

CASE NO.:
Appeal (crl.) 577 of 2008

PETITIONER:
Huchappa @ Hucharayappa & Ors

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 01/04/2008

BENCH:
DR. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
JUDGMENT

CRIMINAL APPEAL NO. 577 OF 2008
(Arising out of SLP (Crl.) No. 7463/2007)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned single judge of the High Court upholding the judgment of learned Principal Sessions Judge, Shimoga in SC No.37 of 1995 convicting the three appellants for offence punishable under Section 326 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence each one of them to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each with default stipulation. There were originally 14 accused persons. The trial court found the present appellants guilty and others were found not to be guilty under Section 235(1) of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). Originally all the accused persons were charged for having committed offence under Sections 143,144,147, 148, 109, 504, 324, 323 and 506 read with Section 149 IPC. In view of death of Mahadevappa (hereinafter referred to as 'deceased') on 28.11.1994, Section 302 IPC was added.

3. The prosecution version as unfolded during trial was as follows:

The accused persons 1 to 14 forming themselves into members of unlawful assembly, with deadly weapons assaulted CW-1 and caused fracture of his left leg. CW-1 consequent to the injuries and septicemia died after five days while under treatment. The F.I.R. is lodged by the deceased. The contents of the F.I.R. implicated all the accused persons. PWs. 2 and 5 are the eye witnesses to the incident. They also implicate A1 to A-14 as assailants who caused grievous injuries on CW-1, ultimately resulting in his death.

4. As noted above, after the death of the deceased, another complaint was filed and the case was registered as one in relation to the offence punishable under Section 302 IPC. The trial court as noted above found accused 4 to 14 to be not guilty. An appeal was preferred by the appellants which, as noted above was

dismissed. The High Court disposed of the appeal observing as follows:

"The trial court has grossly erred in acquitting A4 to A14. Since Section 149 is invoked and acquitted accused would be equally and vicariously liable for the acts of A1 to A3 as they have shared common object and they had also participated in the assault. The State has not filed an appeal against illegal acquittal.

The trial court convicted A1 to A3 for committing offence under Section 326 I.P.C. The injury was caused on the non-vital part, no intention to cause the injury which is likely to cause death and no knowledge of causing death could be inferred from the overt acts. Therefore conviction u/s 326 IPC is sound and proper. Looking into the consequence and ghastly act, the sentence imposed is also sound and proper and do not call for interference. The appeal is dismissed."

5. Learned counsel for the appellants submitted that the High Court's judgment is clearly unsustainable being unreasoned.

6. Learned counsel for the respondent-State supported the judgment.

7. To say the least the High Court's judgment is a bundle of confusion. The High Court held that the trial court has erred in acquitting A4 to A14, since Section 149 was invoked and acquitted accused persons should be equally and vicariously liable as they shared common object of A1 to A3 and also participated in the assault.

8. The High Court noted that the State has not filed an appeal against the "illegal acquittal". The High Court upheld the conviction holding that injury was caused on the non-vital part which was likely to cause the injury which is likely to cause death and no knowledge of causing death could be inferred from the overt acts. Therefore the conviction was maintained and the appeal was dismissed.

9. Since the High Court has not applied its mind to various contentions raised on behalf of the appellant and has in a casual manner disposed of the appeal, we have no hesitation in setting aside the impugned judgment. We remit the matter to the High Court for fresh disposal in accordance with law. Since the Criminal Appeal is to the year 2001, we request the High Court to dispose of the appeal as early as practicable preferably by the end of October, 2008.

10. It is stated that an application for suspension of the sentence of the accused persons and grant of bail moved in the High Court. If the same is filed, it shall be dealt with in accordance with law.