SUPREME COURT OF INDIA

Pattarvayal Kanakan

Vs.

State of Kerala

Crl.A.No.1163 of 2009

(H.L.Dattu and Ranjan Gogoi JJ.)

08.01.2013

ORDER

1. This criminal appeal is directed against the judgment and order passed by the High Court of Judicature of Kerala at Ernakulam in Criminal Appeal No. 2107 of 2004, dated 01.12.2007. By the impugned judgment and order, the High Court has confirmed the judgment and order, dated 16.11.2004, passed by the Trial Court in Sessions Case No. 46 of 2002, whereby the appellant is convicted for offence punishable under Sections 143, 147, 148, and 302 read with Section 149 of the Indian Penal Code, 1860 ("the IPC" for short) and sentenced to undergo rigorous imprisonment for life.

2. This case relates to the murder of one Purushothaman ("the deceased" for short) by the appellant-accused and six other accused persons on 01.11.1998. At 9:15 p.m., on the fateful night, the deceased was attacked by a group, comprising of the accused persons, while he was proceeding towards the house of his neighbour (PW-3) to attend a phone call from his wife's house. The deceased's sister (PW-1) followed him at a distance and thus was an eye-witness to the incident in its entirety. The deceased was first inflicted a blow with a pestle (MO1) on his head by the appellant and thereafter as he fell down, the six other accused persons attacked him with the iron rod, knife, chopper, axe, etc. As soon as PW-1, the wife of deceased, his brother (PW-2) and his uncle (CW-5), amongst others, reached the spot, the accused persons escaped leaving behind MO1. PW-1 and PW-2 rushed the deceased to the hospital, however, the deceased succumbed to his injuries.

3. The First Information Report ("the FIR" for short) was registered for offence punishable under Sections 143, 147, 148 and 307 read with Section 149 of the IPC, specifically implicating only the appellant. On completion of the investigation, the appellant and six other accused persons were charge-sheeted for offences under Sections 143, 147, 148 and 302 read with Section 149 of the IPC. During the pendency of the trial, one accused person had died and, thus, only the appellant and five other accused persons were tried for the above mentioned offence.

4. The Trial Court has, after marshalling the evidence on record including evidence of the eye-witnesses, i.e., PW-1 and PW-2, acquitted the other five accused persons by extending the benefit of doubt on the finding that the identity of the said five accused persons could not be established by acceptable evidence and, ergo, their presence as members of the unlawful assembly is not conclusively proved. However, the appellant was convicted on findings, first, that it is only the appellant who is specifically implicated in the FIR by PW-1, second, that the evidence of PW-2 corroborates PW-1's identification of the appellant and third, that the deadly blow caused by the appellant using MO1 corroborated with the injuries in the Post Mortem Report.

5. The appellant, aggrieved by the aforesaid judgment had approached the High Court. The High Court has re-appreciated the entire evidence on record and analyzed the submissions of the parties, inter- alia, that the ante-mortem injuries of the deceased tally with the injuries inflicted by the appellant and that the evidence of eye- witnesses is credit-worthy. Accordingly, the High Court has confirmed the conviction and sentence of the appellant.

6. The appellant, aggrieved by the confirmation of his conviction and sentence by the High Court, has approached this Court in this appeal.

7. We have heard Shri V. Giri, learned senior counsel for the appellant and Shri Ramesh Babu, learned counsel for the respondent- State. Shri Giri would assail the impugned judgment and order by contending, inter alia, that the Courts below, ought not have accepted the evidence of PW-1 and PW-2 while convicting the appellant alone.

8. We have carefully perused the judgment and order passed by the Courts below and have re-appreciated the evidence on record including the evidence of the eye-witnesses and the report of the medical officer. It is upon such perusal that we do not find any merit in the aforesaid submissions advanced before us by learned

counsel for the appellant. In our considered view, neither the Trial Court nor the High Court has committed any error, whatsoever, which would call for our interference.

9. In the result, the appeal is dismissed.

Ordered accordingly.