SUPREME COURT OF INDIA

State of Kerala

Vs.

Nazar

Crl.A.Nos.1043 and 1044 of 1999

(B. P. Singh and Arun Kumar JJ.)

24.11.2004

JUDGEMENT

B. P. Singh, J.

1. Criminal Appeal No. 1043/99 has been preferred by the State of Kerala while Criminal Appeal No. 1044/99 has been preferred by Yesudas alias Tommy, who was accused No.1 in the trial. Both the judgments are directed against the common judgment and order of the High Court of Kerala at Ernakulam dated 22-7-1993 whereby the High Court disposed of several appeals preferred by different accused including appeal filed by Yesudas alias Tommy, the appellant in Criminal Appeal No. 1044/99. It appears that during the pendency of the appeal before this Court, appellant Yesudas alias Tommy was released on parole but he committed suicide. The appeal preferred by him, therefore, abates. The appeal preferred by the State of Kerala was originally preferred against A2, A3 and A5 and A7. This Court granted special leave only against A2 and dismissed the special leave petition as against A3, A5 and A7. We may only notice at this stage that 13 accused had been put up for trial before the Court of Sessions, Alappuzha in Sessions Case No. 39/96. The trial court by its judgment and order dated 11-12-1997 convicted A1 of the offence under Section 302, IPC and sentenced him to death. A2, A3, A5 and A7 were convicted of the offence punishable under Section 302 read with Section 149, IPC and sentenced to imprisonment for life. They were also found guilty of some other minor offences. On appeal, the High Court declined the death reference but finding A1 Yesudas alias Tommy guilty of the offence punishable under Section 302, IPC sentenced him to imprisonment for life. So far as A2, A3, A5 and A7 are concerned, it found that there was no evidence to prove that there was an unlawful assembly, and, therefore, acquitted them of all the charges levelled against them.

As noticed above, the appeal preferred by Yesudas and Tommy has abated and the appeal of the State of Kerala is confined only against A-2 Nazar.

2. We have gone through the judgments of the courts below. The learned counsel for the parties have brought to our notice the relevant evidence on record. We are satisfied that the High Court has correctly recorded the finding, that Section 149 has no application in this

case. The facts clearly disclose that the accused did not act pursuant to a common unlawful object, because there was in fact, no unlawful assembly. Each one of the accused was acting on his own and, therefore, could be held guilty only for his individual act.

3. So far as the allegations against A2 are concerned, he is alleged to have injured PWs 1 and 2. PW2 has turned hostile and did not support the case of the prosecution.

4. So far as PW1 is concerned, there was a simple injury on his back of a very insignificant nature. PW1 is also the first informant, but while lodging the first information report, he had stated that he had suffered a scratch on his back at the hands of some unknown persons. In his deposition, he admitted that he knew A2 from before. It was found that he had not named A2 as his assailant nor had he named him at all in the first information report. The High Court taking all these facts and circumstances came to the conclusion that the prosecution had not make out a case against A2 and the other accused persons, who were appellants before the High Court. We find that the conclusion reached by the High Court is based on the evidence on record and we find no error in the appreciation of the evidence by the High Court. The High Court has taken a view which could reasonably be taken on the basis of the evidence on record. The conclusion reached by the High Court appears to be reasonable. In such circumstances, it would not be proper for this Court to interfere with the order of acquittal recorded by the High Court. Even if another view may be possible, the order of acquittal must be sustained, if the finding of the High Court is a finding based on the evidence on record and is a possible reasonable view of the evidence.

5. We, therefore, dismiss Criminal Appeal No. 1044/99 as having abated and Criminal Appeal No. 1043/99 preferred by the State of Kerala as devoid of merit.

Appeal dismissed.