

Kothapalli Sunil Kumar Vs. the State of A.P. Rep. by Public Prosecutor

Kothapalli Sunil Kumar Vs. the State of A.P. Rep. by Public Prosecutor

SooperKanoon Citation : sooperkanoon.com/446185

Court : Andhra Pradesh

Decided On : Dec-16-2002

Reported in : 2003(1)ALD(Cri)472; 2003(1)ALT(Cri)297

Judge : K.C. Bhanu, J.

Acts : Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3 and 23(1); Indian Penal Code (IPC) - Sections 354; Scheduled Tribes (Prevention of Atrocities) Rules, 1995 - Rule 7; Code of Criminal Procedure (CrPC) - Sections 162

Appeal No. : Crl. A. No. 430 of 1999

Appellant : Kothapalli Sunil Kumar

Respondent : The State of A.P. Rep. by Public Prosecutor

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : C. Praveen Kumar, Adv.

Disposition : Appeal allowed

Judgement :

K.C. Bhanu, J.

1. The appeal is directed against the judgment in Special Sessions Case No. 10/1998 on the file of the Special Judge for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum-Additional District Judge, Adilabad, convicting the accused for an offence under Section 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the S.C. & S.T. Act') read with Section 354 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs.500/-, and in default, to undergo rigorous imprisonment for three months. Questioning the legality and correctness of the conviction and sentence recorded by the Court below, the accused filed the present appeal.

2. The brief facts that are necessary for disposal of the present appeal are that, on 3.4.1998 at about 3.00 p.m., a sweeper by name Eppa Durgamma went inside the Municipal Office, Kagaznagar, along with another sweeper, P.W.2, that while returning after drinking water the accused caught hold of the hand of Durgamma-P.W.1 with an intention to outrage her modesty and abused her in vulgar language, that on a report given by her, the Kagaznagar police registered a case in crime No. 50/1998 under Section 3(1)(xi) of the S.C. & S.T. Act read with Section 354 I.P.C.

3. On behalf of the Prosecution, P.Ws. 1 to 4 were examined and Exs.P1 and P2 were marked. On behalf of the accused, D.Ws. 1 and 2 were examined.

4. The lower Court, after hearing both sides and considering the evidence on record, came to the conclusion that the Prosecution proved the guilt of the accused for the offence under Section 3(1)(xi) of the S.C. & S.T. Act read with Section 354, and therefore convicted and sentenced the accused as aforesaid.

5. Now the point for determination is whether the judgment of the lower Court is correct, legal and proper

6. Learned counsel for the appellant contended that the interested testimony of P.Ws. 1 and 2 cannot be taken into consideration, that the ingredients of the offences alleged against the accused are not made out, and that the investigation was conducted by the Officer below the rank of Deputy Superintendent of Police

and therefore the trial is vitiated. On the other hand, the learned Public Prosecutor contended that the evidence of P.Ws. 1 and 2 is very clear that the accused outraged the modesty of P.W.1, that there is no reason for P.W.1 to foist a false case against the accused, and that the well-reasoned order of the Court below cannot be disturbed. Therefore, he prays to dismiss the appeal.

7. The specific case of the Prosecution is that while P.Ws.1 and 2 were returning from the Municipal office after drinking water, the accused caught hold of the hand of P.W.1 and stated 'Rave Munda', and that thereafter P.W.1 raised cries and on hearing her cries the Municipal workers caught hold of the accused and took him to the police station and presented the report.

8. The substantive charge for which the accused was convicted is under Section 3(1)(xi) of the S.C. & S.T. Act, which reads as follows:

'Section 3(1) - Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, --

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine.'

9. It is to be seen whether the evidence of P.Ws. 1 and 2 inspires confidence. Admittedly, the Kagaznagar police station was abutting the municipal office, so also the quarter of the Sub-Inspector of Police of Kagaznagar Police Station. It is an admitted fact that several persons visit the municipal office for payment of tax etc. None of the persons present there at the time of the incident was examined on behalf of the Prosecution. On the own showing of P.W.1, the municipal workers, who were present in the compound of the municipal office, rushed to the spot and caught hold of the accused. But, not even a single worker was examined to show that the accused was caught red-handed and taken to the police station. If the municipal workers had really caught hold of the accused and taken to the police station, then, certainly the S.I. of Police would have arrested the accused

immediately on the date of incident i.e. on 3.4.1998. But, as seen from the evidence of P.W.4-the S.I. of Police, the accused was arrested on 4.4.1998 at 8.50 p.m. at the house of the accused.

10. According to P.W.1, she gave Ex.P1-report immediately after taking the accused to the police station. That appears to be false, because P.W.4 stated that he had received Ex.P1-report on 3.4.1998 at 8.10 p.m., but not at 2.00 p.m., as claimed by P.W.1. If such is the case, Ex.P1-report is hit by Section 162 of the Code of Criminal Procedure as it came into existence during the course of investigation.

11. The evidence on record shows that there were two rival groups between the Chairman and the Vice-chairman of Kagaznagar Municipality and the accused was the supporter of the group of the Chairman. If really the incident as spoken to by P.Ws. 1 and 2 had taken place, the rival group of the accused would have certainly reported the incident to the police, because the police station was abutting the municipal office. This creates a suspicion whether the incident as spoken to by P.Ws. 1 and 2 had taken place at all.

12. Coming to the evidence of P.W.3, her presence at the time of incident was not spoken to by P.Ws. 1 and 2. Her evidence is that she along with P.Ws. 1 and 2 went to Kagaznagar police station immediately after the incident and presented a report and she put her thumb mark on the report. But her statement appears to be false, since Ex.P1 does not contain her thumb mark. The evidence of P.W.3 is an improvement, because she did not state to the police that she had seen the accused catching hold of the hand of P.W.1. Under these circumstances, it is not safe to place reliance on the evidence of P.W.3.

13. The lower Court held that the discrepancies or improbabilities in the evidence of P.Ws. 1 to 3 were not material discrepancies so as to disbelieve the Prosecution case. But, the discrepancies in the evidence of P.Ws. 1 to 3 go to the root of the case. Hence, the Prosecution version cannot be believed.

14. P.W.4 was the Sub-Inspector of Police, Kagaznagar Police Station at the time of the incident. He examined P.Ws. 1 to 3 and recorded their statements. He also

arrested the accused. The accused examined D.Ws. 1 and 2 on his behalf. D.W.1 was the Chairman of the Municipal Council at the relevant point of time. According to him, the incident in question did not happen at all. D.W.2 was one of the Councilors. He stated that he was present in his chambers on the date of incident and no altercation or incident as alleged had taken place. There is no reason for D.Ws. 1 and 2 to speak false on oath.

15. The accused was convicted for the offence under Section 3(1)(xi) of the S.C. & S.T. Act. Admittedly, the investigation was done by the Sub-Inspector of Police. Learned counsel appearing for the accused relied upon a decision in *Viswanadhula Chittibabu v. State of A.P.*, 2002(2) ALD (Crl.) 206 (A.P.), wherein a Division Bench of this Court held in paragraph 25 as follows:

'.....we have come to the conclusion that Rule 7 framed under Section 23 of the said Act is a mandatory and it has to be strictly complied with, which is not the procedural defect but it is inherent defect in conducting the investigation under the said Act and we further hold that if the investigation is done by any other office below the rank of Dy. S.P., will vitiate the trial'

16. Learned counsel for the appellant-accused also relied upon a decision in *E. Sessaiah v. State of Andhra Pradesh*, 2000(1) ALD (Crl.) 709 (A.P.), wherein this Court held in paragraph 7 as follows:

'It may be mentioned that Rule 7 of the Rules has made provision for appointment of Special Investigating Officers for investigating into the offences under the Act. Rule 7 of the Rules contemplates, firstly that an offence committed under the Act shall be investigated by a police officer not below the rank of the Deputy Superintendent of Police. It does not rest here. It further provides that the investigating officer shall be appointed by the State Government, Director General of Police, Superintendent of Police after taking into account his past experience, his sense of justice and his ability to perceive the implications of the case.'

17. In the present case, the investigation was not conducted by the Deputy Superintendent of Police. All the witnesses were examined by P.W.4, who was the Sub-Inspector of Police. Only one witness was examined by the Deputy

Superintendent of Police, but that witness was not examined in the Court. Though P.W.4 stated that the Sub-Divisional Police Officer took up further investigation, there is nothing on record to show about the further investigation being conducted by the said Officer. Therefore, in view of Rule 7 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, the entire trial gets vitiated, as the investigation was not conducted by the Officer in the rank of Deputy Superintendent of Police.

18. In view of the aforesaid discussion on the point of facts and Law, the accused is entitled for acquittal.

19. In the result, the accused is acquitted for the charge under Section 3(1)(xi) of the S.C. & S.T. Act read with section 354 I.P.C. The bail bonds of the accused shall stand cancelled. The appeal is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com