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B.K. CHANNAPPA  
v.  
STATE OF KARNATAKA

NOVEMBER 10, 2006

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[A.K. MATHUR AND LOKESHWAR SINGH PANTA, JJ.]

*Penal Code, 1860 :*

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*Sections 304 Part II r/w 149 and 302 r/w 149—Murder—Caused by unlawful assembly, by inflicting injuries with deadly weapons—Eighteen injuries found on the body of deceased—But none on the vital parts—Hence, it cannot be said that the injuries were inflicted with intention to cause death—Conviction of accused under S.302 r.w. S.149 therefore altered to that under S.304 Part-II r/w S.149.*

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*Section 302—Murder—Caused by unlawful assembly, by inflicting injuries with deadly weapons—23 accused—Acquittal of A-15 by Trial Court—Conviction by High Court under S.302—Justification of—Held, not justified—Though name of A-15 finds mention in the FIR but injured witness or eyewitness had not mentioned his name in their statements recorded by Police under S.161, CrPC or in the testimony that he participated in inflicting injuries on body of the deceased—Also no weapon of offence recovered from A-15 or at his instance—Conviction of A-15 as recorded by High Court cannot be sustained as it is based on the inference drawn regarding his participation and existence of common intention on the basis of conjectures and surmises.*

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**Twenty three persons were tried for the offence of killing one person and injuring four others. The accused persons had allegedly assaulted the deceased with various deadly weapons like choppers, axes, sickle, clubs and stones which led to his death.**

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**The Trial Court held that A-2, A-3, A-10, A-11, A-13, A-14, A-17 to A-22 had formed an unlawful assembly to cause the death of deceased in prosecution of which they murdered him and caused grievous injuries to PWs1 to 4. Accordingly it convicted them under Section 302 IPC read with Section 149 IPC and sentenced them to life imprisonment. A-17, A-18 and A-20 were also held guilty under Section 324, IPC while A-19 was additionally**

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convicted under Section 326 IPC. A-1, A-4 to A-9, A-12, A-15, A-16 and A-23 were given benefit of doubt and hence acquitted. High Court however set aside the acquittal of A-1 and A-15 and convicted them under Section 302 IPC and sentenced them to undergo life imprisonment. It further affirmed the conviction of A-2, A-3, A-17, A-19 and A-20. The conviction of A-10, A-11, A-13, A-14, A-18, A-21 and A-22 was set aside by the High Court.

Out of the present three appeals, two have been filed by A-1 and A-15 while the third appeal has been jointly filed by A-2, A-3, A-17, A-19 and A-20. A-1 died during pendency of appeal before this Court, hence his appeal stands abated.

Disposing of the other two appeals, the Court

**HELD:**1.1. The injured witnesses PW-2, PW-3 and PW-4 have fully established the case of the prosecution against A-2, A-3, A-17, A-19 and A-20, although there were certain discrepancies in their testimony and in comparison to the versions of PW-6, PW-7 and PW-19, the eyewitnesses, in regard to the weapons of offence individually used by A-1, A-3, A-17, A-19 and A-20 for inflicting injuries on the person of each of injured witness as also on the person of the deceased. The discrepancies pointed out are however minor and insignificant. The witnesses were examined in the Court after a gap of almost five years after the occurrence. The evidence on record further shows that the injured witnesses had been subjected to searching lengthy cross-examination and in such type of cross-examination, some improvements, contradictions, and omissions are bound to occur in their evidence, which cannot be treated very serious, vital and significant so as to disbelieve and discard the substratum of the prosecution case. There is no merit in the argument of the appellants that the evidence of the injured witnesses and other eyewitnesses should be labelled as the evidence of the interested witnesses. On the other hand, the evidence of all the eyewitnesses including injured persons is quite natural, convincing and trust-worthy. There is no material on record from which an inference can be drawn that the material witnesses have implicated the appellants A-2, A-3, A-17, A-19 and A-20 in a false case.

[818-B-G]

1.2. The judgment of the High Court holding A-2, A-3, A-17, A-19 and A-20 guilty of assaulting the injured witnesses and causing fatal injuries to the deceased cannot be found faulty on any ground. The evidence of the injured witnesses and eyewitnesses finds corroboration from the medical evidence. On close scrutiny of the evidence of PW-32, the medical expert who conducted

**A** the post mortem, it is clear that none of the injuries inflicted on the person of the deceased was found on any of the vital part of his body. On perusal of the medical report prepared by PW-32, large crush injury or lacerated injuries were found either on the chin, right leg, left knee, left wrist, right shoulder, right forearm, etc. on the body of the deceased, except two lacerated injuries above right lateral malleolus and on right medial malleolus. It is true

**B** that as many as 18 injuries found on the dead-body of the deceased, were noticed but the prosecution has not established on record that the said injuries were inflicted with the intention to cause the death of the deceased. Considering the nature of the injuries having been found not on the vital part of the body, the conviction of A-2, A-3, A-17, A-19 and A-20 as recorded by the trial court and affirmed by the High Court under Section 302 IPC cannot be sustained.

**C** The conviction of A-2, A-3, A-17, A-19 and A-20 is altered from Section 302 IPC read with Section 149 to Section 304 Part-II read with Section 149 IPC. However, taking into consideration the time lag of more than eleven years from the date of the incident till the date of disposal of these appeals by this Court during which period the said accused have suffered physically, mentally and financially, sentence of eight years on each of the said accused and a fine of Rs.2,000/- each is imposed which would meet the ends of justice in the present case. [818-H; 819-A-E]

**E** 1.3. The conviction of A-17 and A-20 under Section 324 IPC shall remain intact. The conviction of A-19 under Section 326 IPC imposed on him by the trial court and affirmed by the High Court do not call for any interference in this appeal. [819-F-G]

**F** 2. Though the name of A-15 finds mention in the FIR but no injured witness or eyewitness has mentioned his name in the statement recorded by the Police under Section 161, CrPC connecting him with the commission of the offence. The High Court has not given any specific finding that A-15 was a member of the unlawful assembly along with the other accused persons. PW-7, a servant of the deceased, who was produced as an eyewitness of the incident, has categorically stated that when he along with other injured witnesses and eyewitnesses reached the spot, A-15 had kept the right leg of the deceased on his left leg. No eyewitness or injured witness has named

**G** A-15 in their testimony that A-15 had participated in inflicting injuries on the body of the deceased. The Trial Court has recorded a specific finding that the prosecution has not proved on record beyond reasonable doubts that A-15 along with A-1 (since deceased), A-4 to A-9, A-12, A-16 and A-23 had inflicted any blow on the body of the deceased, with the weapons stated to have been

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held by them neither any weapon of offence was recovered from A-15 or at his instance. The evidence proved does not permit any inference to be drawn regarding participation of A-15 in the commission of the offence. Therefore, the conviction of A-15 recorded by the High Court cannot be sustained as it is based on the inference drawn regarding his participation and existence of common intention on the basis of conjectures and surmises. The judgment of the High Court, therefore, convicting A-15 under Section 302, IPC, and sentencing him for life imprisonment is set aside. [820-B-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 404 of 2004.

From the Judgment and Order dated 10.9.2005 of the High Court of Karnataka in Criminal Appeal No. 384 of 2000.

N.P. Midha, Mohan V. Katarki (for Javed Mahmud Rao) and N.D.B. Raju (for Guntur Prabhakar) for the Appellant.

Sanjay R. Hegdge and Anil K. Mishra for the Respondent.

The Judgment of the Court was delivered by

**LOKESHWAR SINGH PANTA, J.** The above-said three appeals relate to single incident and are directed against common judgment and order dated 10.09.2003 of the High Court of Karnataka at Bangalore, in Criminal Appeal No.104 of 2000 and Criminal Appeal No.384 of 2000, they are heard together and shall stand disposed of by this common judgment.

Criminal Appeal No. 404/2004 has been filed by B.K. Channappa (A-1) and Criminal Appeal No.580/2004 has been filed by Marulsidappa (A-15) against their conviction and sentence recorded by the High Court under Section 302 of the Indian Penal Code (for short "IPC") in Criminal Appeal No.384 of 2000 filed by the State of Karnataka against the order of acquittal passed by the trial court .

Criminal Appeal No. 566/2004 has been filed by Karibasappa (A-2), Halanaika (A-3), B.K. Manjunatha (A-17), B.K. Parmeshwarappa (A-19) and B.K. Shivrajappa (A-20) against the impugned judgment and order of the High Court upholding their conviction and sentence under Section 302 IPC read with Section 149 IPC and conviction of B.K. Manjunatha (A-17) and B.K. Shivrajappa (A-20) under Section 324 IPC and B.K. Parmeshwarappa (A-19)

A under Section 326 IPC: respectively.

In all, 23 accused persons were tried by the learned Sessions Judge, Chitradurga in Sessions Case No. 111/1995 for the offences under Sections 143, 148, 302 IPC read with Section 149, Section 307 read with Section 149, Section 324 read with Section 149, Section 448 read with Section 149 and Section 427 read with Section 149 of the IPC.

The trial court, after examining the prosecution evidence, came to the conclusion that A-2, A-3, A-10, A-11, A-13, A-14, A-17 to A-22 had formed an unlawful assembly to cause the death of B.G. Basavarajaiah (Basavarajappa) and in prosecution of the same, they murdered B. G. Basavarajaiah and caused grievous injuries to B.G. Chandrashekaraiah (PW-1), Shekharappa (PW-2), B.G. Shivamurthaiah (PW-3) and B.G. Prakashaiah (PW-4). The trial court held A-2, A-3, A-10, A-11, A-13, A-14, A-17 to A-22 guilty of the offence under Section 302 IPC read with 149 IPC and sentenced them to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- each, and in default of payment of fine, to undergo rigorous imprisonment for one year. A-17, A-18 and A-20 were also held guilty under Section 324, IPC and were sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.500/- each, and in default thereof, to suffer simple imprisonment for two months. A-19 was further convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, and in default of payment of fine, to undergo simple imprisonment for six months .

Feeling aggrieved against the judgment of the learned trial court, Criminal Appeal No.104 of 2000 came to be filed by all the accused persons whereas Criminal Appeal No.384 of 2000 was filed by the State against the acquittal of some of the accused persons.

The High Court convicted A-1 and A-15 under Section 302 IPC and sentenced them to undergo life imprisonment. The conviction of A-2, A-3, A-17, A-19 and A-20 recorded by the trial court and sentence imposed on them were affirmed on all counts. The conviction of A-10, A-11, A-13, A-14, A-18, A-21 and A-22 was set aside by the High Court and they were, accordingly, acquitted. Both the appeals were decided by the High Court by a common judgment, which is impugned by the appellants herein by way of these appeals.

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The facts relevant and necessary for the decision of these appeals are that in the year 1995, A-1 had contested election against one Shivamurthappa to become a member of the Zila Panchayat. A-2 to A-23 supported A-1 in the said election. B.G. Chandrashekaraiyah (PW-1), Shekarappa (PW-2), B.G. Shivamurthaiyah (PW-3), B.G. Prakashaiah (PW-4), Maheshwarappa (PW-5) and B.G. Revanasiddappa (PW-8), B. C. Basavarajaiah (PW-9) and Basavarajappa (PW-10) were the followers of Shivamurthappa. B. Parmeshwarappa (A-19) is a dumb person, who, at the relevant time, was working as a servant of the deceased.

According to the prosecution case, because of the defeat of A-1 in the Zila Panchayat election, he suspected that Basavarajaiah had played major and vital role in getting A-1 defeated in the election and as a result thereof, A-1 had entertained ill-will and grudge against Basavarajaiah.

The occurrence in question, took place on 5.7.1995 at about 10.00 a.m. at Lingadahalli Road (Basavanahalu village) when the deceased Basavarajaiah had left his village on his motorcycle to look after his land situated hardly 600 metres from the village Basavanahalu. According to the prosecution, sensing the arrival of Basavarajaiah, the appellants and other acquitted accused persons armed with deadly weapons like, choppers, axes, sickle, clubs and stones were hiding in an ambush near the land of Basavarajaiah and surrounded him on his arrival at the scene of occurrence. Basavarajaiah was given a number of blows with the aid of weapons resulting in his fall on the ground.

PW-19, a deaf and dumb person, at the relevant time was working in the field of the deceased along with PW-7. On seeing the appellants and other accused inflicting blows on the person of Basavarajaiah, he rushed to the scene of occurrence to rescue the victim, but PW-7 and PW-19 too were assaulted by some of the accused persons. PW-1, a relative of the deceased, was on the road near the village and on hearing the cry of Basavarajaiah, he went to the place of occurrence along with Maheshwaraiah (PW-5) and found Basavarajaiah lying down on the ground with a number of bleeding injuries on his person and all the accused were surrounding the victim armed with deadly weapons. PW-1 was also given threats by the accused to resist himself from intervening in the incident and in fact, A-17 and A-18 alleged to have pierced on his chest with a chopper, fortunately for PW-1 the same did not cause any serious injury to him. Seeing the large mob of the accused persons gathered with deadly weapons as well as the condition of victim Basavarajaiah, PW-1 immediately sent PW-5 to get some help from the village.

A According to the prosecution, PW-2, PW-3, PW-4 and PW-5 thereafter rushed to the spot in a tractor and on their arrival they too were assaulted by some of the accused persons. The aforesaid witnesses ran away towards their village to save themselves from further assault by the accused persons. Further, it was alleged that some of the accused persons assaulted other villagers including PW-8 to PW-11.

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On receipt of a cryptic telephone message that there was some *galata* going on near village Basavanahalu, Rajanna (PW-42), ASI, Davanagere Rural Police Station, recorded the message and informed his superior Officer Mallikarjunappa (PW-43) CPI, who at the relevant time was present in the Police Station. PW-43 along with PW-42 and other police officials rushed to the scene of occurrence. On their arrival at the scene of occurrence, they found Basavarajaiah lying dead. The Investigating Officer went to the village and recorded the statement of PW-1, on the basis of which the case in Crime No.263/95 came to be registered on 5.7.1995 at about 12.30 noon for the offences punishable under Sections 143, 144, 147, 148, 307, 302, 324 and 427 read with Section 149 IPC against 15 named and other (unknown) persons.

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D PW-1, PW-2, PW-3 and PW-4, the injured witnesses, were sent to the hospital for treatment. The dead-body of Basavarajaiah, deceased herein was sent for autopsy. Dr. R. Deverajan (PW-32), medical expert, conducted the *post mortem* on the dead-body of the deceased and opined that the death was due to hypovolaemic and neurogenic shock. Dr. Anita B. (PW-33), medically examined PW-5 and found injuries on his person, whereas Dr. Prahalada Reddy (PW-34) had given medical treatment to PW-19 who had suffered grievous injuries. The Investigating Officer prepared mahazars on the spot and recorded the statements of the witnesses on the day of the occurrence and some of the witnesses were examined on the following day. The accused were arrested on different dates. After completion of the entire investigation and on receipt of the medical reports of the injured witnesses, the *post mortem* report of the deceased and reports from Forensic Science Laboratory as well as from the Chemical Analyst, charge-sheet came to be filed against 23 accused persons.

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G The trial court has found *prima facie* case against all the accused persons and they were tried accordingly for the aforesaid offences. The prosecution, in support of its case, examined 43 witnesses and got marked documents Exhibits P1 to P73 in support of the oral evidence. The accused in their statements recorded under Section 313, Cr. P.C., denied the allegations of the prosecution and claimed to be innocent. They pleaded that they have been falsely implicated in the present case due to political rivalry between the

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complainant party and the accused party. However, no oral defence evidence has been led by the accused, except placing reliance on certain contradictions and omissions appearing in the statements of some witnesses recorded by the Police during investigation. As noted above, the trial court found A-2, A-3, A-10, A-11, A-13, A-14, A-17 to A-22 guilty of various offences and accordingly sentenced them. However, A-1, A-4 to A-9, A-12, A-15, A-16 and A-23 were given benefit of doubt.

The appeals of the convicts and the State were decided by the High Court by a common impugned judgment and order. Hence, these three separate appeals by the appellants.

The learned counsel for the appellant in Criminal Appeal No. 404/2004 stated at the Bar that B. K. Channappa (A-1) died during the pendency of this appeal. Be it noted that one letter dated 20.09.2006 written by Mr. Javed M. Rao, Advocate, Supreme Court, to the Registrar of this Court is placed on record informing this Court that appellant B. K. Channappa (A-1) died on 07.07.2005. Along with the said letter, a Death Certificate of B.K. Channappa, issued by the Chief Registrar of Births and Deaths, Government of Karnataka, has also been enclosed. This appeal of A-1 thus stands abated.

On behalf of the appellants in Criminal Appeal No.566 of 2004, Shri N. P. Midha, learned counsel, contended that the trial court as also the High Court have wrongly appreciated the evidence of the injured witnesses as well as the eyewitnesses for holding the appellants guilty of the offences. He also contended that, noticing the contradictions and improvements in the ocular evidence of the injured witnesses and the eyewitnesses, namely, PWs-6, 7 and 19, in their statements before the Police and the trial court, the testimony of these witnesses do not inspire confidence to connect the appellants with the commission of the alleged offences and, therefore, their testimony cannot be accepted. He next contended that the oral evidence of the witnesses was not corroborated by the medical evidence, therefore, the prosecution case is highly unreliable and doubtful about the time of the death of the deceased.

Shri Sanjay R. Hedge, learned counsel for the respondent-State, however, supported the judgment of the High Court concerning the conviction of A-2, A-3, A-15, A-17, A-18, A-19 and A-20 by contending that there was no reason why the evidence of the injured witnesses and the eyewitnesses corroborated by the medical evidence should be rejected. It was his argument that the High Court, as a first Court of Appeal, has a duty to reconsider the

A evidence and correct the error committed by the trial court. He, however, fairly and in our view, rightly stated that though the name of Marulsiddappa (A-15) finds mention in the FIR recorded at the instance of PW-1, yet from the evidence on record led by the prosecution, his participation in the commission of the crime is not proved beyond reasonable doubt.

B We have independently scrutinized the evidence of the material witnesses in the teeth of the rival contentions of the parties. On reprisal and scrutiny of the evidence of the injured witnesses Shekharappa (PW-2), B.G. Shivamurthaiah (PW-3) and B.G. Prakashaiah (PW-4), they have fully established the case of the prosecution against A-2, A-3, A-17, A-19 and  
C A-20, although there were certain discrepancies in their testimony and in comparison to the versions of PW-6, PW-7 and PW-19, the eyewitnesses, in regard to the weapons of offence individually used by A-1, A-3, A-17, A-19 and A-20 for inflicting injuries on the person of each of injured witness as also on the person of the deceased. The discrepancies, as pointed out by the learned counsel for the appellants, are minor and insignificant. The occurrence  
D took place on 5.7.1995 and the witnesses were examined in the court after about a gap of almost five years. The evidence on record further shows that the injured witnesses had been subjected to searching lengthy cross-examination and in such type of cross-examination, some improvements, contradictions, and omissions are bound to occur in their evidence, which cannot be treated very serious, vital and significant so as to disbelieve and  
E discard the *substratum* of the prosecution case. The evidence of the injured witnesses and other eyewitnesses has been rightly re-appreciated and accepted by the High Court and we find no cogent and sound reason to differ from the well-reasoned judgment upholding the order of the trial court. There is, therefore, no merit in the argument of the learned counsel for the appellants  
F that the evidence of the injured witnesses and other eyewitnesses should be labelled as the evidence of the interested witnesses. On the other hand, we find that the evidence of all the eyewitnesses including injured persons is quite natural, convincing and trust-worthy. There is no material on record from which an inference can be drawn that the material witnesses have implicated the appellants Karibasappa (A-2), Halanaika (A-3), B. K. Manjunathaa  
G (A-17), B. K. Parmeshwarappa (A-19) and B. K. Shivarajappa (A-20) in a false case.

Having given our careful consideration to the submissions made by the learned counsel for the parties, we are of the opinion that the judgment and  
H order of the High Court holding Karibasappa (A-2), Halanaika (A-3), B. K.

Manjunatha (A-17), B. K. Parmeshwarappa (A-19) and B. K. Shivarajappa (A-20) guilty of assaulting the injured witnesses and causing fatal injuries to the deceased cannot be found faulty on any ground. The evidence of the injured witnesses and eyewitnesses finds corroboration from the medical evidence. On close scrutiny of the evidence of Dr. R. Deverajan (PW-32), it is clear that none of the injuries inflicted on the person of the deceased was found on any of the vital part of his body. As per the opinion of the Doctor, the deceased died due to hypovolaemic and neurogenic shock. On perusal of the medical report prepared by Dr. R. Deverajan (PW-32), large crush injury or lacerated injuries were found either on the chin, right leg, left knee, left wrist, right shoulder, right forearm, etc. on the body of the deceased, except two lacerated injuries above right lateral malleolus and on right medial malleolus. It is true that as many as 18 injuries found on the dead-body of the deceased, were noticed but the prosecution has not established on record that the said injuries were inflicted by the appellants with the intention to cause the death of the deceased. Considering the nature of the injuries having been found not on the vital part of the body, we are of the view that the conviction of A-2, A-3, A-17, A-19 and A-20 as recorded by the trial court and affirmed by the High Court under Section 302 IPC cannot be sustained. We alter the conviction of A-2, A-3, A-17, A-19 and A-20 from Section 302 IPC read with Section 149 to Section 304 Part-II read with Section 149 IPC. However, taking into consideration the time lag of more than eleven years from the date of the incident till the date of disposal of these appeals by this Court during which period the appellants have suffered physically, mentally and financially, we impose a sentence of eight years on each appellant and a fine of Rs.2,000/- each which, in our view, would meet the ends of justice in the present case. In default of fine, each of the appellants shall further undergo simple imprisonment for three months.

The conviction of A-17 and A-20 under Section 324 IPC and the sentence imposed on them including fine and sentence in default shall remain intact. The conviction of A-19 under Section 326 IPC and sentence imposed on him by the trial court and affirmed by the High Court do not call for any interference in this appeal. All the sentences imposed on A-2, A-3, A-17, A-19 and A-20 shall run concurrently.

This appeal is partly allowed in terms of the above-said observations and findings.

In Criminal Appeal No.580 of 2004, the appellant Marulasidappa (A-15) has challenged his conviction and sentence imposed by the High Court under

- A Section 302 IPC. The appellant (A-15) has been acquitted by the trial court along with A-1 (deceased) and other accused persons, out of the total 23 accused who faced trial court before the learned Sessions Judge.

We have examined the entire evidence on record. Though the name of Marulasidappa (A-15) finds mention in the FIR but no injured witness or eyewitness has mentioned his name in the statement recorded by the Police under Section 161 of the Code of Criminal Procedure connecting him with the commission of the offence. The High Court has not given any specific finding that Marulasidappa A-15 was a member of the unlawful assembly along with the other accused persons. PW-7, a servant of the deceased, who was produced as an eyewitness of the incident, has categorically stated that when he along with other injured witnesses and eyewitnesses reached on the spot, A-15 had kept the right leg of the deceased Basavarajaiah on his left leg. No eyewitness or injured witness has named A-15 in their testimony that A-15 had participated in inflicting injuries on the body of the deceased. The trial court has recorded a specific finding that the prosecution has not proved on record beyond reasonable doubts that A-15 along with A-1 (since deceased), A-4 to A-9, A-12, A-16 and A-23 had inflicted any blow on the body of the deceased, with the weapons stated to have been held by them neither any weapon of offence was recovered from A-15 or at his instance. However, the evidence proved does not permit any inference to be drawn regarding participation of Marulasidappa (A-15) in the commission of the offence. We, therefore, cannot sustain the conviction of Marulasidappa (A-15) recorded by the High Court as it is based on the inference drawn regarding his participation and existence of common intention on the basis of conjectures and surmises. The judgment of the High Court, therefore, convicting A-15 under Section 302, IPC, and sentencing him for life imprisonment is set aside and the appeal is accordingly allowed. Marulasidappa (A-15) is stated to be in jail undergoing imprisonment in this case. He shall be released forthwith by the jail authorities, if not required in any other case. Fine, if paid by Marulasidappa (A-15) in terms of the judgment and order of the High Court, shall be refunded to him without any delay.

G B.B.B.

Appeals disposed of.