
(2001) 08 AP CK 0127

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 117 of 1995

Degumati Hazarath Reddy

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 06-08-2001

Acts Referred:

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3
Special Courts Act, 1979 — Section 14

Citation : (2001) 2 ALD(Cri) 493 : (2001) 2 ALT(Cri) 249 : (2001) CriLJ 4495 :
(2002) 1 RCR(Criminal) 590

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : P. Krishna Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—This Criminal Appeal is filed by accused Nos. 2,4,5, 6 and 11 against the judgment dated 23/01/1995 made in C.C.No.40/1992 on the file of the Special Sessions Judge, Guntur under S.C. & S.T. (Prevention of Atrocities) Act, 1989 (for short "the Act").

2. A-1, A-2, A-4, A-5 and A-6 are convicted u/s 323 R/W Section 149 IPC. A-1, A-4 and A-11 are further convicted of offence u/s 3(1)(xi) of the Act. The other accused are acquitted for the charges framed against them. It is not in dispute that the Sub Inspector of Police, Chinakraka P.S. laid a charge sheet against all the appellants herein and others directly before the learned Special Sessions Judge, who in turn took the cognizance of the offence and taken on file and held that the appellants are guilty for the aforesaid offences. A-1, A-2, A-4, A-6 and A-11 are sentenced to undergo Rigorous Imprisonment for six months each for the offence u/s 147 IPC. A-1, A-2, A-4 and A-6 are sentenced to undergo Rigorous Imprisonment for 3 months each for the offence u/s 323 R/W Section

149 IPC. Each of A-1 and A-4 are sentenced to undergo Rigorous Imprisonment for 3 years and A-1 is sentenced to undergo Rigorous Imprisonment for one year and also to pay a fine of Rs.100/- each for the offence u/s 3(1)(xi) of the Act, in default, to undergo Simple Imprisonment for one month. The sentences of A-1, A-2, A-4 and A-6 imposed u/s 323 R/W 149 IPC shall run concurrently with the sentence u/s 147, u/s 3(1)(xi) of the Act. The sentence of accused A-11 awarded u/s 149 shall run concurrently with his sentence u/s 3(1)(xi) of the Act.

3. The case of the prosecution is that PW-1 (Pallipati Bujjamma) belongs to SC caste. She belongs to Brahmanakraka village and she sells sundry articles to the devotees visiting Rangayyaswamy tomb situated at Arundathiyawada of Brahmanakraka village. On 08/07/1991 at 3-00 p.m., G. Seshaiiah (PW-6) who is the brother of PW-1, after visiting the said tomb waited for the bus to go to Gudladona. After some time, RTC bus came but it was overcrowded, therefore, PW-6 put his towel on vacant seat and boarded the bus. In that connection, there was an altercation between A-1 and PW-6. A-1 abused PW-6 as "MADIGA NAKODAKA! NEEK SEATU EDUNDIRA! MADIGOLLAKU POGAREKKINDI". A-1 also kicked on his stomach. On hearing the commotion, PW-1 and others intervened and brought out PW-6 from the bus. Even A-1 also got down the bus. After the bus left for Gudladona A-1 again abused PW-6 in filthy language. A-4, who was present there, sent a boy to the village to bring their caste men. PW-2 questioned A-1 for his unnecessary abusing of PW-6. On that A-1 grew wild and kicked PW-2. In the meanwhile, A-2 to A-18 having formed themselves into an unlawful assembly with a common object of causing hurt to PW-1 and other Arundhatiyas, came and attacked on them with sticks and axes. Out of fear PW-1 ran to the house of Gochipathala Malakondaiah - PW-5 to save herself, while PW-3 ran away. Thereupon A-1 joined the said unlawful assembly. All the accused trespassed into the house of PW-5 where A-2 poked PW-1 on the right side of her stomach and also kicked her. A-3, A-4, A-5 and A-6 entered inside the house and beat PW-1. A-2 caught hold of legs of PW-1 and lifted her petty coat. Then A-1 poked with a stick on her vagina and beat on her right ear and throat. A-1 also kicked on the stomach of PW-1. A-11 torn the jacket of PW-1, dragged and pulled her in the drainage canal. When PW-2 intervened A-14, A-5 and A-9 beat her with sticks. All the accused attacked the house of PW-3 and beat her with sticks and hands. When PW-4 came to the rescue of PW-3, A-5, A-9 and A-14 beat her with sticks on her back. Thus, PW-4 sustained simple hurt. Thus, it is stated that the accused are liable for punishment u/s 3 (1)(xi) of the Act and under other relevant sections of IPC. After examination of the witnesses - PWs 1 to 11 and documentary evidence Ex.P-1 - P-11 for the prosecution and on behalf of the defence DW-1 and documents B-1 to B-7, the learned Special Sessions Judge held that the accused found guilty of the offences and imposed punishment. Aggrieved by the same, the accused filed the present Criminal Appeal.

4. Sri Padmanabha Reddy, learned senior counsel appearing for the appellants submits that taking cognizance of the offences directly by the Special Court of

Sessions is illegal and without jurisdiction and admittedly, no charge sheet was filed before any Magistrate and there was no committal order committing the case to the said Special Court.

5. If the appellants succeed on this point, the question of going into the merits does not arise. Therefore, the question that arises for consideration is whether the Special Court of Sessions is empowered to directly take cognizance of the offence without committal order and whether the entire proceedings of the trial including the judgment rendered by the Special Court of Sessions is vitiated by reason of Special Court taking cognizance directly without committal order.

6. As per Section 14 of the Special Courts Act, the Special Court is constituted for the speedy trial of the offences under the Act but the aforesaid section does not empower it to take cognizance of the offence under the Act as a Court of original jurisdiction. The original jurisdiction is vested with the Magistrate only and no Magistrate in this case has committed the case for trial by the Special Court of Sessions, and therefore, taking cognizance by the Special Court directly is illegal. u/s 193 Cr.P.C. the Special Court of Sessions is not empowered to take cognizance of any offence as a court of original jurisdiction unless the case has committed by the Magistrate. The special enactment also does not provide for taking cognizance by the Special Court. Section 209 Cr.P.C. deals with the commitment of the case to the Court of Sessions, when offence is triable exclusively by it. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is exclusively triable by the Court of Sessions, he shall commit after complying with the provisions of Section 207 or 208 as the case may be and subject to the provisions of the code relating to bail, send to that court the record of the case and the documents and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Sessions. In this case, the procedure as contemplated u/s 207 Cr.P.C. has not been complied with as the Sessions Court taken the cognizance without any committal order. Therefore, it is stated by the learned senior counsel appearing for the appellants that the entire proceedings taking cognizance, trying the offence and convicting the appellants is vitiated and without jurisdiction and there are entitled for acquittal. In support of his contention, the learned counsel also relied on a decision of the Apex Court in P.VENKATA REDDY V. STATE OF A.P. (1) wherein it is held that the Court of Sessions has not acquired jurisdiction to try the offence under the Act since the procedure prescribed under sections 193 and 209 Cr.P.C. was not followed in the judgment rendered by it in such trial, which has no original jurisdiction and the judgment is non-est in law. The aforesaid view of the learned single Judge was also referred to by a division bench of this court in REFERRING OFFICER, ADDITIONAL DISTRICT AND SESSIONS JUDGE, SRIKAKULAM (2) and held that the trial by the Special Court without committal vitiates the entire proceedings and must be deemed to be null and void. Their Lordships further observed that having regard to the dicta in MOD SUFI V STATE OF WEST BENGAL(3) held that

the Special Court cannot proceed with the trial of the case without having jurisdiction to directly take cognizance of the offence and without the case being committed to it. The provisions of Sections 460, 462 and 465 cannot also be invoked to save the situation.

7. Following the aforesaid judgment, I am left with no other option except to hold that the entire proceedings relating to the judgment under C.C.No.40/92 on the file of the Special Sessions Judge which is the subject matter of the appeal is null and void. The said judgment is accordingly set aside and the appeal is allowed. The bail bonds furnished by the appellants shall stand discharged.