

(2010) 09 CHH CK 0021
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1599 of 1995

Rupram and Another

APPELLANT

Vs

Stale of Madhya Pradesh (Now Chhattisgarh)

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 465
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(xi)

Citation : (2011) 1 MPHT 14

Hon'ble Judges : Manindra Mohan Shrivastava, J

Bench : Division Bench

Advocate : Pankaj Agrawal, for the Appellant; Sushil Dubey, Govt. Advocate for the State, for the Respondent

Judgement

Manindra Mohan Shrivastava, J.—This appeal is directed against the judgment of conviction and order of sentence dated 25-11-1995 passed by the Special Judge (Sessions Judge, Raipur) in Criminal Case (Special) No. 412/91 whereby the appellants have been held guilty of commission of offence u/s 3(1) (xi) of the Scheduled Castes/Scheduled Tribes Atrocities Act, 1989 and sentenced to undergo Rigorous Imprisonment of six months. Case of the prosecution is that in the night of 21-10-1991, when complainant-Ku. Jyoti (P.W. 1), who belongs to Gond Tribe was sleeping in her room, at about 11.30 P.M., the appellants entered her room and outraged her modesty by pulling her clothes. First Information Report (Exh. P-1) was lodged by Ku. Jyoti (P.W. 1) in Police Station Dhamtari, upon which the police registered crime alleging commission of offence u/s 3(1) (xi) of the Scheduled Castes/Scheduled Tribes Atrocities Act, 1989. After investigation, a charge-sheet was filed in the Court of Special Judge, Raipur.

2. Relying upon the testimony of Ku. Jyoti (P.W. 1), Kamla Bai (P.W. 2), Ram Bai (RW. 3), Investigating Officer, Ramkrishna Singh (P.W. 5) and disbelieving the defence of the appellants, learned Trial Court held appellants guilty of commission of offence alleged and sentenced them to undergo RI for six months.

3. Assailing the validity of the judgment of conviction and sentence, learned Counsel for the appellants raised fundamental issue with regard to jurisdiction of the Special Judge to try the offence alleged against the appellants. Learned Counsel for the appellants urged that charge-sheet was filed in the Court of Special Judge without there being any committal proceedings drawn by the concerned Judicial Magistrate as required u/s 193 of the Code of Criminal Procedure, 1973. It is submitted that the learned Special Judge could not have taken cognizance of the case upon submission of the charge-sheet unless the same was duly committed to it for trial as required under the provisions of the Code of Criminal Procedure, 1973, and therefore, the entire trial is vitiated and the impugned judgment of conviction could not be sustained in the eye of law. Learned Counsel further argued that the sole testimony of the complainant-Ku. Jyoti (P.W. 1) was liable to be disbelieved as the same was not corroborated by other prosecution witnesses and the prosecution has failed to prove that any overt act was done by the appellants towards commission of alleged offence. It is also submitted that as Vishwanath (P.W. 4) did not support the case of the prosecution and the prosecution failed to examine other witnesses namely Arjun Sahu and Pusau Ram, the Court below ought to have disbelieved the entire case of the prosecution. It is also submitted that according to the testimony of the complainant herself, the alleged offence was committed in the night and there was complete dark and that other witnesses had not seen the appellants entering and outraging her modesty and coming out of the house and there was no identification also. Therefore, the conviction of appellants is unsustainable under the law.

4. On the other hand, learned Counsel for the State would submit that the ground relating to illegality in holding trial on the ground of noncommittal by the Magistrate was not raised before the learned Court below nor any specific ground has been taken in the appeal and the same is therefore, liable to be ignored. Learned Counsel further submits that the same is mere irregularity within the meaning of Section 465 of the Code of Criminal Procedure and, therefore, only on that ground trial, could not be held vitiated, Further submission of learned Counsel for the State is that commission of offence has been proved by unimpeachable testimony of complainant- Ku. Jyoti (P.W. 1), Kamla Bai (P.W. 2). Ram Bai (P.W. 3), Investigating Officer, Ramkrishna Singh (P.W. 5), and therefore, the conviction of the appellants is just and proper.

5. The first ground raised by learned Counsel for the appellant with regard to the very jurisdiction of the Special Judge to take upon trial without the case being committed to its Court by the Jurisdictional Magistrate goes to the matter and is a ground relating to the very jurisdiction and authority of the Special Judge to try the offence alleged. I am not inclined to reject the appeal at this stage only on the ground that no specific ground to that effect has been raised before this Court in the memo of appeal or that such ground has not been taken before the Trial Court. More so, from the perusal of the trial placed before this Court, it is found that the charge-sheet was directly filed in the Court of Special Judge,

Raipur as is evident from the opening order sheet dated 23-12-1991. It has not been disputed by the learned Counsel for the State and is clearly borne out from the records of Special Case No. 412/91 of the Court of Special Judge, Raipur that the Police of (Special) Police Station, Dhamtari filed charge-sheet against the appellants in the Court of Special Judge, Raipur as is evident from the order sheet dated 23-12-91. There is no reference to any committal proceedings drawn by the Jurisdictional Magistrate. This fact is also very clear from the impugned judgment of conviction and sentence. Therefore, it is beyond any pale of doubt that the police filed charge-sheet in the Court of Special Judge, Raipur without there being any committal proceedings drawn by the Jurisdictional Magistrate and without there being any order of committal as required u/s 193 of the Code of Criminal Procedure. It is, thus, clear that the Special Judge himself took cognizance of the case upon submission of charge-sheet directly in his Court.

6. The question, therefore, which arises for consideration before this Court is whether the Special Judge had jurisdiction and authority to take cognizance without the case being committed to it by a Competent Magistrate.

The question is no longer *res Integra* in view of the judgments of Supreme Court in the case of *Gangula Ashok and Another Vs. State of A.P., Vidyadharan Vs. State of Kerala, and M.A. Kuttappan Vs. E. Krishnan Nayanar and Another*, In the case of *Gangula Ashok (supra)*, Supreme Court dealing with the identical issue held:--

10. Section 193 of the Code has to be understood in the aforesaid backdrop. 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. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. 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 to 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.

11. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (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. If that be so, there is no reason to think that the charge-sheet or a complaint can straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal Courts that the Court of Session is given a

superior and special status. Hence we think that 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. The aforesaid view taken by the Supreme Court was reiterated in the case of Vidyadharan (supra), wherein Supreme Court concluded by observing:--

20. Hence, we have no doubt that a Special Court under this Act is essentially a Court of Session and it can take cognizance of the offence when the case is committed to it by the Magistrate in accordance with the provisions of the Code. In other words, a complaint or a charge-sheet cannot straight away be laid down before the Special Court under the Act. We are reiterating the view taken by this Court in Gangula Ashok and Another Vs. State of A.P., , in the above terms with which we are in respectful agreement. The Sessions Court in the case at hand, undisputedly, has acted as one of original jurisdiction, and the requirements of Section 193 of the Code were not met.

Relying upon the earlier two decisions in the case of M.A. Kuttappan (supra), Supreme Court concluded as under:--

10. In view of the aforesaid decisions of this Court it could not be contended before us that the Special Judge had jurisdiction to entertain the complaint directly and to issue process after taking cognizance without the case being committed to it by a Competent Magistrate. The question is no longer *res integra* and, therefore, it must be held that the learned Special Judge in the instant case erred in entertaining a complaint filed before it and in issuing process after taking cognizance without the case being committed to it for trial by a Competent Magistrate. Though the High Court has quashed the proceeding on a different ground altogether, we are satisfied that the impugned order of the Special Judge deserves to be set aside so far as it related to its taking cognizance of an offence under the 1989 Act, and issuing process on the basis of the complaint directly made before it by the complainant.

A Division Bench of Madhya Pradesh High Court in the case of Bhooraji and others Vs. State of M.P., , relying upon the judgment of Supreme Court and Gangula (supra), has also held that the Court of Sessions, specified as a Special Court under the Act of 1989 can take cognizance only upon committal of case to it by Jurisdictional Magistrate.

8. In so far as provisions of Section 465 of the Code of Criminal Procedure is concerned, suffice to say that the said provision cannot be made applicable so as to cure a defect of jurisdiction as it is not a mere omission or irregularity which can be cured, as held by the Supreme Court in the case of H.N. Rishbud and Inder Singh Vs. The State of Delhi, and in the case of Bhooraji (supra). In the result, it is held that the trial in the instant case was without jurisdiction and contrary to the provisions contained u/s 193 of the CPC and, therefore, the entire trial is vitiated and the impugned judgment of conviction and sentence is

unsustainable in law. The appeal, therefore, succeeds on this short ground alone and is hereby allowed. The impugned judgment of conviction and sentence is set aside. The Court below is directed to return the charge-sheet and papers therewith to the prosecution who may resubmit the same to the Competent Jurisdictional Magistrate for further proceedings in accordance with law. As the appellants are on bail, they are directed to appear before Jurisdictional Committal Magistrate, Raipur on 18-10-2010 and on such appearance, they shall be enlarged on bail on the same terms and conditions on which they were on bail before this Court during the pendency of appeal, for their further appearance before the Committal Magistrate, as may be directed from time to time.