

(2006) 09 KAR CK 0072
In the Karnataka High Court
Case No : Criminal A.No. 705 and 715 of 2000

State of Karnataka

APPELLANT

Vs

Vithal Laxman Chalawadi and Others

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357
Penal Code, 1860 (IPC) — Section 143, 149, 323, 324, 34

Citation : (2006) 09 KAR CK 0072

Hon'ble Judges : V. Jagannathan, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : P.M. Nawaz, HCGP, for the Appellant; Dayananda, S. Patil, as Amicus Curiae for R-1 and 2, S.S. Mamadapur, for Ashok R. Kalyanshetty, for R-3 and 4 in CrI.A. No. 715/2000 and G.S. Anusuya in CrI.A. No. 705/2000, for the Respondent

Judgement

1. Six persons were tried for the offences punishable under Sections 143, 324 read with Section 149 and 302 read with Section 149 of IPC and the learned Sessions Judge, Bijapur, acquitted four of them and convicted two accused persons for the offence punishable u/s 324 of I.P.C. The State aggrieved by the said order of acquittal of four accused and conviction of two persons for lesser offence u/s 324 of IPC has preferred these two appeals, and hence these two appeals are disposed of by this common judgment.

2. The case of the prosecution in brief is as under:

Complainant Guralingappa, (PW-1) was residing in Ambedakar Galli of Bagalkot along with his mother (PW-6), deceased elder brother Ramesh, sister Kummakka and sister-in-law Suvarna (PW-9) and about four years prior to the complaint it was decided to take one Padavva the sister of accused Nos. 1 to 4, in marriage to deceased Ramesh. After the engagement was over Rs. 30,000/- was given to the accused family as they wanted to purchase a Matador Van. The said loan amount was not repaid by the accused and therefore, the vehicle was brought and

stationed in front of the house of the complainant. Apart from this incident, the real reason for the present incident to take place was the refusal on the part of the deceased Ramesh to marry Padavva, sister of accused Nos. 1 to 4 and Ramesh refused to marry her on the ground that she was hard of hearing. However, the younger sister of accused Nos. 1 to 4 namely, Suvarna (PW-9) decided to marry Ramesh after having a love affair with him. Consequent to this, Ramesh took Suvarna to Bijapur and a registered marriage took place between them. This act on the part of the deceased in marrying Suvarna, the younger sister of Accused Nos. 1 to 4 enraged the accused persons as they felt that Ramesh had spoiled the life of Padavva by refusing to marry her. This led to the incident of murder of Ramesh and according to the complaint on 25.12.1995 at about 4.00 p.m. accused Nos. 1 to 4, being the elder brothers of Suvarna went to the house of the Mahadevappa Basappa Dodamani - accused No. 5 and Yellappa - accused No. 6 and had a meeting and afterwards at 6.30 p.m. the four accused Nos. 1 to 4 came to the house of the complainant and asked about the whereabouts of the Ramesh and when Ramesh called the accused persons to come inside the house, they questioned him for having married Suvarna without their consent and there afterwards, the accused assaulted Ramesh with knife all over the body. It is the complaint allegation that Accused Nos. 1 to 4 assaulted Ramesh with knife on his body and this was followed by Accused No. 2 also assaulting Ramesh with knife on his stomach and accused No. 3 joined in achieving the common object of the assembly crime by instigating the other accused to finish off Ramesh. The complainant and his mother (PW-6) went to the rescue of Ramesh and in the course of incident they were also assaulted and Accused No. 1 assaulted PW-1, complainant with a knife on the stomach and PW-6 received a chappal blow at the hands of accused No. 3 on her mouth. Following the injury sustained, Ramesh was taken in autorickshaw to the hospital but on the way he breathed his last.

3. PW-11 - Shankar, PSI of Bagalkot Police Station received information from the hospital that PW.1 who had sustained injuries in the incident was being admitted and immediately PSI went to the hospital and register a case as per Ex.P.1 in Crime No. 379/95 and sent FIR to the Court. There afterwards, PW-12, Head Constable was asked to keep watch over the dead body and on the following morning PW-11, the investigating officer conducted the Inquest panchanama, Ex.P.13 and also spot panchanama as per Ex.P.14. The clothes of the deceased were seized as per mahazar - Ex.P.15 and the dead body was Bent for post mortem examination and it was conducted by PW.16 - Dr. Goudappa Shankareppa Baragi. During the post mortem examination, Doctor noticed as many as 17 injuries on the dead body and coupled with four more internal injuries, opined that injury No. 16 and 17 led to profuse bleeding and the cause of death due to above said injuries. There afterwards, the CPI took over the investigation. On his part PW.14 Wilson Sudhakar, the CPI after the arrest of the accused recorded the voluntary statements and based on the statement of A-2 as per Ex.P.17 recovered two knives under Ex.P.19 and Ex.P.18, is the seizure

panchanama of chappal. He collected the injury certificates of injured witness as per Ex.P.21 and Ex.P.22 and on completion of the investigation which included recording of statements several witnesses and collecting the FSL report as per Ex.P.23, chemical examination report, Ex.P.24, the charge sheet was submitted.

4. At the trial, the prosecution examined PW.1 to 16 and documents Ex.P.1 to P.25, which were produced. But the accused did not admit the incriminating circumstances appearing in the evidence when questioned u/s 313 of the Cr.P.C and led no defence evidence. Learned trial Judge after appreciation of the evidence on record and in the light of the arguments advanced, came to the conclusion that there were discrepancies in the testimony of the injured witnesses as well as other witnesses on record and it was not possible to draw the inference which accused has caused which injury to the deceased. And in addition, the trial Court also found that various panchnamas viz., spot panchanama, inquest panchanama and the recovery panchanama were not proved and taking into account all these defects in the prosecution case, the trial Court thought it is fit to extend the benefit of doubt to accused No. 2 and accused No. 4. However, the trial Court was satisfied with regard to the prosecution case concerning the assault committed by accused Nos. 1 and 3 on PW.1 and PW.6 and therefore, the said two accused persons were convicted for the offences punishable u/s 324 of IPC against Accused No. 1 and Accused No. 3 was acquitted for the offence u/s 323 IPC.

5. Aggrieved by the aforesaid judgment and order of the acquittal passed by the trial Court, in acquitting all the accused persons for the offence of murder, the State has preferred this appeal against the said accused and in respect of two accused, A-1 and 3 who are convicted to lesser offence punishable under Sections 324 and 323 respectively. State has preferred another appeal questioning the said conviction and this is how the two appeals arise out of the same judgment passed by the trial Court.

6. We have heard the submissions made by Sri. P.M. Nawaz, learned Government Pleader for the State as well as the arguments advanced by Sri. Dayanand S. Patil, learned Counsel for R-1 and R-2 in appeal No. 715/2000 and Sri. S.S. Mamadapur for Sri. Ashok R. Kalyanshetty, learned Counsel for R-3 & R-4 in the same appeal and arguments of Smt. Anusuya, learned Counsel for R-1 and 3 in CrI.A.No. 705/2000.

7. The learned Government Pleader, Sri Nawaz, argued that the prosecution mainly relies on the testimony of two injured witnesses - PWs.1 and 6 and their evidence is corroborated by the testimony of two independent eye witnesses. Therefore, the trial court could not have disbelieved the testimony of the said witnesses, who have spoken with regard to the presence of the accused in the house of the complainant and assault committed by them on the deceased as well as PWs.1 and 6 receiving the injuries when they tried to rescue the deceased -Ramesh being assaulted by the accused persons. The said evidence of the above witnesses is also supported by the medical evidence of PW.16 and the

injuries sustained by PWs.1 and 6 have been spoken by PW.15 - Dr. Hanamant, who has issued the wound certificates as per Exs.P21 and 22. Therefore, it was submitted that the prosecution had proved beyond all reasonable doubt, the act of accused persons in committing the assault on the deceased -Ramesh and causing him number of injuries with the knife. Therefore, even if there are some discrepancies and inconsistencies in the testimony of the material witnesses, they however did not affect the root of the prosecution case and as such the trial court was in error in disbelieving their version in toto.

8. It was further submitted by the learned Government Pleader that the trial court has accepted the testimony of two injured eye witnesses and convicted accused No. 1 for the offence punishable u/s 324 and accused No. 3 for the offence punishable u/s 323 of IPC and this goes to show that the presence of accused persons as well as the role played by the accused persons stood established and the said two accused persons did not prefer any appeal against their conviction and all the factors taken together go to show that the prosecution has established its case against the accused persons. Therefore, the finding of the trial court that the scene of occurrence is not proved and the recovery evidence is also not very convincing and does not in any way discredit the testimony of material witnesses including the two injured eye witnesses. It was further submitted that even though there is no sufficient evidence as against accused Nos. 5, it is unlikely that Section 149 of IPC gets attracted to the case on hand. Still the common intention on the part of accused Nos. 1 to 4 in assaulting the deceased - Ramesh is established having regard to the manner in which the said four accused assaulted the deceased. Therefore, by application of Section 34 of IPC, accused Nos. 1 to 4 are liable to be convicted for causing the death of Ramesh. Referring to the decision of the Hon"ble Supreme Court reported in 2005 SCC Cri. 127, it was submitted that even if the evidence does not indicate as to which of the injuries caused to the deceased, led to his death, still all the accused persons having caused number of injuries on the deceased are liable to be convicted for the offence of murder with the aid of Section 34 of IPC. Therefore, the acquittal of the accused for the offence of murder by the trial court is erroneous and so far as the injuries caused to PWs.1 and 6 are concerned, the accused, who caused those injuries, will be liable for their separate act. Hence, the learned Government Pleader submitted that the trial court's finding is unreasonable and contrary to the trustworthy evidence of the material witnesses, particularly the injured eye witnesses. The motive for the murder is also proved by the prosecution and as such, even if there are minor contradictions in the testimony of witnesses, the evidence on the whole placed on record is credible and trustworthy and supported by the medical evidence as well as the evidence of the police officers - PWs.11 & 14. Therefore, all the accused persons be convicted for the offence of murder with the aid of Section 34 of IPC.

9. On the other hand, learned Amicus Curiae, Sri Dayananda S. Patil, appearing for the respondents No. 1 and 2 in CrI.A.No. 715/2000 by relying on the

reasoning given by the trial court, submitted that the prosecution has not been able to establish clearly the scene of occurrence, because the witnesses did not speak consistently with regard to this aspect of the matter and secondly the recovery evidence is also not credit worthy as the panch witnesses have turned hostile. Hence, the recovery is bad in the eye of law. Coupled with this, the medical evidence does not given an indication as to whether deceased - Ramesh died on account of which of the injuries caused by the accused persons and the evidence regarding the injuries Nos. 16 and 17 caused to him is not very clear. Therefore, the trial court has given the benefit of doubt to the accused in this regard. It is his submission that the reasoning given by the trial court is just and proper and therefore interference with the order of acquittal passed by the trial court is not called for in this appeal. He therefore, prayed for dismissal of the State appeal and to confirm the judgment and order of acquittal passed by the trial court.

10. Learned Counsel, Sri Mamadapur, appearing for Sri Ashok R. Kalyanashetty for respondents No. 3 and 4 submitted that so far as these two accused persons are concerned, there is no evidence on record to indicate that they were involved in committing the assault on the deceased and there is no evidence on record to indicate that these two accused persons were with accused No. 1 and 4 before the incident took place, but on the other hand, it has come in the evidence of PW.1 that accused Nos. 1 and 4 after the incident ran towards the house of accused Nos. 5 and 6. As such, the acquittal of the said two accused persons by the trial court is just and proper and the State appeal as against these two accused persons be liable to be dismissed.

11. Learned Counsel for respondents in CrI.A.No. 705/2000, Smt. G.S. Anasuya, virtually adopted the argument addressed by Sri Dayananda S. Patil, learned Amicus Curiae for respondents No. 1 and 2 in Cri.A.No. 715/2000.

12. Having thus heard the submission made by the respective sides and after having carefully gone through the evidence on record as well as the reasoning of the trial court, the only point for consideration is whether the State has made out the case for interference with order of acquittal passed by the trial court.

13. Out of 16 witnesses examined by the prosecution, the material witnesses are PW.1, who is the complainant - cum - injured eye witness and PW.6 - Putalawwa, the mother of PW.1 and the deceased and two independent eye witnesses - PWs.7 and 8, apart from the medical evidence and the evidence of Investigating Officers.

14. P.W.16-Dr. Gowdappa Shankarappa Baragi speaks to the medical evidence and two Police Officers P.W.11-Shankar, CPI who registered the case and P.W.14-Wilson Sudhakar, CPI, speak to the various panchanamas and recording of voluntary statements of the accused relating to the submission of the charge sheet. Excepting the above witnesses, the rest of the witnesses have not supported the prosecution case and they are P.W.2-Yamanappa, Panch Witness in

the inquest panchanama Ex.P2; P.W.3-Shyam, witness for the seizure of the clothes of the deceased and panchanama Ex.P7; P.W.4-Ramaduth and P.W.5-Fakirappa, the panchas for seizure of chappal from A-3; P.W.9-Suvarna, wife of deceased Ramesh and P.W.10-Somappa, who was examined in connection with the money transaction between the deceased and A-1.

15. The prosecution is required to establish that the deceased Ramesh died a homicidal death. So far as this aspect of the case is concerned, the evidence of P.W.16-Dr. Goudappa Shankareppa Baragi does not give room for doubt in any one's mind as to the nature of the death of Ramesh. The said doctor in the course of his evidence has deposed to the effect that on 26.12.1996, he conducted the autopsy on the dead body of Ramesh at 12.25 P.M. and noticed the following external injuries:

1. Incised wound on the posterior aspect of the right wrist 2"x1.1/2"x1" placed transversely.
2. Abrasion 1"x1/2" on the posterior aspect of right index finger on the proximal phylans.(Longitudinally placed)
3. Incised wound 2"x1/4"x1/4" on the palmar aspect of the middle finger (right) , longitudinally placed.
4. Incised wound 1"x1/4"x1/4" on the right thumb.
5. Incised wound 1"x1/4"x1/4" on the left thumb longitudinally placed.
6. Abrasion 2cm x 1cm on the anterior aspect of left upper arm(middle) transversely placed.
7. Abrasion 2cm x 1cm placed 1" lateral to the injury No. 6 on left upper arm.
8. Abrasion 1cm x 1cm on the upper 3rd of the left forearm placed transversely.
9. Incised wound 1.1/2"x1/2"x1/4" on the posterior aspect of the left upper arm placed transversely in the middle 3rd.
10. Abrasion 1cm x 1cm x 1cm on the anterior aspect of the left shoulder joint place transversely.
11. Incised wound 1/2" x 1/4" x 1/4" for the frontal region of the scalp place transversely.
12. Incised wound 3" 1/2" x 1/2" on the left parietal region placed longitudinally.
13. Abrasion 1cm x 1/2 cm on the right zygomatic region placed vertically.
14. Incised wound 1" x 1/4" x 1/4" on the exterior aspect of left thigh 2" below the inguinal ligament placed transversely.
15. Incised wound on the right thigh 4" x 1/4" x 4" in the under 3rd. Extending from lateral aspect to middle side downwards.

16. Incised wound 6" x 2" x 1 1/2" on the right side of chest 2" lateral from right nipple placed vertically lung is protruding through the wound.

17. Incised wound 3 1/2" x 2" x 1 1/2" in the left side of the chest extending to sub-costal region from the midline 1 1/2" below the left nipple. Transverse colon is protruding through the wound.

The doctor has further deposed that on dissection, he noticed the following injuries:

1. There is a fracture of right ulna

2. There is hematoma weighting about 500 gms below the right side of the abdomen. There was a tare on right diaphragm.

3. There was an incised wound on right side measuring 3 1/2" x 2" x 1/2".

4. Injury No. 1 to 15 are simple in nature. Injury Nos. 16 and 17 are grievous in nature.

5. Injury No. 16 and 17 were bleeding. The cause of death is due to shock and haemorrhage,

16. It is the opinion of the doctor that the deceased died due to shock and haemorrhage and injury Nos. 16 and 17 were bleeding injuries and Ex.P20 is the post-mortem report issued by him. There is nothing in the cross-examination of the doctor to disbelieve his medical evidence as to the cause of the death.

17. Apart from the evidence of the doctor, we also have the evidence of P.W.11-Shankar. CPI who has spoken to the inquest mahazar and inquest report being drawn as per Ex.P2. It is also in his evidence that from the scene of offence, blood stained mud was collected and Ex.P14 is the panchanama of the scene of offence. A look at Ex.P13-the inquest panchanama coupled with the medical evidence of the doctor and the postmortem report confirms the fact of homicidal death of Ramesh. In fact, there is no dispute as to the homicidal death of the deceased as could be seen from the judgment of the trial Court.

18. Now the question is as to who caused the death of Ramesh and this takes us to the complaint, Ex.P1 lodged by P.W.1 as well as the evidence of the eye witnesses P.Ws.1 and 6 who are injured in the incident and also P.W.7 and P.W.8.

19. In the complaint Ex.P1-the names of the all the accused persons find a place and so also the motive for the incident and it is the complainant's version that on 25.12.1995 at 6.15 p.M., A-1 to A-4 came to the house of P.W.1 when complainant along with his mother, younger sister, brother-Ramesh and sister in law were in the house and the accused persons questioned him as to where Ramesh is and they questioned for marrying their sister without informing the accused persons and then A-1 and A-4 assaulted with knife on Ramesh and there afterwards, A-2 took out the knife from A-1 and stabbed on the stomach of Ramesh and A-3 instigated the other accused to finish of Ramesh. In the

complaint, it is stated that when complainant and his mother tried to intervene, they were also assaulted by A-1 and A-3 and after the incident, Ramesh was found lying with bleeding injuries and on the way to the hospital he died.

20. In the course of his evidence before the Court, P.W.1 has stated that accused persons were unhappy because the accused had married Suvarna, the younger sister of accused persons and with this background, on 25.12.1995 at about 6.00 P.M. when he along with his mother and younger sister were present in the house and when Ramesh and his wife Suvarna were in the rear room of the house, A-1 and A-4 came, A-1 - Nijappa took out the knife and stabbed Ramesh and this was followed by A-2 in taking out the knife from A-1 and assaulting the deceased with knife and A-3 assaulted P.W.1's mother with chappal on her mouth. He further deposes that A-1 assaulted the accused on his stomach and he had bleeding injuries. It is also stated by him that at that time P.W.7-Chandrakanth and P.W.8-Laxman also came there and the accused persons ran away from the house. Following the death of Ramesh at 9.00 P.M. P.W.1 lodged a complaint as per Ex.P1. In the course of his cross-examination, P.W.1 has once again described the entire incident by stating that he and his mother and younger sister were in the Padasala of the house taking tea and his brother Ramesh with his wife Suvarna were in the rear room of the house and when they were taking tea, the accused No. 2 came there and they followed A-2 and went into the room of Ramesh and he saw A-1 and A-4 assaulting Ramesh with knife and Ramesh sustained four to five injuries on him and there afterwards A-2 took out the knife from A-1 and assaulted the deceased on stomach. He also states to the effect that when he caught hold of A-1, he was assaulted on the stomach by A-2 with knife. The other suggestions put to this witness have all been denied by him in the cross-examination.

21. P.W.6 is the other injured witness and she is the mother of deceased Ramesh and she deposes to the effect that at 6.00 P.M. on that day, when she was in the house with her sons and daughter-in-law, A-1 to A-4 came and assaulted Ramesh with knife. When P.W.6 went to the rescue of Ramesh, A-3 assaulted her with chappal on her face and again the knife held by A-2 hit her on her thumb and chest and A-1 assaulted P.W.1 with knife on the stomach and on hearing their cries, the neighbours came. In the cross-examination, the defence has brought out from the mouth of this witness more particulars of the incident, which she did not say in the examination-in-chief. She has stated that A-4 assaulted Ramesh with knife and A-2 and A-3 came there and A-2 assaulted with knife on the deceased Ramesh. Her son was made to fall down and then all the accused persons started to assault the deceased. She has further stated that the knife had pierced the body of her Ramesh and blood had fallen in the Padasala and she says that she had seen the knife held by A-1 and A-4 when her son deceased Ramesh was assaulted. This testimony of P.W.6 gives a graphic description of the entire evidence and there is nothing in her evidence to disbelieve her presence or assault committed by the accused on the deceased Ramesh. In fact, P.W.6 also sustained injuries in the course of the said incident.

22. Apart from the above two eye witnesses, the prosecution has also placed testimony of P.Ws.7 and 8. P.W.7-Chandrakant has deposed to the effect that on 25.12.1995 at about 6 or 6.30 P.M. he heard galata Bound and he went to the house of Ramesh and there he saw all the accused 1 to 4 assaulting deceased Ramesh with knife and this witness says that A-1 assaulted Ramesh with knife on the right side of the Chest, on his back, when P.W.6 came to rescue, she was assaulted by chappal by A-3 and P.W.1 was assaulted by A-1 with knife and thereafter A-1 and A-2 ran away from their house. He has also stated about Lakshman i.e. P.W.8 being present and all of them took Ramesh to the hospital in an autorickshaw. In the Gross-examination of P.W.7, the defence has not been able to discredit his testimony with regard to his presence and with regard to the assault committed by the accused on the deceased as well as P.W.6.

23. P.W.8 is the last of the eye witnesses and he has deposed in his evidence that at about 6 to 6.30 P.M. on hearing galata in the house of deceased Ramesh, he went there and found A-1 armed with knife and A-1 assaulted deceased Ramesh four or five times. He also says that A-2 assaulted P.W.1 on his shoulder and A-2 assaulted P.W.6 with chappal on the right chest and on the right hand. In the course of his cross-examination, P.W.8 has stated that when he went inside the house of deceased Ramesh he saw the accused A-1 to A-1 present and scuffle was going on between Ramesh and P.W.1 on one side and A-1 to A-4 on the other and he admits that he has not mentioned before the Police when A-1 assaulted Ramesh and A-2 assaulted P.W.1.

24. Thus a close examination of testimony of P.Ws.1 and 6- the two injured witnesses gives the clear picture of the incident which took place in the house of the complainant, when deceased Ramesh was assaulted by the accused persons in the manner spoken to by P.Ws.1 and 6. The presence of the accused persons and the presence of the injured eye witnesses P.Ws.1 and 6 is established beyond reasonable doubt and so also the injuries caused to P.Ws.1 and 6 in regard to which there is evidence of the doctor P.W.15. The said Dr. Hanumanth has deposed in his evidence that he examined P.W.1 on 25.12.1995 at 7.30 P.M. and noticed one simple injury and issued Ex.P12-Wound Certificate. The doctor also states to the effect that he also examined P.W.6 on 26.12.1995 and noticed injuries as per Ex.P22-Wound Certificate and all the injuries were simple in nature. The doctor has stated in his evidence that injury No. 3 could be caused by hitting with chappal.

25. Thus, the testimony of P.Ws.1 and 6 finds support from the medical evidence of P.W.15 with regard to the injuries sustained by them in the course of the incident. The very fact that both of them went to the rescue of Ramesh when the accused were assaulting Ramesh also stand established and the presence of P.Ws.1 and 6 can never be doubted, and the trial Court has accepted their testimony in so far as the injuries caused to them. We therefore see no infirmity in the testimony of injured eye witnesses P.Ws.1 and 6 coupled with the evidence of P.Ws.1 and 8 and the medical evidence on record. No doubt, there is some

discrepancy in the evidence of P.Ws.1 and 6 with regard to the scene of offence. But the fact remains that the incident took place in the house of P.W.1 when he along with his mother, deceased Ramesh and his wife Suvarna were in the house. All the accused A-1 to A-4 came there and assaulted the deceased with knife on his body and this was witnessed by P.Ws.1 and 6 who are also injured in the course of their rescue act and therefore absolutely there is no reason to disbelieve the testimony of these witnesses and more particularly the testimony of P.Ws.1 and 6, which, in our view is clear and cogent and trustworthy. Their evidence is corroborated by the evidence of P.Ws.7 and 8, the eye witnesses to the incident and there is further corroboration from the medical evidence on P.W.15 in so far as the injuries sustained by P.Ws.1 and 6 are concerned and P.W.16 in so far as the injuries caused to the deceased Ramesh is concerned. In our opinion, there is no conflict between the medical evidence and the testimony of eye witnesses. Even if there is a suggestion put to the doctor that only injury Nos. 16 and 17 were fatal injuries, yet the medical evidence on the whole does not conflict with the testimony of the eye witnesses P.Ws.1 and 6. We therefore do not agree with the reasoning of the trial Court that the medical evidence is in conflict with the testimony of P.Ws.1 and 6. So far as the argument of the learned Counsel for the respondent, Sri. Dayananda S. Patil that it is not clear as to which of the injuries were caused by each accused is concerned, in view of the convincing evidence of the material witnesses that all the accused persons, A-1 to A-4 were present and caused injuries on the deceased, it is immaterial as to which of the injuries lead to the death of Ramesh. In this regard, we would like to refer to the decision of the Hon''ble Supreme Court in the case of State of M.P. v. Deshraj and Ors. reported in 2005 SCC(Cri.)123. In the said decision, it has been observed that once there exists common intention among the participants in a crime, the overt acts on the part of each of the accused need not be proved and the liability u/s 34 of IPC arises. The Apex Court disagreed with the view taken by the lower Court that there was no evidence as to which injury could be attributed to which accused and therefore conviction u/s 323 and 302 becomes applicable. The said view taken by the Court below was set aside by the Hon''ble Supreme Court in the said case.

26. With regard to the submission of Sri. Dayananda S. Patil that the sketch map of the scene of offence was not produced, we do not find serious infirmity in the prosecution case mainly on that count. At the most, it can be termed as a lapse on the part of the investigation. In the instant case, when the testimony of eye witnesses is found to be credible and trustworthy and when the scene of offence is proved through their testimony, non-production of the sketch map will not be material. In fact, the Hon''ble Supreme Court in the case reported in 2004 SCC(Cri)144 [State of U.S. v. Babu and Ors.] has observed that site plan is not a substantial evidence and therefore omission to indicate the location of the gas light in the site plan was not fatal. Therefore, we do not find any defect in the prosecution case because of the sketch map having not been produced.

27. In so far as the submission that the evidence let in as regards the recovery

of knife being not convincingly established by the prosecution is concerned, it is to be mentioned that non-recovery of the weapon will not be a ground to reject the testimony of the eye witnesses. The Apex Court in the case reported in Anwarul Haq Vs. The State of Uttar Pradesh, has observed that merely because the knife has not been recovered during the investigation, the evidence of eye witnesses cannot be discarded.

28. Coming to the submission made by the learned Counsel for the accused that it has come in the evidence of P.Ws.1 and 6 as well as the complaint that intestine had come out following the stab blow given to deceased Ramesh and that the medical evidence does not indicate that such a thing had happened and therefore, the evidence of eye witnesses cannot be believed is concerned, it has to be observed herein that the maxim "falsus in uno falsus in omnibus" has no application in our country and merely because the part of the testimony of the eye witnesses is not proved, that does not give room to reject his entire testimony lock, stock and barrel. In this regard, we place reliance upon the decision of the Hon"ble Supreme Court reported in 2005 SCC Crimes 1260 (Israr v. State of U.P.). In the said decision, it has been held that even if a part of the prosecution case is not acceptable that would not result in rejection of the entire prosecution case and if on careful analysis of the evidence, case against any accused is made out, he would be liable to be convicted, notwithstanding that evidence found to be deficient to prove guilt of other accused persons. In the instant case, merely because of some witnesses have stated that the intestine had come out when Ramesh was stabbed with the knife and that part of the evidence is not being supported by the post mortem report, Ex.P.14, that itself will not give room to reject the rest of the testimony of the material witnesses particularly P.Ws.1 and 6 with regard to the assault committed on the deceased Ramesh by the accused A-1 to A-4.

29. We are therefore convinced to hold that the prosecution had established the case beyond all reasonable doubt in so far as A-1 to A-4 causing the number of injuries on deceased Ramesh leading to his death and A-1 and A-3 also causing injuries to P.Ws.1 and 6. The medical evidence has supported the eye witnesses testimony so also the evidence of police officer P.W.14- Wilson Shankar CPI and the I.O. He has deposed in his evidence that A-2 took him to the village and produced two knives M.Os.6 and 7 and they were seized under the recovery mahazar Ex.P19. Further, he has spoken to the effect that he also received F.S.L. report-Ex.P23 and chemical examination report- Ex.P24. From the evidence of two police Officers, it also becomes clear that there is no delay in lodging of the complaint or the FIR reaching the Court and as such there is nothing in the entire evidence on record even to remotely take the view that there was any false implication of the accused. In fact, no such foundation was also laid by the accused in this case as could be seen from their 313 reply statement.

30. Now the question is whether Section 149 of IPC comes into operation in the instant case. No doubt, the charge is that all the accused persons numbering six

formed an unlawful assembly and in pursuance of the common objection of the said assembly, committed the assault on the deceased Ramesh in the aforesaid manner. But we have seen from the evidence on record that no one speaks about any role played by A-5 and A-6. Except mentioning in the complaint that the accused A-1 to A-4 had a meeting in the house of A-5 and A-6, no witness has stated about the role played by the said two accused persons. If they are taken out of the list of the accused, then the accused who remain in the fray are only four in number. The learned Government Pleader submitted that even if Section 149 is not attracted to the case on hand and also no charge is framed invoking Section 34 of IPC, yet there is no bar to bring in Section 34 to the instant case. In support of his submission, he has placed reliance on the decision of the Supreme Court in 2005 SCC(Cri) 127 [Dini Singh and Ors. v. State of Bihar) .

31. The Hon"ble Supreme Court in the said case has observed that where the charge was framed u/s 149 but not u/s 34, conviction by applying Section 34 in such a case is valid. In fact, the observations of the Apex Court in this regard are to be found in Para 17 of the judgment, which reads as under:

The legality of conviction by applying Section 34 IPC in the absence of such charge was examined in several cases. In Willie(William) Slaney v. State of M.P. it was held as follows: (AIR p.137, para 86)

86. Sections 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; "and the charge is a rolled-up one involving the direct liability and the constructive liability" without specifying who are directly liable and who are sought to be made constructively liable.

In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out. In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant.

32. Therefore, in the instant case, the common intention on the part of A-1 to A-4 has been clearly established by the testimony of P.Ws.1 and 6 and other eye witnesses and the manner in which the assault was committed on deceased speaks to the common intention of the four accused persons who are brothers inter-se and all of them were angry with the deceased, for the deceased having refused to marry Padavva and marrying Suvarna. The said accused persons assaulted the deceased with knife in the manner spoken to by the eye witnesses. Therefore, the common intention on the part of the accused persons A-1 to A-4 and their participation has been proved beyond all reasonable doubt by the prosecution. Therefore, in our considered view, A-1 to A-4 are liable to be

convicted for the offences of murder with the aid of Section 34 of IPC.

33. We accordingly hold that the reasoning of the trial Court is perverse, contrary to the evidence on record and its appreciation of the evidence is erroneous and against the well established proposition of law laid down by the Hon''ble Supreme Court and as such there are compelling reasons to interfere with the judgment and order of acquittal passed by the trial Court. We accordingly set aside the judgment and order of acquittal and convict the accused A-1 to A-4 for the offence of murder punishable u/s 302 of IPC read with Section 34 of IPC.

34. We have heard the learned Counsel for the parties on the question of sentence.

35. Learned Amicus Curiae, Sri Patil, appearing for the respondents No. 1 and 2 submitted that the incident took place more than 11 years back and this fact may be taken note of while imposing sentence. On the other hand, learned Government Pleader, Sri Nawaz, accused Nos. 1 to 4 have committed a heinous offence of murder. Therefore, a maximum punishment be given to them as per law.

36. In our opinion, accused Nos. 1 to 4 are the brothers interse, yet they have joined together and took away the life of deceased -Ramesh, only because the said deceased married younger sister of the accused and not the elder sister. Therefore, this is not a case, which can be brought within the category of rarest of rare cases so as to award death penalty, but the only alternative sentence is of life imprisonment and that sentence would meet the ends of justice together. So far as the injuries caused to PWs.1 and 6 by accused Nos. 1 and 3 having regard to the nature of injuries caused as per the wound certificates - Exs.P21 and 22, in our view the conviction of accused No. 1 for the offence punishable u/s 324 of IPC and accused No. 3 for the offence punishable u/s 323 of IPC is just and proper. Therefore, we confirm that part of the order of trial court.

37. We proceed to pass the following:

ORDER

1. State appeal in Crl.A.No. 715/2000 stands allowed and Crl.A.No. 705/2000 stands dismissed.

2. The acquittal of R1 - Vithal Laxman Chalawadi, R2 - Umesh Laxman Chalawadi, R3 - Mahadevappa Basappa Doddamani and R4 - Yallappa Yamanappa Neela Naik in Crl.A.No. 715/2000 for the offence punishable u/s 302 of the IPC by the trial court is set aside instead all the R1 to R4 - accused are convicted for the offence of murder punishable u/s 302 of IPC.

2. In respect of the above said conviction, the aforesaid R1 to R4 - accused are sentenced to undergo imprisonment for life and each one of them is also directed to pay fine of Rs. 5,000/- each and in default of payment of fine to undergo rigorous imprisonment for a period six months. If the fine amount is realised, the

same shall be paid as compensation to Suvarna (PW.9) - wife of the deceased - Ramesh in accordance with Section 357 of Cr.PC.

4. The conviction and sentence imposed upon by the trial court in respect of R1 - Nijappa Laxman Chalawadi for the offence punishable u/s 324 of IPC and R2 - Gangappa Laxman Chalawadi for the offence punishable u/s 323 of IPC both are in CrI.A.No. 705/2000 is however confirmed.

5. R1 - Vithal Laxman Chalawadi, R2 - Umesh Laxman Chalawadi, R3 - Mahadevappa Basappa Doddamani and R4 - Yallappa Yamanappa Neelanaik in CrI.A.No. 715/2000 are entitled to Bet off in accordance with Section 328 of IPC in respect of the period during which they have already in custody during the trial.

6. The substantive sentence imposed on R1 - Vithal Laxman Chalawadi, R2 - Umesh Laxman Chalawadi, R3 - Mahadevappa Basappa Doddamani and R4 - Yallappa Yamanappa Neelanaik in CrI.A.No. 715/2000 shall run concurrently.

7. We direct R1 - Vithal Laxman Chalawadi, R2 - Umesh Laxman Chalawadi, R3 - Mahadevappa Basappa Doddamani and R4 - Yallappa Yamanappa Neelanaik in CrI.A.No. 715/2000 to surrender forthwith before the trial court and to undergo sentence imposed upon them and in the event of failing to do so, we also direct the trial court to take immediate necessary and effective steps to secure the presence of the said accused persons so as to ensure to serve out the sentence i.e. imposed upon them as above by us.

8. The acquittal of R1 - Nijappa Laxman Chalawadi and R2 - Gangappa Laxman Chalawadi in CrI.A.No. 705/2000 by the trial court is however sustained and consequently the appeal filed by the State against them stands dismissed.

38. We place on record our appreciation for the effective assistance rendered by learned Amicus Curiae, Sri Dayananda S. Patil, appearing for R1 and R2 in CrI.A.No. 715/2000. We fix his fee at Rs. 5,000/- and direct the Registry to make an arrangement for payment of the same at the earliest. It is ordered accordingly.

39. A copy of the order passed herein shall be sent to the trial court for compliance forthwith.