

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 1289 of 2012

SK. KHABIR

Appellant(s)

VERSUS

STATE OF WEST BENGAL

Respondent(s)

J U D G M E N T

N. V. RAMANA, J.

1. This appeal by special leave is directed against the judgment and order dated 24.12.2010 passed by the High Court at Calcutta in CRA No. 42 of 1990 wherein the High Court upheld the judgment and order dated 13.01.1990 passed by the 2nd Additional Sessions Judge, Hooghly in Sessions Trial No.51 of 1983 convicting the appellants for offences under Sections 148,307/149 and 302/149 of IPC.
2. Brief facts of the prosecution case, necessary for the disposal of this case is as follows. The de-facto complainant (PW-1), and his brothers Abdul Sayed and Narul Islam were arrested sometime in May,1980

in connection with murder of one Saiful Islam of Nalitjole Village. Even after getting released by bail, they could not go back to their village as their residence was ransacked and damaged by the enraged villagers. However, the accused persons along with others, persuaded the complainant and his brothers, to return to their village. Consequently, on their return to the village on 25.04.1981, they found an assemblage of villagers near their house and suspecting certain danger, they ran to save their lives. But, they were chased by the accused persons, including the present appellant, armed with deadly weapons like swords, spears and lathis etc. This pursuit ended with the brutal killing of the brothers of PW 1-complainant at around 11:45 A.M, wherein the complainant himself was grievously injured by the accused persons. Thereafter, the FIR being Case No.18/1981, dated 25.04.1981, came to be registered under Sections 148,149,342,326,307,302 of IPC, wherein around 26 persons, including the present appellant were named as the accused persons. Subsequently, the chargesheet was submitted under Sections 148/149/307/302, IPC against the appellant and 12 others. Thereafter, the accused persons were put on trial as they did not plead guilty to the charges leveled against them.

3. After the conclusion of trial, the present appellant, and five others

were found guilty and convicted under Sections 148/307, IPC read with Section 149/302, IPC. Aggrieved, by the aforementioned judgment of conviction the accused persons, including the appellant, preferred an appeal before the High Court in Criminal Appeal No.123 of 1985, wherein they contended that, there has been irregularity in framing of the charge and therefore, the conviction and sentence was not sustainable on the basis of such irregular charge. Vide order dated 31.07.1981, the High Court allowed the appeal preferred by the accused persons and remanded back the matter for retrial.

4. In furtherance of the above order, the trial court initiated the retrial, where upon the examination of evidences on record, the appellant along with five other accused persons were found guilty under Section 148/307 read with Section 149/302 of IPC. Accordingly, they were sentenced to suffer rigorous imprisonment for life and also pay a fine of Rs.500/- each and in default to undergo further rigorous imprisonment for five months each for the offence under Section 302/149 of IPC. They were also directed to undergo rigorous imprisonment for two years each for the offence under Section 307 IPC read with section 149 IPC and shall also pay a fine of Rs.300/- each and in default to suffer further rigorous imprisonment for three months each. There were further directed to

undergo rigorous imprisonment for six months for the offence under Section 148 IPC and shall also pay a fine of Rs.100/- each in default to suffer further rigorous imprisonment for one month each. All the sentences were directed to run concurrently.

5. Aggrieved by the above order of conviction, the accused persons, including the present appellant, again approached the High Court in Criminal Appeal no.42 of 1990. The High Court dismissed the appeals preferred by the accused persons and upheld the order of conviction passed by the trial court qua accused no.2 (appellant herein), accused no.3 and accused no.6.
6. Aggrieved by the impugned judgment and order passed by the High Court, only accused nos. 2 and 3 had preferred the present appeal. Since accused no.3 has expired, now only the accused no.2, (Sk.Khabir) is before this Court.
7. The counsel on behalf of the accused-appellant submitted that, the High Court has erred while upholding the order of conviction passed by the trial court as heavy reliance has been placed on the testimony of the eye witnesses who were closely related to the victim. Further, the counsel submitted that, two other witnesses have turned hostile.
8. On the other hand, the counsel on behalf of the respondent-State

while supporting the concurrent findings of the courts below, has submitted that the present appeal being devoid of merits is liable to be dismissed.

9. Having heard the counsels from both the parties and after perusing the materials produced on record, we find that, *firstly*, the ocular evidence of the two eye witnesses stands fully corroborated by the medical evidence, wherein it is proved that the accused persons used blunt and sharp weapons to cause injuries on the deceased persons and the P.W 1-complainant as well. Additionally, the depositions of P.W 1 & 2 are in consonance with the contents of the FIR. In light of the aforesaid facts, although P.W 1-complainant was the brother of the deceased persons, his evidence is found to be reliable after close scrutiny.
10. *Secondly*, the accused persons have not challenged the post-mortem examination reports of the victims during the cross examination wherein it is clearly stated that, the victims had an unnatural death pursuant to the injuries caused to them by means of weapons such as tangi, sword, lathis etc. Even P W 16-Doctor, has opined that, the incision injuries on the neck and shoulders, likely caused by weapons like a tangi or sword, were sufficient to cause death in the ordinary course of event.

11. *Lastly*, although, P.W. 3 and 4, have not supported the case of the prosecution, a close scrutiny of their evidence would reveal that, they have not denied the incident per se. Whereas, it is clearly implied from their statement that, they were present at the site of occurrence and have expressed awareness about the death of deceased persons.
12. Having observed the above facts and circumstances, we are of the considered opinion that, both the Courts below have rightly convicted the accused. In our opinion, there exists no perversity in the judgment of the High Court. Hence, there is no reason to interfere in the well-reasoned order of conviction and sentence.
13. The appeal is, accordingly, dismissed.
14. Pending applications, if any, shall also stand disposed of.

.....J.
(N. V. Ramana)

.....J.
(Mohan M. Shantanagoudar)

NEW DELHI,

OCTOBER 10, 2018