SUPREME COURT OF INDIA

Jawahar Punekar

Vs.

State of Maharashtra

Crl.A.No.1040 of 2008

(H.L.Dattu and Chandramauli Kr. Prasad JJ.)

05.12.2012

ORDER

1. This appeal is directed against the judgment and order passed by the High Court of Judicature at Bombay, Nagpur Bench in Criminal Appeal No. 238 of 1999, dated 06.03.2006. By the impugned judgment and order, the High Court has confirmed the order of conviction and sentence passed by the learned Additional Sessions Judge, Wardha in Sessions Trial No. 152 of 1997, dated 20.08.1999.

2. There are six accused persons, namely Jawahar Punekar (A1), Chhotu Punekar (A2), Santosh Punekar (A3), Bandu Punekar (A4), Pannalal Punekar (A5) and Smt. Lilabai Punekar (A6), belonging to the same family, before us, as appellants in this appeal. All these appellants question the conviction and sentence awarded by the Trial Court and subsequently confirmed by the High Court.

3. The appellants were tried by the Trial Court on a charge that on 08.02.1997 approximately at 08:40 p.m. at Hawaldarpura, Wardha, they had formed an unlawful assembly with the common object of murdering one Abdul Jakir Faruki ("the deceased" for short) and committed offence punishable under Sections 147, 148, 506, 302 read with Section 149 of the Indian Penal Code ("the IPC" for short).

4. The Trial Court, vide judgment and order dated 20.08.1999, convicted the appellants for the offences punishable under Section 302 read with Section 149 of the IPC and sentenced them to imprisonment for life.

5. Being aggrieved by the aforesaid conviction and sentence passed by the Trial Court, the appellants had appealed before the High Court. The High Court, after re-appreciating and analyzing the entire evidence on record, arrived at the conclusion that the Trial Court is justified in convicting the appellants for the offences under Section 302 read with Section 149 of the IPC reasoning that the very fact that the appellants on date of the incident had accosted the deceased, forming an unlawful assembly wherein A1 and A2 were armed with deadly weapons like sword and gupti (sword stick), A3 and A4 were assisting them by assaulting the deceased with fists, slaps and stones while A5 and A6 were instigating them not to spare the deceased, speaks volumes of their common object in intentionally causing the brutal injuries resulting in his death on the spot. It is that order which is called in question by the appellants in this appeal.

6. We have heard Shri. Rabin Majumdar, learned counsel for the appellants and Shri. Sushil Karanjkar, learned counsel for the respondent-State. We have also perused the evidence of the eye witnesses, namely, Mr. Kamalkishor (PW-1), Mr.Jugalkishor (PW-2), Mr. Lakhan (PW-3), Ms. Rafika (PW-4) and also looked into the report of the Medical Officer (PW-13).

7. The Trial Court and the High Court, after due appreciation and re- appreciation of evidence on record, respectively, have come to the conclusion that the death of the deceased is homicidal. Having perused the report of PW-13, wherein the 31 injuries caused to the deceased are enumerated along with possible attribution of each injury towards his death, we concur with the above conclusion reached by the Courts below. This aspect of the matter is not in doubt in this appeal.

8. Sri Majumdar would submit that the statements of the aforesaid eye- witnesses raise suspicion and cannot be relied upon to convict A1 to A4 of the aforesaid offence as the statements so made are “parrot-like” carry the element of fabrication. He would also submit that A5 and A6 could not have been charged of the aforesaid offence since their presence itself at the time of incident is doubtful.

9. Analyzing the first submission regarding the veracity of the statements of the eye-witnesses with respect to the offence committed by A1 to A4, we find from the evidence that the said witnesses have narrated the incident in the sequence it occurred and corroborate each other. In their cross-examination, nothing has been brought on record to indicate that the said accused were not present at the scene of incident or have been falsely implicated. A concurrent reading of their evidence clearly depicts as to what transpired on the fateful day of the incident. Their

statements are univocal and complete the jigsaw to bring out a neat picture of the incident.

10. The only question which survives is that why the statements of the said eye-witnesses should be disbelieved. The perusal of evidence on record indicates that no other theory of commission of offence could possibly be attributed but for the one presented by the prosecution and accepted by the Courts below. Also, the question of surmises or conjectures cannot be drawn as neither the statements nor the cross-examination of the eye-witnesses indicate anything but the truth of the prosecution story in respect of the offence committed by A1 to A4. The evidence of eye-witnesses, therefore, is of sterling quality and thus cannot be disbelieved.

11. In our view, the roles attributed to A5 and A6 during the commission of offence need to be re-considered and the evidence on record, therefore, has to be re-appreciated in their context. PW-1, who is also the author of the First Information Report, in his evidence has stated that A5 and A6 were instigating A1 to A4 to assault the deceased. This instigation by A5 and A6 was after the crime was committed by A1 to A4. To the same effect is the evidence of PW-2, who is the brother of PW-1.

12. However, PW-3, who at the relevant time was accompanying the deceased, in his evidence has stated that A5 and A6 reached the spot of the incident subsequently and not when A1 to A4 were assaulting the deceased. In the cross-examination also he sticks to that statement. PW-4, mother of the deceased, in her evidence has not stated anything with regard to the presence of A5 and A6. PW-6, who is also an eye- witness to the incident and nephew of the deceased, also does not mention the presence of A5 and A6 when A1 to A4 were assaulting the deceased. In our view, the presence of A5 and A6, therefore, at the time of the incident is doubtful and thus the benefit of doubt requires to be extended to them.

13. Since we have doubted the presence of A5 and A6 in the commission of offence, the charge against A1 to A4 requires to be modified from Section 302 read with Section 149 of the IPC to that of an offence under Section 302 read with Section 34 of the IPC. It must be pointed out that the evidence on record makes it abundantly clear that the common object of the unlawful assembly so formed was intentionally to cause the death of the deceased. This Court in Bhagwan Baksh Singh v. State of U.P., Cr. A. No. 37 of 1957, decided on 18.08.1958, had upheld the conversion of conviction under Sections 302 read with 149 to Sections 302 read with 34 of the IPC in similar set of circumstances, i.e., benefit of doubt being

given to seven out of ten accused persons and intention in commission of offence being clearly made out in the charge-sheet. Therefore, A1 to A4 had ample notice of the charge of common intention. In the light of benefit of doubt extended to A5 and A6, the conviction of A1 to A4 is modified to Section 302 read with Section 34 of the IPC.

14. In the result, we partly allow this appeal and sustain the conviction and sentence of A1 to A4. We are informed that A3 to A6 are already on bail. Therefore, A5 and A6 are discharged of their bail bonds. Since we have confirmed the judgment of the Trial Court insofar as A1 to A4 are concerned, A3 and A4 shall surrender before the respondent authorities forthwith to serve out the remaining part of their sentence.

Ordered accordingly.