

THE HONOURABLE DR.JUSTICE G. RADHA RANI

CRIMINAL APPEAL NO.533 of 2013

JUDGMENT:

This Criminal Appeal is filed by the appellants – A1 to A5 aggrieved by the judgment of the Special Sessions Judge for Trial of Cases under SCs & STs (POA) Act- cum - Additional Sessions Judge, Khammam in S.C.No.53 of 2012, dated 17.06.2013.

2. The case of the prosecution in brief as per the charge-sheet filed by the Additional Superintendent of Police, Bhadrachalam sub-division was that, the de-facto complainant belonged to Koya (ST caste) and the accused A1 to A3 belonged to Kamma, which comes under non SC & ST caste. The complainant and accused Nos.1 to 3 were residing in the same locality and their houses were situated opposite to each other. There were previous grudges between the complainant and the accused over the issue of dumping dung and waste material in front of the house of the complainant. The accused Nos.1 to 3 intentionally used to dump dung and waste material in the open place available in front of the complainant's house and they also used to insult her by calling her with caste name, when ever she questioned their acts.

2.1. On 29.08.2011 at about 10:30 AM, the complainant and others picked up a quarrel with Garikapati Vimala (Mother of A1 and A2 and wife of A3) over the issue of dumping waste material and dung in front of their house. On the same evening, again both the parties quarreled with each other and in that quarrel Garikapati Vimala was beaten up by Suresh and Others, which was subject matter in Crime No.185 of 2011 under Section 324 read with Section 34 of IPC. Keeping it in mind, A1 to A5 went to the house of the complainant and in retaliation, they criminally trespassed into the house of the complainant and broke the doors with sticks. They attacked and dragged the complainant and LWs.2, 4, 6 and 9 out of the house by abusing the complainant in filthy language referring to her caste name and beat them indiscriminately and caused grievous and simple injuries. From there, they went to the houses of LW3 and beat LWs.3, 5, 7 and 8 indiscriminately and caused simple injuries. The injured took help from one Sathalu, belonging to CPI Party, went to hospital on the same night and on the next day morning i.e., on 30.08.2011 at 8:00 AM, the complainant lodged a report before Bhadrachalam Town Police.

2.2. Basing on the said report, the SI of Police, Bhadrachalam Town registered a case in Crime No.186 of 2011 under Section 324 read with 34 of IPC and Section 3(1)(x) of SC & ST (POA) Act, 1989. The Superintendent of Police, Khammam appointed the Additional Superintendent of Police (Operations), Kothagudem as the investigating officer on 31.08.2011. As per

the said proceedings, the Additional Superintendent of Police took up the investigation, visited the scene of offence, recorded the statements of LWs 1 to 10, drafted the crime detail form in the presence of mediators and issued a requisition to the Tahsildar, Bhadrachalam to furnish the caste particulars of the complainant and LWs. 2 to 9 and the accused.

2.3. Subsequently, as per the proceedings of the Superintendent of Police, Khammam dated 12.12.2011, the Additional Superintendent of Police, Bhadrachalam continued further investigation in the case. He recorded the statements of LWs.11 to 13 and obtained the caste particulars of the witnesses and the accused from the Tahsildar, Bhadrachalam, collected the wound certificates of LWs.1to 9 from the medical officer. He effected the arrest of A1 and A2 on 19.01.2012 and produced them before the court. A4 and A5 surrendered before the Additional Superintendent of Police (for short "ASP"), Bhadrachalam on 16.02.2012 on obtaining anticipatory bail from the High Court of Andhra Pradesh. A3 was arrested on 13.03.2012 by the ASP. He recorded the confession statement of A3 and in pursuance of his confession, recovered five (05) sticks used in the commission of offence under the cover of panchanama in the presence of mediators and produced him before the court.

2.4. It was mentioned in the charge-sheet that though the complainant in her report stated that A1 to A3 and 15 others attacked on them, as there was no substantial evidence brought on record to prove the offence against others

except A1 to A5, the Police had not charge-sheeted others. The Police filed charge-sheet against A1 to A3 for the offences under Section 143, 448, 324, 325, 506 read with Section 149 of IPC and Section 3(1)(ii)(x) of SC & ST (POA) Act, 1989 and against A4 and A5 under Section 143, 448, 324, 325, 506 read with Section 149 of IPC and Section 3 (1)(x) of SC & ST (POA) Act, 1989.

3. The case was taken cognizance by the Judicial Magistrate of I Class, Bhadrachalam, numbered it as PRC.No.88 of 2012 and committed to the Special Sessions Judge for Trial of Cases under SC & ST (POA) Act, 1989, as the charge under Section 3(1)(ii)(x) of SC & ST (POA) Act was exclusively triable by the Special Court.

4. The same was numbered as SC.No.53 of 2012 by the Special Court and on appearance of the accused, charges were framed under Section 147, 148, 294(b) read with Section 34, Section 324 read with Section 34 and Section 506 read with Section 34 of IPC. The accused A1 to A5 pleaded not guilty and claimed to be tried.

5. During the course of trial, the prosecution examined PWs.1 to 22 and got marked Exs.P.1 to P.18 and MOs.1 to 5.

6. No defence evidence was adduced by the accused.

7. A portion of the 161 Cr.P.C. statement of PW.2 was marked as Ex.D.1.

8. On considering the oral and documentary evidence on record and the material objects marked, the Special Court found A1 to A5 guilty for the offences under Section 147, 148, 323, 425, 506 read with Section 34 of IPC and Section 3(1)(x) of SC & ST (POA) Act and sentenced them to undergo rigorous imprisonment for a period of one year and a fine of Rs.1000/- each in default, to suffer simple imprisonment for three months for the offence under Section 323 read with Section 149 of IPC, rigorous imprisonment for a period of six months for the offence under Section 506 read with Section 149 of IPC. Rigorous imprisonment for a period of six months and a fine of Rs.1,000/- each, in default to suffer simple imprisonment for three months for the offence under Section 3(1)(x) of SC & ST (POA) Act and directed all the sentences to run concurrently. The accused A1 to A5 were acquitted for the offences under Section 427 and Section 294(b) of IPC.

9. Aggrieved by the said conviction and sentence recorded against them, the accused persons preferred this appeal contending that the Special Court erred in convicting the appellants for the offences under Sections 147, 149, 323, 425 and 506 read with Section 34 of IPC and Section 3(1)(x) of SC & ST (POA) Act, as the ingredients to constitute the said offences were not made out by any legal or reliable evidence. The provisions of SC & ST POA Act had no application to the facts of the present case. The Special Court failed to see that the allegations which would attract an offence under Section 3(1)(x) of SC & ST (POA) Act

was leveled at a belated stage only with a view to harass and to implicate the accused in a serious case. The learned Judge failed to see that the alleged abuse of PW.1 in her caste name took place in her home and not in a public view. Hence, the provisions of Section 3(1)(x) of SC & ST (POA) Act were not attracted.

10. The learned judge ought to have seen that neither the names of the accused were mentioned in the First Information Report (for short "FIR") nor any specific overt acts were attributed to them in the FIR. The learned judge erred in thinking that PW.1 was a member of the SC & ST (Koya), even though she had married a member of the backward caste and hence she was no longer a member of the ST caste. The learned judge ought to have seen that there were several contradictions in the evidence of witnesses which would go to show that the incident did not take place as deposed by the prosecution witnesses. The learned Judge failed to see that the prosecution witnesses developed their evidence from stage to stage and erred in not considering the discrepancies between the statements of the witnesses. The learned Judge erred in not attaching any significance to the delay in lodging the FIR and prayed to allow the appeal.

11. Heard the learned counsel for the appellants and the learned Assistant Public Prosecutor.

12. The learned counsel for appellants pointed out several irregularities committed by the trial court in framing the charges, convicting the accused and sentencing them for various offences and pointed out the discrepancies in the evidence of the witnesses and about the delay in lodging the FIR.

13. The learned Assistant Public Prosecutor supported the judgment of the trial court and contended that the statements of the witnesses would prove the guilt of the accused beyond reasonable doubt and prayed to confirm the conviction and sentence recorded by the trial court against them.

14. On a perusal of the record, though the charge-sheet was filed against A1 to A3 for the offence under Section 3(1)(ii)(x) of SC & ST (POA) Act, 1989 and against A4 and A5 for the offence under Section 3(1)(x) of SC & ST (POA) Act, 1989 and cognizance was taken by the Judicial Magistrate of I Class, Bhadrachalam for the said offence under Section SC & ST (POA) Act, 1989 and committed it to the Special Court, as the said charges were exclusively triable by the Special Court for trial of cases under SC & ST (POA) Act, 1989, no charge was framed by the Special Court under Section 3(1)(ii)(x) against A1 to A3 or 3(1)(x) of SC & ST (POA) Act against A4 and A5. Though the charge-sheet would not disclose the offences under Sections 147, 148, 294(b) read with Section 34 of IPC or Section 324 read with Section 34 of IPC or Section 506 read with Section 34 of IPC, the Special Court framed the charges for these offences.

15. In the third charge framed under Section 294(b) read with Section 34 of IPC, it was added with pen as (or) 3(1)(x) of SC & ST (POA) Act. But the ingredients of the said charge of abusing the complainant in the name of caste within the public view by A1 to A5 were not put forth to the accused by the Special Court. The substance of the said charge was not put to the accused and the ingredients of the charge were not read over to the accused and the plea of the accused on the said charge was not recorded by the Special Court. Though the charge-sheet was filed for the offences under Sections 143, 448, 324, 325 and 506 read with Section 149 of IPC, the Special Court framed the charges for the offences under Sections 294(b), 324 and 506 read with Section 34 of IPC but not under Section 149 of IPC.

16. The Special Court specifically recorded in the 5th charge that A1 to A5 in furtherance of their common intention criminally intimidated the witnesses with dire consequences and not framed the charge under Section 149 of IPC that with a common object, they committed the said offences. Though, there is no charge for the offence under Section 425 of IPC, the Special Court found A1 to A5 guilty for the charge under Section 425 of IPC but not inflicted any sentence for the said offence. Likewise, though the Special Court found A1 to A5 guilty for the offences under Section 147 and 148 of IPC, had not inflicted any sentences against A1 to A5 for the said offences.

17. The learned counsel for the appellants contended that, the Special Court convicted the accused persons A1 to A5 for the offence under Section 3(1)(x) of SC & ST (POA) Act without framing the charge and the writing of Section 3(1)(x) in the third charge appears to be interpolated without putting the substance of the said charge to the accused and the ingredients of the said charge were not read over to the accused and not sought their plea, whether they were guilty or not for the said charge, contended that it would go to the root of the matter and a failure of justice had been occasioned thereby to the accused persons. He further contended that the conviction of A1 to A5 for the said charge and the sentences inflicted against them for it were liable to be set aside. He further contended that, as there was no charge framed under Section 425 of IPC and though the Special Court found A1 to A5 guilty for the said offence, not inflicted any sentence for the said charge, the same was also liable to be set aside. His further contention was that, though charges were framed under Sections 147 and 148 of IPC and the trial court found A1 to A5 guilty for the said charges, but failed to inflict any sentence for the said offences, the same were also liable to be set aside. His further contention was that the Special Court convicted the accused for the offences under Section 323 read with Section 149 of IPC and Section 506 read with Section 149 of IPC, though they were charged for the offences under Sections 324 read with Section 34, and 506

read with Section 34 of IPC and the same were also irregular, hence they were also liable to be set aside.

18. Chapter XXXV of Cr.P.C. deals with irregular proceedings. Section 464 of Cr.P.C provides for effect of omission to frame, or absence of or error in charges. It reads as follows:

464. Effect of omission to frame, or absence of or error in, charge. -

“(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.”

“(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit.”

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

19. Thus the Cr.P.C. prescribes that no finding, sentence or order by a court of competent jurisdiction can be held invalid on the ground of any error, omission or irregularity in framing the charges and even if the court of appeal is of opinion that a failure of justice had occasioned thereby, the matter shall be remanded to the trial court to frame the charges and to direct a fresh trial to be held upon the charges so framed.

20. Hence, it is considered fit to remand the matter to the trial court to frame the charges properly and to conduct a fresh trial upon the charges so framed.

21. Hence, this Court does not intend to discuss the merits of the matter and considers it fit to remand the matter to the trial court for framing the charges in accordance with the facts of the case and to conduct a fresh trial upon the charges framed.

22. In the result, the Criminal Appeal is allowed and remanded to the trial court for framing of charges afresh and to conduct a fresh trial upon the charges framed within a period of 6 months from the date of receipt of a copy of this judgment.

Miscellaneous applications pending, if any, shall stand closed.

Dr. G.RADHA RANI, J

08th February, 2023
nsk.