise, A-5 & 6 are brothers and are sons of A-4. A-7 & 8 are direct brothers. Other accused viz., A-1, 9, 10 & 11 are related inter-se to each other. Among the accused, Appellant No. 1/A-1 was working as a school teacher in Govt. Higher Primary School situated at Basavanahalli. Appellant No. 2/A-3 Rangaraju is working as driver in Milk Dairy at Bangalore. Rajegowda Appellant No. 3/A-4 was working as Attender in Animal Husbandry Department at Kyathanahalli. K.R. Babu appellant No. 4/A-5 and K.R. Dilip appellant No. 5/A-6 are settled in Bangalore, among whom A-5 is working as a lorry driver and K.G. Prasad/Appellant No. 6/A-7 is also working as a driver at Bangalore. Appellant No. 8/A-9 Pradeep who died during the pendency of this appeal had completed second year PUC at Holenarasipura Junior College. All these accused are natives of Kyathanahalli village, Halekote Hobli, Holenarasipura Taluk.

1.4 It is the case of prosecution that all was not well between the accused on the one hand and the deceased, PWs.1 to 11, 13 to 18 on the other hand on account of the land dispute that was there between them coupled with criminal cases that had been instituted against each other due to which they were nursing grudge against each other.

1.5 Such being the position, it is the case of the prosecution that on 22.5.2005 PW-12 Kempegowda had arranged a lunch in his house on the eve of

housewarming ceremony and the marriage of his son. To the said feast he had invited the villagers of Kyathanahalli including the accused, the two deceased, PWs. 1 to 11, 13 to 18 apart from others from the surrounding villages who are his relatives and friends. Thereafter, according to the prosecution, on the evening of 21.2.2005 near Borappa's temple situated at Kyathanahalli village A9 & 10 along with other accused hatched a conspiracy to commit the murder of the two deceased.

1.6 It is further the case of the prosecution on 22.5.2005 non-vegetarian lunch was served with liquor to the invitees. All the invites left the house of PW. 12 - Kempegowda after lunch. The two deceased, who had been invited for lunch by PW-12, had their food at about 5 or 5-30 p.m. and thereafter left the house of PW-12 on their motor cycle bearing No. KA-13/Q-6888. In the mean time, it is the prosecution case the accused in pursuance of the conspiracy hatched the previous day formed themselves into an unlawful assembly armed with deadly weapons namely, chopper, longs and stones near the house of PW-12 on the road running in between Kyathanahally and Halekote with the common object of committing the murder of the two deceased. Thereafter, at about 6-30 p.m. when the two deceased came to the said place on their motor cycle bearing No. KA-13/Q 6388 the accused way laid them, assaulted with chopper, longs, stones and committed their murder. Seeing the assault made on the two deceased when PWs-4 & 18 intervened to rescue them accused assaulted them with stones due to which they sustained injuries and also caused damages to the motor cycle of the deceased. It is the specific case of the prosecution that A7, A8 and A2, A9 assaulted the deceased Krishnegowda with longs and chopper, A2, A3 and A4, A5 assaulted the deceased Srinivasa with longs and chopper respectively. Further A-4 assaulted with stone on the left cheek of PW-4 and on the left side of the neck of PW- 18. The said occurrence according to the prosecution was witnessed by PW-3, 8 to 11, 13, 17 & 18. After the two deceased and injured were assaulted, the accused took to their heels with the weapons and thereafter the two deceased and PW.4, who was injured, were removed in a tempo, which was fetched by PW-3 from Halekote to Holenarasipura hospital where the two deceased were declared as brought dead. PW- 18 escaped after he was assaulted. After PW-4 was taken to Holenarasipura hospital he was examined by PW-27, Medical Officer. After his examination PW-27 Medical Officer sent intimation as per Exs.P-25 & 26 to the jurisdictional police reporting two deceased having been brought dead and the injured PW-4 having been treated in the hospital on account of the assault made by A-4 Rajegowda. The said intimation was received initially by HC-134 not examined in the case, who in turn handed over to PW-28 PSI. PW-28 on receipt of Exs.P-25 & 26, proceeded to the hospital at Holenarasipura, there after ascertaining from Medical Officer that PW-4 was in a fit condition to give statement, recorded his first information as per Ex.P-2, in the presence of Medical Officer and thereafter returned to the police station and on the basis of Ex.P-2 he registered a case in Cr. No. 98/2005 for the offences punishable under Secs. 143, 147, 148, 341, 302, 427 R/w Sec.

149 of IPC against the accused and issued FIR as per Ex.P-27 to the jurisdictional Magistrate which reached at about 7-05 a.m. on 23.5.2005. PW-28 thereafter reported the occurrence to his superior officers including PW-29, CPI. PW-29 on receipt of the information proceeded to the spot of occurrence, there after observing the scene of occurrence he tried to trace the witnesses as they were not available he returned to the hospital at Holenarasipura. At the hospital he took over further investigation of the case from PW-28 PSI at about 1 a.m. on 23.5.05. Thereafter in the morning PW-29 directed PW-28 to hold inquest over the body of the deceased Krishnegowda who in turn held inquest over the said body in the presence of panchas including PW-6 Anil and drew up inquest panchanama as per Ex.P-5. At the time of Ex.P-5 he also recorded the statements of blood relatives including that of PW-13. At the same time, PW-29 CPI held inquest over the body of deceased Srinivasa and drew up inquest panchanama as per Ex.P-1 in the presence of pancha PW-1. He recorded the statement of PW-8 at the time of Ex.P-1. After completion of the inquest, PW-29 - Investigating Officer sent requisition to the medical officer to conduct post mortem examination over the two dead bodies. In pursuance of the same PW-21 and PW-27 two medical officers working at Holenarasipura Hospital conducted autopsy over the body of deceased Srinivas and Krishnagowda respectively and issued post mortem report as per Ex.P-15 & 22 respectively. Thereafter, PW-29 proceeded to the scene of occurrence and there he drew up scene of offence panchanama as per Ex.P-9 in the presence of panchas PW-13 & 16. At the time of Ex.P-9 he also seized MOs. 1 to 17, which were lying at the spot. In the mean time, it is the case of the prosecution PW-18 who had sustained injuries got himself examined by PW-19 medical officer at Mangala Hospital, Hassan who had issued wound certificate in respect of him as per Ex.P-13. PW-29 during the course of investigation had also directed his staff to trace and apprehend the accused. Accordingly, A-5, 6 & 8 came to be arrested by him on 8.6.2005, A-4 on 9.6.2005 and A-1, 3, 7 & 9 on 14.6.2005. On their interrogation he recorded their voluntary statements as per Ex.P-29 of A6, Ex.P-30 of A-7, Ex.P-31 of A-1, Ex.P-32 of A-3 and Ex.P-33 of A-9 respectively. Thereafter in pursuance of the said statements he recovered MOs. 19 & 12 under Ex.P-17 at the instance of A-6, MOs. 18 & 23 at the instance of A-1 under Ex.P-18 in the presence of PW-26, MOs.20 & 24 at the instance of A-3 under Ex.P-19, MOs.21 & 25 at the instance of A-7 under Ex.P-20, MO-26 under Ex.P-21 at the instance of A-9 in the presence of panchas PW-25 & 26. Thereafter on completion of their arrest formalities got them remanded to judicial custody. He also arrested A-10 & 11 on 1.7.2005 and 20.5.2005 respectively and after completion of their arrest formalities got them remanded to judicial custody. During the course of investigation, PW-29 recorded the statement of witnesses examined on behalf of the prosecution and also witnesses cited in the charge-sheet. PW-29 thereafter forwarded the seized articles in the case for subjecting to chemical examination to FSL office in pursuance of which PW-20 examined the articles sent for examination and issued the report as per Ex.P-14. PW-29 continuing the investigation thereafter secured the relevant documents including the PM report,

FSL report and other documents. In the mean time, he also made efforts to trace A-2 who was absconding till such time. As the investigation was completed, as A-2 could not be traced he submitted final report against the accused showing A-2 as absconding in the case before the jurisdictional magistrate who committed the case of the accused to the Court of Sessions, which in turn, on receipt of the records secured the presence of the accused, framed charges against them as aforesaid to which they pleaded not guilty and claimed to be tried.

1.7. The prosecution in support of its case in all examined PWs-1 to 29 and got marked exhibits Exs.PI to P35 and MOs - 1 to 26. The accused during the course of examination of the prosecution witnesses got marked Exs.D1 to D6.

1.8. After the closure of the prosecution evidence, the accused were examined u/s 313 Cr.P.C. They denied all the incriminating circumstances that were put to them found in the evidence of the prosecution witnesses. They also submitted that they have no defence evidence to lead. Total denial of the prosecution case is the defence of the accused.

1.9. The learned Trial Judge on considering the evidence and the documents placed on the record came to the conclusion that the prosecution has failed to establish all the charges levelled in so far against A10 and All, the charge of 307 r/w 149 IPC and 120(B) read with 149 IPC against all the accused, but has established the charges under Sections 143, 147, 148, 341 r/w. S. 149, 302 r/w. S. 149 of IPC and 427 r/w. S. 149 of IPC insofar as these appellants/accused and accordingly, by the impugned judgment and order, convicted and sentenced them as aforesaid.

The appellants/accused being aggrieved by the said judgment and order of conviction and sentence are in appeal before this Court.

2. During the pendency of this appeal, it is reported that, accused No. 9 committed suicide. In support of the same, learned Counsel for the appellant has also produced the UDR report and FIR registered on the basis of the information of the death of A9. In view of the same, appeal preferred by A9 gets abated.

3. Sri Hashmath Pasha, learned Counsel appearing for the appellants/accused assailing the impugned judgment and order, firstly, contended that Ex.P2, the first information in the case is hit by Section 162 of the Code of Criminal Procedure as the Police had information about the occurrence much prior to the registration of the case. In this connection, he submitted that the evidence on record reveals the Police had earlier information of the occurrence and immediately thereafter, they had visited the scene of occurrence and had removed the bodies to the hospital and later at about 11.00 p.m. in the hospital, Ex.P2 of PW-4 has been recorded. The evidence of PW-3, PW-4, PW- 10 and PW-11 reveals that the Police had come to the spot much prior to the registration of the case in pursuance of Ex.P2. Ex.P2 cannot be treated as the first information as the investigation had already commenced. Therefore, the subsequent events that have taken place will have to be viewed in a suspicious manner which does

not inspire confidence to place any reliance on the same. He further contended that in so far as the testimony of the eyewitnesses is concerned, namely, PWs-3, 8, 9, 10, 13, 11, 17 and 18, they are all interested witnesses being related to each other. Among them some of them are the brothers of the two deceased. The names of PWs-8, 9, 10, 13, 17 & 18 has not been mentioned in the first information report. Further, the statements of PWs-9, 10 and 18 has been recorded nearly about five days after the occurrence and that by itself is sufficient to hold, their testimony cannot be relied upon claiming that they had witnessed the occurrence. In so far as the injured witnesses PWs-4 and 18 are concerned, he submitted that PW-4 has turned hostile. He has not supported the case of the prosecution. PW-18, the other injured eyewitness has got himself treated at Mangala Hospital in Hassan at the hands of PW-19 on 23.05.2005 and as his statement came to be recorded by the Investigating Officer on 05.06.2005 about 13 days after the occurrence. If really, these two witnesses had sustained injuries at the hands of the accused as projected by the prosecution. PW-4 would not have turned hostile and the statement of PW- 18 could not have been recorded about 13 days after the occurrence. He also pointed out, when PW-4 according to the prosecution has gone to the hospital at Holenarasipura, immediately after the occurrence, PW18 has escaped from the spot and has taken treatment at Hassan. The evidence of these two injured witnesses therefore does not inspire confidence to place reliance on them. He further submitted the ocular testimony of the alleged witnesses examined by the prosecution is in direct conflict with the medical evidence on record. The eyewitness claim that the two deceased were assaulted with choppers and longs. The two Medical Officers, who have conducted autopsy, namely, PWs-21 and 27 have not noticed any incised wounds on the two deceased. Therefore, the claim of the eyewitnesses that the two deceased were assaulted by the accused with choppers and longs, cannot be believed. He also further contended in so far as the recovery of MOs-18 to 26 at the instance of A1, A3, A6, A7 & A9 cannot also be believed for the reason. Firstly, the recoveries of the aforementioned material objects have been made much later to the date of arrest of the accused and recording of their voluntary statement. Nextly, on account of direct evidence being untrustworthy, he submitted, as all the eye witnesses to the occurrence are related to each other interse, they being interested and as their testimony is not corroborated from any independent quarters, no reliance can be placed on them. He also contended, according to the prosecution, the two deceased were assaulted with three choppers wielded by A1, A5 & A6 and with three longs by A3, A7 and A8. What has been seized during the course of investigation is only one chopper MO-18 and no explanation is forthcoming with regard to the non-seizure of the other two choppers which according to the prosecution has been used by the accused in the commission of the offence. The learned Trial Judge without appreciating this material on record in its right perspective has come to an erroneous conclusion in holding that the accused are guilty of the offence punishable u/s 302 of IPC and other allied offences for which they have been convicted. He also contended the prosecution case is that, in pursuance of the

conspiracy that had been hatched on 21.05.2005 in the evening near Borappa's temple at Kyathanahalli Village by the accused, they had committed this offence on the evening of 22.05.2005 near the house of PW-12 on the road running in between Halekote to Kyathanahally. As the prosecution did not lead any cogent evidence on this aspect, the learned Trial Judge has acquitted all the accused of the said charge of conspiracy and A10 & A11 of all the charges levelled against them. As the initial conspiracy according to the prosecution has failed in view of Ex.P2 having been hit by Section 162 and having regard to the conduct of the prosecution witnesses, they being interested, the accused cannot be said to have committed the aforementioned offences. Therefore, the impugned judgment and order of conviction and sentence passed on the appellants be set aside and they be acquitted.

4. In support of his submission, he relied upon the decision reported in State of Andhra Pradesh Vs. Punati Ramulu and others,

5. Per contra, Sri. N.S. Sampangi Ramaiah, learned HCGP supporting the impugned judgment and order contended the evidence on record does not reveal that the Police had any definite information about the commission of the cognizable offence. PW-28 came to know about the commission of the offence only on receipt of the death intimation Exs.P25 and 26, which he received, issued from PW-27 at about 10.30 p.m. on 22.05.2005 and thereafter, he proceeded to the hospital and recorded Ex.P2 of PW-4 who was undergoing treatment at the said hospital. In that view of the matter, he submits that Ex.P2 is not hit by Section 162 of Cr.P.C. and the investigation done in pursuance thereof cannot be found fault with. He further contended, merely because PWs.-3, 8, 9, 10, 11, 13, 17 & 18 are related inter se amongst them, among whom, some are also brothers of the deceased, their evidence cannot be brushed aside as their evidence is cogent and consistent with regard to the alleged assault on the two deceased including that of the two injured, which is fortified from the medical evidence and as nothing has been brought out in the cross-examination to discredit their testimony, the learned Trial Judge has committed no error in believing their testimonies and holding that the accused are guilty of the offences for which, they have been convicted. He further contended merely because, PW.4 and PW. 18 - the two injured have turned hostile that does not take away the case of the prosecution, in view of the evidence of the other eyewitnesses examined in the case, whose testimony is cogent and reliable. He also contended the testimony of PWs-27 & 21, the two medical officers who have conducted the autopsy over the bodies of the two deceased, have stated in their evidence that the injuries, which they have noticed, can be caused not only with stones but also with choppers and longs. In that view of the matter, it cannot be said that ocular testimony of the aforementioned witnesses is in direct conflict with the medical evidence to discard their testimony. Taking from any angle, he submitted as the evidence of the prosecution witnesses including of all the Investigating Officers being cogent and consistent, the impugned judgment and order of the Trial Judge does not call for any interference and therefore, the appeal be dismissed.

6. Having regard to the aforementioned facts, rival contentions, the evidence and the documents on record, the points that arise for our consideration are:

- i) Whether the prosecution has established that the two deceased, namely, Krishnegowda and Srinivasa, have died an homicidal death and the two injured PWs-4 and 18 have sustained injuries on their person?
- ii) If so, the prosecution has established that the accused are responsible for the homicidal death of the two deceased and causing injuries to PWs.4 and 18?
- iii) Whether the impugned judgment and order of conviction and sentence passed on the appellants by the Trial Judge calls for any interference?

7. Re. Point No. 1

The prosecution in order to establish that the two deceased, namely, Krishnegowda and Srinivasa have died an homicidal death have placed reliance on the testimony of PWs-21 and 27 who have conducted autopsy over the dead bodies of the said two deceased. PW-21 in his evidence has stated that, on 23.05.2005 he conducted autopsy over the body of the deceased Srinivasa and found the following external and internal injuries:

1. Cut lacerated wounds over left forehead above eye brow 2 1/2" X 1/2" X 1/2" and 1" X 1/4" X 1/4" adjacent to the first bone exposed.
2. Cut lacerated wound over head vertex 2 1/2" X 3" X 1/2" zig zag bone exposed.
3. Cut lacerated wound over head anteriorly 2" X 1/2" X 1/4"
4. Cut lacerated wound over head laterally over temporal area behind right ear 3" X 1/2" X 1/2" and 1 1/2" X 1/2" X 1/2" adjacently.
5. Cut lacerated wound adjacent to right eye 1 1/2" X 1/2" X 1/2".
6. Linear over right side of face from cheek to ear right 4" X 0.3 cms.
7. Cut lacerated wound over right side of chest over 3rd and 4th intercostal space 2 1/2" X 1" X 1".
8. Linear abrasion over right clavicle 2" X 0.2 cm.
9. Altered wound over right arm and shoulder area 4" and 3 1/2" linear.
10. Three cut lacerated wounds over right forearm posteriorly 2 1/2" X 3/4 X 1", 1" X 1/4" X 1/4", 1 1/2" X 1" X 1/2" ulna present.
11. Lacerated wounds over right palm between thumb, index finger and ring and little Finger 1/2" X 1/2" and 1/2" X 1/2".
12. Cut lacerated left arm 2" X 1" X 1/2" and shoulder with fracture of process.
13. Lacerated wound over left forearm 1 1/4" X 1/4" X 1/4".

14. Abrasion over right knee 1" X 1/2".

15. Lacerated wound over right ankle 1/4" X 3/4" X 1/4" medially.

16. Lacerated wound over occipital (head) area 1" X 1/2" X 1/4".

17. Lacerated wound over root of more 1/2" X 1/4" bone exposed.

8. He has further stated that all the above external and internal injuries were anti-mortem in nature. He has opined that the death of deceased Srinivasa is on account of the injuries sustained and that he has issued the post-mortem report in respect of him as per Ex.P15. This evidence of PW-21 is further fortified from the evidence of PW-29 CPI who has conducted inquest over the body of the deceased Srinivasa in the presence of the Pancha PW-1. Their testimonies reveal that they have noticed the injuries on the body of Srinivasa as reflected in the post-mortem report Ex.P15 issued by PW-21. Further, the evidence of PWs-3, 8, 9, 10, 11, 13, 17 & 18 also reveals that they have noticed the injuries on the body of the deceased Srinivasa. In the cross-examination of these witnesses, nothing has been elicited to discredit their testimony with regard to the injuries sustained by the deceased Srinivasa which has resulted in his death. Therefore, we hold that the prosecution has established that the deceased Srinivasa has died an homicidal death.

9. Coming to the death of the deceased Krishne Gowda, the prosecution has relied upon the evidence of PW.27 -- Medical Officer, who has conducted autopsy over his body on 23.5.2005. PW.27 in her evidence has stated at the time of post mortem examination, she noticed the following external and internal injuries on the body of the deceased:

External Injuries:

1. Lower lip is cut in the center x 2
2. Upper middle incisor teeth on the right side had fallen.
3. There was bleeding through ears and scalp laceration.
4. A curvilinear laceration, transversely placed in the neck measuring 10 cms x 2 cms x 1cm and trachea and blood vessels with bleeding.
5. A laceration measuring 3 cms x 2cms at the vertex of the head.
6. An hematoma in the scalp measuring 3 cms x 2 cms situated left to injury No. 5.
7. A semi-circular depressed laceration fracture situated on the forehead measuring 7cms x 2 cms x 0.5 cm.

Internal Injuries:

1. A depressed fracture at the center of frontal bone measuring 7cms x 0.5 cm.

2. At the vertex there was a fracture at three places at the top of the head measuring 7 cms x 8 cms.

3. Nasal bone had been fractured.

10. She has further stated all the above external and internal injuries were anti mortem in nature. She has opined that the death of the deceased Krishnegowda is on account of injuries sustained by him and she has issued post mortem report as per Ex.P.22. This testimony of PW.27 is fortified from the evidence of PW.28-PSI, who has held inquest over the body of the deceased Krishnegowda in the presence of the panch PW.6. The evidence of these two witnesses also reveal that they have noticed the injuries as reflected in the post mortem report Ex.P.22 issued by PW.27.

11. Apart from this, the evidence of PWs.3, 8, 9, 10, 11, 13, 17 and 18 also reveal that they have seen the injuries that were found on the body of Krishnegowda. In the cross-examination of these witnesses, nothing has been elicited to discredit their testimony with regard to the injuries that have been found on the body of the deceased Krishnegowda, to which he has succumbed. Homicidal death of the deceased Krishnegowda and that of Srinivas was also not disputed either before the trial Court or before this Court by the Counsel appearing for the appellants/accused. Therefore, having regard to the evidence, which we have adverted to above, we hold that the prosecution has established that the two deceased i.e., Krishnegowda and Srinivasa have died an homicidal death.

12. Nextly, the prosecution in order to establish that PWs.4 and 18 had sustained injuries has relied upon the evidence of PWs.27 and 19 -- Medical Officers, who have treated them and have issued wound certificates Exs.P.24 and 13 respectively in respect of them. PW.27 in her evidence has stated on 22.5.2005 at about 9.45 p.m. she treated a person by name Thammanna i.e., PW.4 and at that time, she noticed that he had sustained a lacerated wound measuring 1 cm. situated on the left cheek below the left eye. She has issued wound certificate in respect of him as per Ex.P.24. PW.19 has stated that on 23.5.2005 in the night at about 12.30 a.m. PW.18 had got admitted in the hospital for treatment of the injuries sustained by him. On his examination, he noticed there was a laceration on the left side of his neck, which was simple in nature and he has issued wound certificate to that effect as per Ex.P. 13. In the cross-examination of these two witnesses, nothing has been elicited to discard their testimonies. Further PWs.4 and 18 claim that they sustained injuries on their person, for which they took treatment, but they do not know who caused the injury on them. Both of these witnesses have turned hostile to the prosecution. Despite the same, in view of the evidence of PWs.27 and 19 and the wound certificates - Ex.P.24 and P. 13 issued by them as the two injured having also sustained injuries is not disputed, in the circumstances, we hold the prosecution has established that PWs.4 and 18 had also sustained injuries on their person.

13. Re-point No. 2:

The prosecution in order to establish that the accused are responsible for the homicidal death of the two deceased Krishnegowda and Shrinivas has placed reliance on the direct testimonies of PWs.3, 4, 8, 9, 10, 11, 13, 14, 17 and 18. Apart from the same, they have also relied upon the first information report-Ex.P.2 of PW.4 given before PW.28 -- PSI at the hospital on the night of the occurrence in the presence of PW.27- Medical Officer. Further they have also relied upon the recoveries of MOs. 18 to 26 at the instance of A.2, A.3, A.6, A7 and A.9. Before dealing with the ocular testimonies of these witnesses adverted to above, we first deal with the legal contention raised by Sri. Hasmath Pasha with regard to Ex.P.2 - First Information being hit by Section 162 of Cr.P.C. It is the case of the prosecution that PW.28 on receipt of Exs.P.25 and P.26 - the death intimation memo and intimation regarding treatment given to the injured PW.4 proceeded to Holenarasipura hospital and there he recorded Ex.P.2 of PW.4 in the presence of PW.27. Thereafter, he returned to the police station and on the basis of Ex.P.2, he registered the case in Crime No. 98/2005 and issued FIR as per Ex.P.27 to the Jurisdictional Magistrate, which reached at about 7.05 a.m. on the morning of 23.5.2005. It is the contention of Sri. Hasmath Pasha that this Ex.P.2 is not the first information as projected by the prosecution. According to him, the evidence of the prosecution witnesses more particularly, that of PWs.3, 4, 10 and 11 reveal that the police had come to the spot of the occurrence much prior to recording Ex.P.2 at the hospital by PW.28 in between 11 p.m to 11.50 p.m.

14. Drawing our attention to the evidence of PWs.3, 4, 10 and 11 he submits that their evidence reveals that the police had come to the spot immediately after the occurrence and they had removed the body of the two deceased to the hospital in a tempo along with the assistance of other witnesses including PW.4. He further contended that before the two bodies were removed to the hospital the evidence of PW.4 reveals that he had gone to the outpost at Halekote and had informed them of the occurrence and thereafter had returned to the place of occurrence. The said outpost police had also sent a message to Holenarasipura police through wireless of the said information. The Outpost police have recorded the same at Outpost police station and forwarded the same to Holenarasipura police station. He further submitted that the evidence of PW.29-CPI reveals that at about 10.30 p.m. or 11.00 p.m. on being informed by PW.28 - PSI of the occurrence he had come to the spot. If the same is taken into consideration, PWs.28 and 29 had the information about the occurrence much prior to coming into existence of Ex.P.2 -- first information recorded by PW.28 in the hospital. Therefore, he submits that since the police already had definite information of the cognizable offence about the occurrence in this case, as the investigation had commenced, Ex.P.2 cannot be treated as first information and it is hit by Section 162 of Cr.P.C.

15. Learned Counsel for the appellant in support of his submission has relied

upon the decision reported in State of Andhra Pradesh Vs. Punati Ramulu and others, which reads as follows:

(A). Criminal P.C (1974), Sec. 154 -- Complaint about cognizable offence -- Refusal by police to record on ground that concerned police station has no territorial jurisdiction over place of crime -- Amounts to dereliction of duty -- Proper course is to record information and forward to police station having jurisdiction.

(B). Criminal P.C. (1974), Ss. 154, 162 -- FIR or statement recorded during investigation -- Investigation Officer deliberately not recording FIR after receipt of information of cognizable offence -- Registering the complaint as FIR after reaching the spot and after due deliberations, consultations and discussion -- Complaint could not be treated as FIR -- It would be a statement made during investigation and hit by S. 162.

(C). Evidence Act (1872), Section 3 -- Interested witnesses -- Not by itself enough to discard their testimony - Their evidence is to be scrutinized carefully -- Investigation found to be tainted and unsafe to rely upon -- Testimony of interested witnesses could not be relied upon in absence of strong corroborative evidence of clinching nature.

16. We have gone through the evidence on record in this connection in depth. On our scrutiny we find sufficient force in the submission made by the learned Counsel for the appellant. The evidence of PW4 and that of PWs 3, 10 & 11 reveal that the police had visited the scene of occurrence much prior to the registration of the case and had also taken steps to remove the two dead bodies to the hospital whereby it indicates the police had definite information about the occurrence of a cognizable offence prior to the registration of the case. Apart from the same the evidence of PW3 also reveals that the police had come to the spot and had removed the two deceased to the hospital at 8.00 p.m. along with PW4 and while he was in the hospital police made enquiry with him and the other eye witnesses who were in the hospital about the occurrence and that would go to show that the police had earlier information of the occurrence much prior to coming into existence of Ex.P2.

17. The Apex Court in the decision relied upon by the Counsel for the appellant has also held if the investigating officer deliberately does not record the FIR after receipt of information of cognizable offence -- registering the complaint as FIR after reaching the spot and after due deliberation, consultation and discussion, such complaint cannot be treated as FIR, it would be only a statement made during investigation and hit by Section 162.

18. As the evidence of PWs.3, 4, 10, 11 and that of PWs.28 and 29 also reveal that the Police had come to the scene of occurrence much prior to coming into existence of Ex.P.2 in the hospital at Holenarasipura in between 11.00 p.m. and 11.50 p.m., it has to be held that Ex.P.2 cannot be treated as first information and Ex.P.27 prepared on the basis of Ex.P,2 cannot be the first information

report. It follows that much water must have flown under the bridge, before Ex.P.2 has come into existence which time has been marked by the investigating agency to plant eyewitness, who are none other than the brothers and relatives of the two deceased in falsely implicating the accused. Therefore, in that view of the matter, we have no hesitation in holding that Ex.P.2 is hit by Section 162 of Cr.P.C. as the police had earlier definite information about the occurrence and they had commenced the investigation.

19. Insofar as the ocular testimony of the witnesses examined by the prosecution as already stated they are all related to each other, some of them being brothers of two deceased. The evidence of PW.3, who is none other than the brother of the two deceased reveals that the police had come to the spot and had removed the two deceased to the hospital. When he was in the hospital, the police had also come there and had made enquiries with him about the occurrence and before the Court he has testified that the accused are the assailants of two deceased. Likewise, is the evidence of other witnesses namely, PWs.8, 9, 10, 11, 13, 14 and 17. All these witnesses were available to the police after the occurrence. They were present at the hospital when the two deceased were taken to the hospital in a tempo, which is not disputed by the prosecution. But, we may have to observe that the statements of PWs.9 and 10 have been recorded by PW.29 on 27.5.2005 and that of PW.11 on 22.6.2005. No explanation is forthcoming from the evidence of the Investigating Officer as to why there was such a delay in recording their statement though they were available immediately after the occurrence at the spot and at the hospital where the two bodies had been taken. Apart from this, PW.4 is the injured eye-witness, who has turned hostile to the Prosecution. Merely because, he has turned hostile, it does not go to the root of the prosecution case, if there is other cogent, reliable and independent evidence on record to show that he had sustained injuries in the occurrence at the hands of the accused. PW.4 in his first information Ex.P.2 does not mention the names of all the eyewitnesses. As already pointed out, his statement is recorded on 26.6.2005 nearly about a month after the occurrence. This is another point, which goes against the prosecution to hold that these witnesses have been planted subsequently in the case and in that view of the matter no reliance can be placed on their ocular testimony. Apart from this, according to these witnesses, two deceased were assaulted with chopper and Long. Two Medical Officers, who have conducted autopsy namely, PWs.21 and 27, have not noticed any incised wounds on the body of the two deceased. What is noticed is only laceration and according to the Doctors, it could be caused by stone. When the evidence of these direct witnesses is to the effect that the accused assaulted the deceased with chopper and long, two deceased should have sustained some incised wounds on their person. Absence of any incised injury would go a long way to place any reliance on the testimony of direct witnesses. For the reasons, which we have already adverted to above, they being interested, no reliance could be placed on their testimony.

20. Insofar as PW.18 is concerned, he has not gone to the hospital along with two deceased and PW.4. According to the prosecution, he left the spot and took treatment with PW.19-Medical Officer at Mangala Hospital on 23.5.2005. His statement has been recorded on 5.6.2005 nearly about 14 days after the occurrence. In the light of the discussion that we have made above, and as he has not made himself available to the police immediately after the occurrence and as he has also turned hostile to the prosecution, his evidence is also of no avail in any manner to the prosecution. Therefore, we are of the view that the evidence of all these witnesses pressed into service to connect the accused with homicidal death of two deceased and causing injuries to PWs.4 and 18 does not inspire confidence to place reliance on them.

21. Nextly, coming to the recovery of the weapons MOs. 18 to 26 made at the instance of A.1, A.3, A.6, A.7 and A.9, we may have observe that what has been mentioned in the first information is; the accused had been assaulted with three choppers whereas only one chopper has been Seized in the presence of A.1. What happened to other two choppers is not forthcoming from the evidence of Investigating Officers. Apart from the same, Accused Nos. 5, 6 and 8 are alleged to have been arrested on 8.6.2005 and on the basis of the voluntary statement of A.6 as per Ex.P.29, MO.10 - Long has been seized by PW.29 under the mahazar Ex.P.17 in the presence of panch PW.25. But the evidence on record does not reveal A.6 has used this Long. Further no recoveries have been made at the instance of A.5 and A.8 though according to the prosecution A.8 had assaulted Krishnegowda with Long. Further A.4 is alleged to have been arrested on 9.6.2005. No recovery has been made at his instance. A.1, A.3 and A.9 have been arrested on 14.6.2005. The recoveries at the instance of A.1 and A.9 namely, the chopper-MO.18 and T-shirt - MO.26 have been made on 17.6.2005 nearly three days after their arrest and recorded their voluntary statement. In view of the date of arrest, date of recording their voluntary statement and the subsequent date of recoveries made at the instance of the accused also does not inspire confidence to place reliance on the recoveries pressed into service by the prosecution as against the accused in view of we also having held the evidence of the direct witnesses is not trust worthy as the same is not corroborated with each other of the actual assault made by each of the accused on the two deceased and as it is also in direct conflict with the medical evidence on record, coupled with the fact that Ex.P2 is hit by Section 162 of Cr.P.C.

Insofar as the assault made on PWs 4 and 18 is concerned, both of them have turned hostile to the prosecution. The ocular testimony pressed into service in this connection, as already pointed out, is untrustworthy. The accused have also not been found guilty by the Trial Judge for having assaulted these two witnesses.

Therefore, taking from any angle, we are of the view that the evidence pressed into service by the prosecution to connect these accused with the murder of the two deceased Krishnegowda and Srinivasa does not inspire confidence to place any reliance on same.

In that view of the matter, we have no hesitation in holding that the prosecution has failed to establish the charges levelled against these appellants also for which they have been convicted.

22. Re. Point No. 3: The trial Judge without appreciating these materials on record in its right perspective has come to an erroneous conclusion in holding that the prosecution has established that these accused are responsible for the murder of the two deceased which finding in our view being contrary to the facts, evidence and being perverse cannot be sustained and accordingly it calls for interference in this appeal.

In the result for the foregoing reasons, we proceed to pass the following:- ORDER

(i) Appeal is allowed.

(ii) The impugned judgment of conviction and order of sentence passed on the appellants/accused dated 18.09.2008 in S.C. No. 143/2005 on the file of the Fast Tack Court-I and Additional Sessions Judge, Hassan, is set aside.

(iii) The appellants/accused are acquitted of all the charges levelled against them.

(iv) They are in custody. They are ordered to be set at liberty forthwith if not required in any other case.