

SUPREME COURT OF INDIA

Kamlakar

Vs.

State of Maharashtra

CrI.A.No.1432 of 2012

(M.R.Shah and A.S.Bopanna,JJ.,)

31.05.2019

JUDGMENT

A.S.Bopanna,J.,

1. The appellant herein was arrayed as accused No.1 in the proceedings before the Sessions Case No.87 of 2005. Along with the appellant, five other accused, namely, accused Nos. 2 to 6 were also charged of the offences under Sections 147, 148 and 302 read with Section 149 of the Indian Penal Code on the allegation that the accused persons were the members of an unlawful assembly and pursuant to the common object, had committed riot and armed with deadly weapon like 'katti' committed murder of one Dhammanand, on March 13, 2005 at about 00.15 Hrs at Dhanegaon. The accused did not plead guilty of the charge and had sought that he be tried. The proceedings was accordingly held in the Sessions Court at Nanded.

2. The learned Sessions Court having considered the matter in detail, through its judgment dated August 16, 2006 has convicted the appellant herein for the offence punishable under Section 302 of Indian Penal Code and the appellant was sentenced to suffer life imprisonment and pay the fine of Rs.1,000/-, in default thereof, to suffer rigorous imprisonment for three months. He was, however, acquitted of the charge under Section 147, 148 of Indian Penal Code. The accused Nos. 2 to 6 were, on the other hand, acquitted of all the charges. The appellant herein, therefore, claiming to be aggrieved by the said judgment dated August 16, 2008 passed by the Sessions Court was before the High Court of Judicature at Bombay, Aurangabad Bench, in Criminal Appeal No.814 of 2006. The State of Maharashtra being aggrieved by the acquittal of the accused Nos.2 to 6 had also assailed the judgment dated August 16, 2008 to that extent in Criminal Appeal No.683 of 2008. The High Court through its judgment dated August 14, 2009 has dismissed both the appeals by confirming the judgment passed by the Sessions Court. Insofar as the challenge to the judgment of the Sessions Court by the State of Maharashtra, the same has attained finality. The accused No.1 who was the appellant before the High Court, is before this Court in the present appeal. The delay of 797 days was condoned on January 30, 2012 and leave was granted on September 14, 2012. In the above background, the conviction ordered by the Sessions Court and upheld by the High Court in holding the accused No.1 alone

guilty of the charge would arise for consideration in this appeal.

3. In that background, we have heard Shri Amit Sharma, learned counsel for the appellant, Shri Nishant R. Katneshwarkar learned counsel for the respondent State and perused the appeal papers.

4. The brief facts leading to the present situation is that all the accused persons being residents of Dhanegaon were in a meeting of Mahila Alpa Bhachat Gat near Bouddha Mandir wherein the complainant of the present incident, namely, Baburao, Kailash and others were also present. During the meeting on March 12, 2005 at about 9.00 p.m. the electric supply went off all of a sudden. The appellant Kamlakar, is stated to have enquired with Kailash alleging that he was the cause for disconnection of electric supply, which led to exchange of abuses between the said Kailash and the appellant Kamlakar. The appellant pushed Kailash who sustained injuries on his person. At about 10.00 p.m., Sheshrao, the father of Kailash accompanied by Kailash went to Baburao who is the uncle of Dhammanand and lodged a complaint at Nanded (Rural) Police Station. The said incident lead to a situation where the accused raised an issue as to why such complaint was lodged and on having enquired with the Dhammanand why his brother Kailash started the quarrel, asked Dhammanand to accompany them to settle the dispute amicably. In that backdrop, at about 00.15 a.m. on March 13, 2005 the said Baburao (PW-1), Rashtrapal (PW-8) and others went to the house of Dilip i.e., accused No.3. The accused Nos.5 and 6 were standing at the door and prevented them from entering the house and pushed them. The accused No.2 - Keshav, accused No.3- Dilip and accused No.4 - Digambar are stated to have caught hold of Dhammanand in the house of Dilip and accused No. 1 Kamlakar who was armed with 'katti' inflicted the blow with the 'katti' on the neck of Dhammanand due to which Dhammanand died on the spot instantaneously. The said persons had thereafter rushed towards the complainant Baburao (PW-1) and Rashtrapal (PW-8) to assault them but they fled away and went to Nanded (Rural) police station and lodged the complaint. The same was registered as C.R.No.55 of 2005 and further investigation was held and the charge sheet was filed.

5. Though the incident had occurred in the said manner and the allegation was against all the accused as already noticed above, except the appellant-accused No.1, the remaining accused have been acquitted. The judgment passed by the Sessions Court and confirmed by the High Court in so far acquitting accused Nos.2 to 6 has attained finality and as such the role of the said accused need not be adverted to in this appeal.

6. In the above backdrop, the consideration required to be made herein is as to whether the concurrent judgments passed by the Sessions Court and the High Court in so far convicting the accused No.1, namely, the appellant herein is justified. The learned counsel for the appellant while assailing the judgment would contend that the story of the prosecution that the appellant had committed the murder of Dhammanand cannot be accepted. In that regard, it is contended that even though the evidence of Shri Baburao (PW-1) and Shri Rashtrapal (PW-8) is considered by both the Courts as that of the eye witnesses to the incident the same is not reliable, It is contended that the said witnesses in cross-examination have stated that they have not seen the carpet spread on the cot and that the

wooden cot shown in the map of the spot panchnama is not visible unless one is to enter inside the house of accused Dilip. In that view, it is contended by him that there is no possibility of the said witnesses having seen the commission of murder by the appellant. It is his further contention that the recovery of the weapon used in commission of the crime is not also satisfactorily established and, in that circumstance, the entire consideration made by the Sessions Court as also the High Court is not justified. The learned counsel for the respondent, on the other hand, has taken us through the record including the judgments passed, to point out that a detailed consideration has been made with regard to the role of the appellant and in that circumstance, both the Courts have arrived at the appropriate conclusion which does not call for interference.

7. In the present facts, with regard to the death of Dhammanand , after the incident, the inquest panchnama was prepared and the dead body was sent to the Civil Hospital Nanded for post mortem examination. Dr. Naresh Zanjhal who performed the autopsy on the dead body was examined as PW-11 and the post mortem notes was marked as Exh.76. He has indicated the cause of death as “haemorrhagic shock due to chop wound over neck”. The same would indicate that it was a homicidal death. The blood-stained clothes of the deceased and also blood stained ‘katti’ was recovered at the instance of the appellant from his house in the presence of panchas under the memorandum panchnama which are marked as Exhibits 39 and 40, which was in the presence of Subhash Waghmare (PW-13). The same had been sent to the Regional Forensic Laboratory, Aurangabad and a report had been obtained. In that circumstance, when the weapon used for committing the offence had been recovered in the manner known to law and the appropriate reports were also obtained, the contention on behalf of the appellant that the recovery of the weapon is not believable cannot be accepted.

8. Insofar as the evidence of eye witnesses, namely, Baburao (PW-1) and Rashtrapal (PW-8) the same indicates that the entire sequence of the events as contained in the complaint have been stated. It is no doubt true that PW-1 in his cross-examination had stated that the wooden cot in the map i.e., the spot panchnama is not visible unless one enters into the house of the accused No.3 Dilip. He has also stated that the victim Dhammanand was killed on the spot by the Kamlakar by inflicting blow with ‘katti’. Further, the said witness has also been chased with intention to attack. As rightly taken note by the Sessions Court as well as the High Court, that even if it is assumed that the accused Nos.5 and 6 were at the door and had prevented Baburao (PW-1) and Rashtrapal (PW-8) at entrance of the door of the house of accused No.3 - Dilip, it would only indicate that they were standing at the threshold of the entrance to the house and in such circumstance there was every possibility of witnessing the occurrence of the incident in the house of the accused. Furthermore, all other aspects relating to the earlier sequence of events which had led to the incident having occurred in the house of Dilip is taken note and when the appellant as also the deceased were inside the house and in the circumstance the death on the spot had occurred, the death in the manner as contended by the prosecution and spoken to by PW-1 and PW-8 is to be accepted. Further the said witnesses PW-1 and PW-8 were also chased by the appellant from the very spot where the incident occurred. That apart, the ‘katti’ was recovered and the forensic report also supported the case of the prosecution.

9. In that circumstance, having reappreciated the evidence to the extent it is required and a detailed perusal of the judgment passed by the Sessions Court as also the High Court would indicate that both the Courts have adverted to the evidence in detail and have ultimately arrived at the conclusion. In such circumstances, when the concurrent judgment based upon the evidence have found the appellant to be guilty of the charge alleged against him in committing the murder and had convicted him under Section 302 of the Indian Penal Code, we see no other reason to take a different view.

10. Accordingly, the appeal being devoid of any merit, stands dismissed.