

SUPREME COURT OF INDIA

Jayakumar

Vs.

State of Kerala

Crl.A.No.330 of 2007

(Asok Kumar Ganguly and Deepak Verma JJ.)

23.05.2011

ORDER

1. In all 7 accused were charged and prosecuted for commission of offences, under Sections 457, 397, 302 read with Section 34 of IPC. Out of 7 accused, Accused No. 2 and Accused No. 5 are absconding whereas Accused No. 6 died before the trial. The Trial Court after appreciating the evidence available on record has given benefit of doubt to other co-accused but Accused No. 1, Appellant Jayakumar, alone has been found guilty for commission of the offence under Sections 457 and 302 IPC and awarded three years' rigorous imprisonment with fine of Rs. 2,000/- and rigorous imprisonment for life with fine of Rs. 5,000/- and in default of fine, to further undergo rigorous imprisonment for one and half years respectively.

2. The matter was taken to the High Court by the sole Appellant Jayakumar by filing Criminal Appeal No. 1196 of 2004 before the Division Bench of the High Court of Kerala. The High Court vide its impugned judgment and order dated 4.1.2006 dismissed the Appellant's appeal. Hence this appeal.

3. The prosecution story in short, is as under.

4. On 15.3.1996 at about 1.30 in night, A1 to A7 in furtherance of their common intention of committing robbery or dacoity and causing death of Prasad, reached outside the house bearing No. K.P. 7/398 popularly known as Sreeniketanam, where deceased and other family members were residing. After reaching the said house, Appellant Jayakumar handed over dangerous knife to A-5 Dasappan and another knife to A6 Vijayan and the chopper to A-7 Babu s/o Verghese and asked them specifically to remain outside the house and keep a watch. A1 to A4 went

near the western gate of the house and door was broke open by the Appellant Jayakumar with the help of rod and other instruments. After removing the plank of the door, they entered the house. A1 Appellant Jayakumar first robbed an amount of Rs. 250/- kept in the purse belonging to PW 4 on the table. At that time, PW2 attempted to obstruct A1 with the torch light. In the said torch light, PW 2, PW 3 and PW 4 were able to see A1. A1 then snatched away the torch and threw it on the ground. PW 3 who had already reached the spot, was pushed on the ground by A-4 and A3 pressed the mouth and nose of PW 4 with a towel.

5. On hearing the commotion, deceased Prasad, reached the hall, where all of them had gathered. Then Appellant Jayakumar inquired about his identity and caused injury with knife near his right collar bone. On getting the injury, deceased embraced A1 and then A2 stabbed him with a knife on his left shoulder. Deceased tried to get hold of A2 but he was obstructed and then A2 dragged deceased out of the house. Thereafter, A1 and A2 both caused several injuries on the person of deceased.

6. Since by that time, the hue and cry was already raised by PW 2, PW 3 and PW4, the inmates of the house, thus, PW 1 a close neighbour, reached the house at about 1.30 a.m. in the night. He thereafter, took injured Prasad firstly to the Neyyattinkara Taluk Hospital and from there to the Medical College Hospital, Thiruvananthapuram. Doctor on duty, on examining Prasad, declared brought him dead. PW 1 in the morning at about 9.30 went to Parassala Police Station and lodged Ext. P1 FIR before PW 19 Sub-Inspector of Police. After lodging the FIR, the investigation commenced. After completion of the investigation, charge-sheet was filed against the Appellant.

7. Appellant pleaded not guilty and prayed for trial.

8. The Trial Court appreciating the evidence of PW2, PW 3 and PW 4, the inmates and eye witnesses, came to the conclusion that Appellant Jayakumar was the assailant and his identity was also fully established by them. On account of the fact that torch was lit by PW 2 at the time of the incident, in the said light, he could be seen by others. It has also come on record that in one of the rooms, light was switched on by PW 4, throwing sufficient light in which all of them could see A1. Other co-accused could not be seen as distinctly by these witnesses. All of them had, then, identified in the witness box Appellant Jayakumar only but were not able to identify others correctly. Since dock identification of Appellant alone was absolutely correct and perfect by all the eye witnesses PW 2, PW 3 and PW 4, trial

court found the same worthy of credence and convicted him and others were given benefit of doubt.

9. As mentioned hereinabove, the Appellant alone has been found guilty for commission of the said offences and the others have been granted benefit of doubt and in our opinion rightly so. In appeal, the High Court also affirmed the said findings. Against the acquittal of other co-accused, there was no appeal preferred by the State thus, we are not concerned with regard to their acquittal recorded by the Trial Court.

10. Learned Counsel for the Appellant contended before us that in the absence of any test identification parade held soon after the incident, the Dock identification by PW 2, PW 3 and PW 4, after a gap of 7 years was not at all sufficient to hold the Appellant guilty for commission of the said offence. It was also contended that on the same set of evidence, others have been given benefit of doubt but the Appellant alone has been found guilty.

11. However, learned Counsel for the Respondent State contended that since there was no doubt on the identification of the Appellant Jayakumar which was duly proved by PW 2, PW 3 and PW 4, therefore, he has rightly been convicted by the Trial Court and affirmed by the High Court and others have been given benefit of doubt as they could not be identified properly. It has further been contended that even if no identification parade was held but in the light of the Dock identification, the same stands legally proved against the Appellant.

12. In the light of the aforesaid contentions, we have heard learned Counsel for the parties and perused the record.

13. We have also critically gone through the evidence of PW 2, PW 3 and PW 4, who have, in one voice, said that it was Appellant Jayakumar who had caused vital blows on the person of the deceased. They have also said that in the torch light, the Appellant was seen at the time of occurrence, apart from the fact, that there was also sufficient light coming out from one of the rooms, where bult was lit by PW4. The injuries caused on the person of the deceased Prasad stand proved from the evidence of the Doctor.

14. FIR lodged by PW 1 gives full and vivid description of the incident as was told to him by PW 2. There is no reason to doubt the correctness of the FIR lodged by PW 1. Evidence of PW 2, PW3 and PW 4 is fully trustworthy. Their evidence also stands corroborated from the medical evidence available on record. In the light of

aforesaid facts and features of the case, no case for interference is made out against the findings and fact recorded by two Courts below.

15. We are of the considered opinion that there is no merit or substance in this appeal. The appeal is accordingly dismissed.