
(2001) 08 MAD CK 0147
In the Madras High Court
Case No : Criminal A. No. 633 of 1995

Mani @ Palanisami

APPELLANT

Vs

State by Sub Inspector of Police

RESPONDENT

Date of Decision : 08-08-2001

Acts Referred:

Citation : (2001) 2 LW(Cri) 755

Hon'ble Judges : N. Dinakar, J

Bench : Single Bench

Advocate : A.K. Kumaraswamy, for the Appellant; Abudu Kumar Rajaratnam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Dinakar, J.—The Appellant, who hereinafter will be referred to as "the accused", in S.C. No. 1 of 1995. was tried before the learned Principal Sessions Court. Erode, which was constituted to try the offences punishable under Tamil Nadu Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1985 (for short "the Act"). He was charged u/s 3 (1)(x) of the Act as well as under Sections 324 and 323 IPC, on the allegation that at 8.00 a.m. on 6.9.1994, he abused P.W.1, Ayyavoo, by calling his caste name and also caused simple injury to him and in the course of the same transaction also caused injuries to P. Ws.3 and 4. The trial Court acquitted the accused for the offence punishable u/s 3(1) (x) of the Act and also acquitted him for the offence punishable u/s 323 IPC. (2 counts) for causing injuries to P.W.1 and P.W.4, but convicted him u/s 324 IPC. under charge No. 2 for causing injury to P.W.3 and on being convicted, he was sentenced to suffer four months rigorous imprisonment. Hence the appeal.

2. The case of the prosecution as could be discerned from the oral and documentary evidence, can be briefly summarised as follows:

The accused is a resident of Nallipalayam and P. Ws.1, 3 and 4 also belong to the same village. At about 8.00 a.m. on 6.9.1994 the accused went to the house of

P.W.3 and after abusing him, cut the fence with an aruval, which he had in his hand and thereafter also inflicted an injury on P.W.3. He also beat P.W.1 with a stick. When P.W.3's father intervened he was also beaten. P.W.4, the brother of P.W.1 was also attacked. A complainant, Ex.P.1 was given at Erode Town Police Station by P.W.1 and the same was recorded by P.W.6 the Head Constable, who registered the case. The injured was sent to the Government Hospital at Kangeyam and on being referred, P.W.2, the doctor, examined P.W.1 and found on his person a lacerated injury measuring 2"x 1/2" x 1/2" on the parietal region. Ex.P.3 is the wound certificate. The doctor also examined P.W.3 and on his person he found a lacerated injury measuring 4" x 1/2" x 1/2" on the occipital region. Ex.P.4 is the wound certificate. The doctor also examined P.W.4 and on his person he found a lacerated injury measuring 3" x 1/2" x 1/2" on the left parietal region and Ex.P.5 is the wound certificate.

3. P.W.7, Inspector of Police, Kangeyam Police Station, took up investigation in the case and at the scene of occurrence, he prepared an observation mahazar, Ex.P.6 and also drew a rough sketch. Ex.P.9.M Os.1 and 2 were seized under a mahazar Ex.P.7. He questioned P. Ws.1, 3 and 4 at the hospital and recorded their statements. The accused was arrested on 17.10.1994 and sent to the Court for remand. He examined the doctor, P.W.2, and recorded his statement. He also sent a requisition to the Tahsildar and obtained Ex.P.10 the certificate, to show that P. Ws.1, 3 and 4 belong to Mathari community and Ex.P.11, the certificate, to the effect that the accused belongs to Kongu Vellalar community. After completing the investigation, final report was filed against the accused.

4. When the accused was questioned u/s 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied all the circumstances and stated that a false case had been foisted upon him.

5 The learned Counsel appearing for the Appellant submits that the accused was acquitted of all the charge except for the charge framed u/s 324 IPC and the learned Sessions Judge having rejected the entire prosecution version, ought not to have convicted him for the offence punishable u/s 324 IPC. for causing injury to P.W.3. It is his further submission that since the accused was tried by the learned Sessions Judge, the Sessions Judge ought not to have taken cognizance of the case without an order of committal passed by a learned Magistrate and in this case, the investigating officer filed the final report before the learned Sessions Judge and the learned Sessions Judge committed an error in taking cognizance on the basis of the final report without an order of committal. It is his submission, that, therefore, the entire proceedings are vitiated. In support of his plea, he relies upon a judgment of the Supreme Court in Gangula Ashok v. State of A.P. 2000 SCC (Cri) 488.

6 I have heard the learned Government Advocate on the contention and also considered the materials. The Supreme Court in the above judgment held that from Sections 14 and 2(1)(d) of the Act, it is for the trial of the offences under the Act that a particular Court of Session in each district is sought to be specified

as a Special Court and though the word "trial" is not defined either in the Code or in the Act it is clearly distinguishable from inquiry and inquiry must always be a forerunner to the trial. The Court of Sessions is specified to conduct a trial and no other Court can conduct the trial of offences under the Act and evidently the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session and the trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for "trial before a Court of Session". The Supreme Court further observed that Section 193 of the Code has to be understood in the aforesaid backdrop and the section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. The Supreme Court further held that two segments have been indicated in Section 193 as exceptions to the aforesaid interdict and one is, when the Code itself has, provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, 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 and neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Sessions (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. As such the charge sheet or complaint cannot straight away be filed before such Special Court for offences under the Act and it can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session.

7. In view of the law enunciated by the Supreme Court in the above judgment, the cognizance taken by the learned Sessions Judge and the subsequent trial are vitiated. Therefore, the conviction of the Appellant cannot be maintained and it has to be set aside, since the learned Sessions Judge acted without jurisdiction on account of the absence of an order of committal, when he took cognizance. Therefore, the conviction of the Appellant u/s 324 IPC. is set aside. The appeal is allowed. The bail bond, if any, executed by the Appellant shall stand cancelled.