
(2000) 11 MAD CK 0075

In the Madras High Court

Case No : Criminal R.C.No. 956 of 2000 and Criminal M.P.No. 7250 of 2000

Elabi @ Murugesan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 30-11-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)

Citation : (2000) 11 MAD CK 0075

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : Mr. V. Kathiravan, for the Appellant; Mr. M. Babu Meeran Government Advocate (Crl.Side), for the Respondent

Judgement

1. The question that arises in this Criminal Revision is when a person is charged for commission of offence u/s 302 IPC (2 counts) in relation to

persons belonging to Scheduled Castes or Scheduled Tribes, whether charge u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (hereinafter referred to as the Act) should also be framed.

2. The facts leading to the controversy can be briefly stated as :-

The petitioner herein Elabi @ Murugesan one Palanivel Selvaraj and Marialious were friends. On 11.6.1999 at 10.30 P.M. they were playing

cards. In the course of the play, altercation occurred, as a result of which the petitioner strabbed Selvaraj on his back with a knife. He had also

attacked Palanivel with the same knife on the head, chest and rib, as a result of which Selvaraj and Palanivel died. A case in Crime No.148 of

1999 u/s 302 was registered the case and filed final report to the following

effect:-

On 11.6.1999 the accused being armed with a knife hidden in his waist, with such intention of causing the murder of Selvaraj and Palanivel began

to playing cards with them along with Mariyaluis at about 10.30 P.M. in thatched shed situated on the western side of the graveyard at the western

bank of Vennar river at Marakkadai Village.

At that time and place, the accused voluntarily picked up rowdy quarrel with Selvaraj, when Selvaraj draw a card and for which Palanivel

intervened, then all the three pushing each other and came near saloon of Pannersalvam. At that place the accused with such intention of causing

the murder of them taking the knife from his waist and saying and firstly voluntarily stabbed with knife indiscriminately on the back, for head, right

hand, left shoulder and left thigh of Selvaraj and he died there itself due to fracture of skull bone, shock and Haemorrhage. On seeing that when

Palanivel intervened and tried to catch the knife from Ilabi. The accused the knife caused injury in the hand of the accused, hence the accused also

with the such intention of causing the murder of Palanivel stabbed him also with the knife indiscriminately on his chest, stomach, left shoulder back

and head and he died there itself due to injuries to vital organs heart, lungs and brain and as a result of shock and Haemorrhage.

Thereby the accused had committed an offence and rendered himself liable to be punished under Sections 302 IPC. (2 counts) and Section 3(2)

(v) of the S.C. and S.T.Act.

3. The petitioner questioned the correctness of the charges under sec 3(2)(v) of S.C. and S.T.(Prevention of Atrocities) Act before the second

Additional District & Sessions Judge, Thanjavur, who held that the petitioner committed offence against the deceased persons fully knowing well

that they belonged to the Scheduled Caste and therefore charge u/s 3(2)(v) of the Act would arise. Aggrieved by the order passed by the learned

second Additional District and Sessions Judge, the accused petitioner had preferred the instant Criminal Revision.

4. Heard both the sides. Section 3(2)(v) of the Act recites as under:-

3 Punishments for offence of atrocities -

(1)..... ..

(2) Whoever, not being a member of a Scheduled Caste or a Schedules Tribe-

(i)....

(ii)

(iii)....

(iv).....

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person

or property on the ground that such person is a member of a Scheduled Caste or Scheduled Tribe or such property belongs to such member, shall

be punishable with imprisonment for life and with fine.

5. I have very carefully perused the charges and also the 161 statement of the eye-witnesses, namely, Srinivasan Ananadarj and Maria Louis. All

of them had stated that because of some dispute in playing cards, the accused attacked the deceased, because they belonged to Scheduled Caste

or Scheduled Tribe, i.e. with an intention of attacking a person belonging to Scheduled Caste or Scheduled Tribe.

6. The learned Counsel for the petitioner drew my attention to the decision reported in Abdul Gafarsab Vs. State, , where a Division Bench of the

Karnataka High Court had occasion to deal with this aspect. The Division Bench of the Karnataka High Court expressed the following view:-

.... merely because it has come on record that the deceased belonged to the Scheduled caste, that this is no ground on which the accused can be

convicted for an offence under this Act unless it is demonstrated that he has by his conduct said or done something that is directed to offend the

sensibilities of the deceased in relation to the caste to which he belonged. The submission is that a scrutiny of the evidence will indicate that

irrespective of what the evidence may establish with regard to the main charge, that there is no material to sustain the conviction under the

subsidiary head. On a careful scrutiny of the record, we are in agreement with this submission as there is no justification for holding that the

accused has committed any offence under the S.C. & S.T. (Prevention of Atrocities) Act, 1989.

7. In a still recent decision, reported in Referring Officer Vs. SC 1/96 to 32/95 (Annexure-I) CC No. 1/96 and 59 other cases (As per list) and

others, , a Division Bench of the Andhra Pradesh High Court has looked at the proposition from a different angle, in that it laid stress upon the

quantum of sentence to be imposed as per Section 3(2)(v) of the Act. The Andhra Pradesh High Court has held that Section 3(2)(v) of the Act

envisages enhanced punishment and that in cases where the offences punishable with imprisonment of ten years or more are committed against a

member of Scheduled Caste or Scheduled Tribe on the ground that such person is a member of that particular community, then instead of ten

years or more, he shall be punishable with imprisonment for life and with fine. The Andhra Pradesh High Court pointed out that the Section

provides enhanced punishment and when the punishment u/s 302 prescribed by law itself is for death or imprisonment for life, addition of charge

u/s 3(2)(v) of the Act would be redundant. I am in respectful agreement with the view expressed by the Andhra Pradesh High Court. It cannot be

said that when a person is punishable with death sentence being one coming under the class of punishment for a term of ten years or more, then

instead of death, sentence, the life sentence should be imposed. That would frustrate the very purpose of the provision, when the case is charged of

an offence u/s 302 IPC (2 counts), if the charge is proved, the sentence that can be imposed on his is either death sentence or life sentence. When

that is the case, it cannot be said that provisions of Section 3(2)(v) of the Act would arise. In fact, the Andhra Pradesh High Court has pointed out

in Referring Officer v. Police Station, Khammam cited supra as follows:-

The object of the provisions under S. 3(2)(v) is to provide for enhanced punishment in regard to offence punishable under IPC with imprisonment

for a term of ten years or more if such offence is committed on the ground that the victim is a member of Scheduled Caste or Scheduled Tribe.

Where the punishment of not less than imprisonment for life and higher sentence i.e. death sentence is provided for in respect of offences such as

the one u/s 302, IPC, the question of applying clause (v) of Section 3(2) does not arise.

8. I hold that the no charge u/s 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, would arise and the learned

Second Additional District and Sessions Judge, Thanjavur would avoid framing of charge u/s 3(2)(v) of the Act at the time of framing of charges.

This Crl.R.C. is ordered accordingly. Consequently, connected Crl.M.P. is closed.