

(2006) 03 MAD CK 0242

In the Madras High Court

Case No : Criminal Appeal No. 233 of 1999

Athimula Gounder and Ponnammal

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 313
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2007) CriLJ 271 : (2006) 1 LW(Cri) 413

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : V. Gopinath for K. Selvarangan, for the Appellant; V. Arul,
Government Advocate (Crl.Side), for the Respondent

Final Decision : Allowed

Judgement

K.N. Basha, J.—This appeal is preferred by accused 1 and 2, who are the husband and wife, challenging the conviction and sentence passed against them by the learned Special Judge in S.C. No. 28 of 1998 by the judgment dated 08.03.1999, whereby both the accused were found guilty u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to undergo one year rigorous imprisonment each.

2. The prosecution case in brief is as follows:

(a) P.W.1 is the Panchayat President of Sorathur Village and he belongs to Scheduled Caste Community. Accused 1 and 2 belong to Gounder community. On 09.03.1998 at 09.00 a.m., when P.W.1 was waiting for the bus at the bus stand, P.W.2 - a tea stall owner asked him whether he has constructed the bus stand. For that, P.W.1 replied that A2 has obtained stay order from the Court and therefore, he was not able to construct the bus stand. At that time, A1 abused P.W.1 by using his community name. A2 also abused P.W.1 by using his community name and told that he has to be beaten with chappal. Thereafter,

P.W.1 boarded the bus and left that place.

(b) P.W.1 went to the Change Police Station on 10.03.1998 and gave a report, Ex.P1 at 11.30 a.m. to P.W.6, Sub Inspector of Police. P.W.6, on receipt of Ex.P1, registered a case in Crime No. 163 of 1998 u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. P.W.6 sent the first information report to the higher officials and to the Court.

(c) P.W.8, Deputy Superintendent of Police took up the investigation on receipt of Ex.P4, printed copy of the First Information Report, reached the scene of occurrence on 10.03.1998 at 3.00 p.m. and prepared Ex.P5, observation mahazar in the presence of P.W.7 and another witness and also prepared Ex.P6, rough sketch. Thereafter, he examined P.Ws.1 to 4 and P.W.7 and recorded their statements. On 13.03.1998, he obtained the Community Certificate marked as Ex.P3 from P.W.5, the Tahsildar and he also examined P.W.5 and recorded his statement. On 17.03.1998, P.W.8 arrested the first accused and remanded him to judicial custody. On the same day, he examined P.W.6 and recorded his statement. On completion of investigation, P.W.8 filed the charge sheet against the accused for the offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 31.05.1998.

3. During the course of the trial, the prosecution, in order to prove its case, examined P.Ws.1 to 8 and filed Exs.P1 to P6.

4. When the accused were questioned u/s 313 Cr.P.C. in respect of the incriminating materials made available against them, both the accused came forward with a version of total denial and have stated that they have been falsely implicated in this case.

5. Mr. V. Gopinath, learned senior counsel appearing for the appellants has submitted that the prosecution has miserably failed to prove its case beyond reasonable doubt. He has also contended that the evidence of P.W.1 is highly artificial and unbelievable and the same was not corroborated by any material particulars by any other witness. Learned Senior Counsel also contended that in this case, the appellants were charged for the offence u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and in such a case, the learned Special Judge ought to have taken cognizance of the case only on the order of committal passed by the Magistrate, but in this case without any order of committal, the investigating officer has filed the final report before the learned Special Judge and the same was taken cognizance of by the learned Special Judge, which is in violation of the procedure contemplated u/s 193 Cr.P.C. In support of his contention, learned senior counsel placed reliance on the decision of this Court in Mani @ Palanisami v. State 2001 2 L.W. 755 and also N. Palanisamy and Ors. v. State by Inspector of Police etc. 2003 2 L.W. 914 and submitted that because of the above said irregularity and illegality, the entire prosecution case is vitiated.

6. I have also heard Mr. V. Arul, learned Government Advocate (Crl. Side) in

respect these aspects.

7. P.W.1 is the complainant in this case. P.Ws.2 and 3 are the eye witnesses. P.W.2 turned hostile and he has not supported the prosecution case. P.W.3 has stated that he was also waiting for the bus on the date of occurrence viz., on 09.03.1998 along with P.W.1. P.W.3 further stated that P.W.2 asked P.W.1 as to why he has not constructed the bus stand and for that, P.W.1 stated that since A2 has obtained an order of stay from the Court, he was not able to construct the bus stand. At that time, A1 abused P.W.1 by using his community name. A2 also abused P.W.1 by using his community name and stated that he has to be beaten with chappal. Thereafter, P.W.1 left in the bus without saying anything.

8. A perusal of the records shows that P.W.1 claimed to be the affected person and he has given a report, Ex.P1 against Accused 1 and 2. Though P.W.1 claimed that the occurrence is said to have taken place on 09.03.1998 at 9 a.m., he has not chosen to give any report immediately thereafter and only on the next day, i.e. on 10.03.1998, he went to the Chengee Police Station and gave a report, Ex.P1 to P.W.6, Sub Inspector of Police at 11.30 a.m. There is absolutely no explanation for such an inordinate delay by P.W.1. Apart from this infirmity, the evidence of P.W.1 is highly artificial and unbelievable. P.W.1 has simply stated that after accused 1 and 2 abused him by using his community name, he has simply boarded in a bus and left the scene. In order to corroborate the version of P.W.1, the prosecution examined P.Ws.2 and 3, but P.W.2 has turned hostile and he has not supported the version of P.W.1. P.W.3 is the only witness to corroborate the version of P.W.1. P.W.3 has stated that he had also accompanied P.W.1 and both of them were waiting for the bus on the date of occurrence at 10 a.m. and only at that time, Accused 1 and 2 abused P.W.1 by using his community name. But P.W.1 has not whispered a word about P.W.3 's presence at that time. Therefore, P.W.3 cannot be believed. The version of P.W.1 remains uncorroborated. I am of the considered view that it is not safe to place reliance on such uncorroborated testimony of P.W.1, coupled with his conduct of not reporting the incident to the police immediately and also not coming forward with any reasonable explanation for the inordinate delay in giving report, Ex.P1 to P.W.6, Sub Inspector of Police.

9. There is much force in the arguments advanced by the learned senior counsel that Accused 1 and 2 without being committed by the Magistrate, the learned Special Judge has taken cognizance of the case, which is against the procedure contemplated u/s 193 Cr.P.C. and thereby, the entire proceedings are vitiated.

10. This Court in *Mani @ Palanisami v. State by Inspector of Police, Kangayam Police Station* reported in 2001 2 LW 755 has held as follows.

Unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly without the case being committed to it by a Magistrate - Section 193 imposes an interdict on all Courts of Session against taking cognizance of any offence as a Court of original jurisdiction - Conviction of

appellant cannot be maintained as sessions Judge acted without jurisdiction on account of the absence of an order of committal ,when he took cognizance .

In yet another decision in N. Palanisamy and Ors. v. State, by Inspector of Police, Protection of Civil Rights Wing, kajamalai, Trichy reported in 2003 2 LW 914 this Court has held as follows.

The Sessions Judge has taken cognizance without being committed by the Magistrate. Therefore, the entire procedure is vitiated.

Therefore, the principle laid down in the above said decisions is squarely applicable to the instant case.

11. For the reasons stated above, this appeal is allowed. The conviction and sentence imposed by the judgment dated 09.11.1998 are set aside. Bail bonds, if any, executed by the accused shall stand cancelled and the fine amount paid, if any, shall be refunded to the accused/appellants.