

Mahendra Kumar Vs. State of Madhya Pradesh (Now C.G.)

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Court : Chhattisgarh

Decided On : Dec-03-2009

Reported in : 2010CriLJ1167

Judge : R.L. Jhanwar, J.

Appellant : Mahendra Kumar

Respondent : State of Madhya Pradesh (Now C.G.)

Judgement :

R.L. Jhanwar, J.

1. This Criminal Appeal is directed against the judgment of conviction and order of sentence dated 20-11-1993, delivered in Special Case No. 33/92 whereby the learned Special Judge, Durg has convicted the appellant under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989 (henceforth 'the Act of 1989') and sentenced him to undergo R.I. for 18 months and to pay a fine of Rs. 1000/-, in default of payment of fine to further undergo S.I. for 4 months.

2. The brief facts are that on 30-3-1992, the prosecutrix Parmila Bai lodged a written report in the Police Station Arjunda that on 28-3-1992, in the night at about 90' clock, the appellant Mahendra Kumar made assault and tried to outrage her modesty near the house of Kotwarin, while she was returning to her house with

her aunt Agasiya Bai after watching movie in Television. On the basis of report of the prosecutrix, F.I.R. Ex. P/1 crime was registered for an offence punishable under Section 3(1)(xi) of the Act and Section 354 of the IPC against the appellant by the Police Station, Arjunda.

3. The allegations against the appellant are that he caught the hand of the prosecutrix and told her Chalo Waha Le Jayenge, on which, the prosecutrix called her aunt. Her aunt also hurled abuses the appellant and he ran away. Thereafter, the prosecutrix came to her house and narrated the incident to her mother-Kunti.

4. Based on F.I.R. Ex. P/1, police started investigation. Statements of witnesses were recorded under Section 161 Cr.P.C. and charge-sheet was filed before the Special Judge, Durg.

5. The Special Judge, Durg framed charge against the appellant under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and read over and explained to him, who abjured the guilt and stated that he is innocent and has been falsely implicated in the case.

6. The learned Special Judge after evaluating the evidence and hearing the counsel for respective parties convicted and sentenced the appellant as above.

7. Shri H.B. Agrawal, learned Senior Advocate for the appellant argued that conviction and sentence is illegal as the entire trial was vitiated because the learned Special Judge directly took cognizance without there being any committal proceedings. In support of this contention, he placed reliance on Gangula Ashok and Anr. v. State of A.P. : (2000) 2 SCC 504 : AIR 2000 SC 740 : 2000 Cri LJ 819. The second ground of attack is that the conviction and sentence passed by the learned Special Judge is not proper because he had not properly evaluated the evidence of witnesses on record, and therefore, no case is made out. Lastly, he urged that the appellant is first offender, and therefore, a lenient view be taken by reducing the sentence of 18 months awarded by the trial Court if the Court finds the appellant guilty. On these premises, learned Senior Advocate prayed that the appellant be released.

8. On the other hand, Shri Satish Gupta, learned Government Advocate supported the judgment delivered by the Special Judge and submitted that no interference is warranted with the conviction and sentence of the appellant. He also stated that evidence adduced by the prosecution clearly touched all the facts and the prosecution had completely proved its case beyond doubt so conviction and sentence is proper. So far as committal proceedings are concerned, he drew the attention of this Court to Section 465 of the Code of Criminal Procedure (for short 'the Code') which falls within Chapter XXXV of the Code under the caption 'Irregular Proceedings' in which it is provided that finding, sentence or order passed by a Court of competent jurisdiction could not be set aside merely on the ground of irregularities if no prejudice is caused to the accused. He also placed reliance in the matter of *State of Madhya Pradesh v. Bhooraji and Ors.* : 2001 Cri LJ 4228 (SC) and *State of Karnataka v. Kuppuswamy Gownder* : AIR 1987 SC 1354 : 1987 Cri LJ 1075.

9. I have heard learned Counsel for the parties and perused the record.

10. In the present case, challan was put up on 30-4-1992 and the judgment was delivered on 20-11-1993. According to the Code and the Act of 1989, there is no provision which empowers the Special Court of Session to take cognizance of any offence punishable under the Act of 1989 as a Court of original jurisdiction, unless the Magistrate commits the case. The original jurisdiction in this regard is vested only with the Magistrate. It is also the submission that Section 209 of the Code deals with commitment of the case to the Court of Sessions Court when offence is triable exclusively by it. In *Gangula Ashok* : 2000 Cri LJ 819 (supra), no doubt their Lordships of the Apex Court have held that neither in the Code nor in the Act of 1989, is there any provision that the specified Court of Session (Special Court) can take cognizance of the offences under the Act of 1989 as a Court of original jurisdiction without the case being committed to it by a Magistrate. However, in a subsequent decision in the matter of *State of Madhya Pradesh v. Bhooraji* : 2001 Cri LJ 4228 (supra) after considering the decision in *Gangula Ashok* (supra) and other decisions, their Lordship of the Apex Court allowed the State appeal and set aside the order of retrial as ordered by the Division Bench of Madhya Pradesh High Court and remanded the matter for a decision on merit in accordance with

law. Their Lordships of the Apex Court while allowing the appeal of the State, held that no prior committal proceedings before any Magistrate was necessary in view of the change in legal position brought about by the Full Bench decision of the High Court of Madhya Pradesh reported in *Anand Swaroop Tiwari v. Ram Ratan Jatav* 1996 MPLJ 141 (FB), which stood overruled by the decision given, in *Gangula Ashok* (supra). Their Lordships of the Apex Court in *Bhooraji's case* (supra) further held that the procedural irregularity caused no prejudice to the convicted persons resulting into failure of justice and this belated technical plea would not render trial by a Court of competent jurisdiction without jurisdiction. Such a Court will not get denuded of its competence to try the case on account of any procedural lapse and the competence would remain unaffected by non-compliance of procedural requirement. The inability to take cognizance by the Sessions Judge without a committal order does not vitiate the trial by a specified Sessions Court.

11. In view of the law laid down by the Supreme Court in *Bhooraji's case* : 2001 Cri LJ 4228, I am of the considered view that the first submission, though on the face of it looks very attractive, but upon close scrutiny I found it to be without substance or merit. In the present case, the appellant had failed to point out any prejudice or disadvantage when the Special Judge (Specified Judge) took the cognizance of the case without any committal order on the basis of legal position adopted by the Full Bench of the M.P. High Court. The procedural lapse would not render the Specified Judge incompetent to take cognizance. If the appellant felt aggrieved by the procedural lapse, then he ought to have raised his objections at the earliest point of time. He did not raise this plea at any point of time prior to trial. This plea has been raised for the first time only when the appeal was hearing finally. Even at the time of hearing, it was not pointed out what prejudices or disadvantages were caused to the appellant when the cognizance taken.

12. Sections 462 and 465 of the Code read as follows:

462. Proceedings in wrong place.--No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division, or other local area, unless it appears

that such error has in fact occasioned a failure of justice.

465. Finding or sentence when reversible by reason of error, omission or irregularity.--(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of Appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

A perusal of above sections of the Code clearly goes to show that the scheme of the Criminal Procedure Code is that where there is no inherent lack of jurisdiction merely either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure an order or sentence awarded by a competent Court cannot be set aside unless a prejudice is pleaded and proved which will mean failure of justice. Even if a trial takes place in a wrong place where the Court has no territorial jurisdiction to try the case still unless failure of justice is pleaded and proved, the trial cannot be quashed.

Thus, the first submission that without there being any committal of the case the learned Special Judge took cognizance directly made on behalf of the appellant has no force and hence the same is rejected.

13. Pramila Bai (PW-1) stated that she is Gond by caste and the appellant belonged to Sahu caste and both are residents of same village. She stated that about 1 years ago, she had gone to the house of Harish Chandra along with her aunt - Agasia Bai and when she was returning at about 9.00 p.m., at that time,

near the house of Kotwarin, the accused/appellant Mahendra Kumar met her and he pressed her toe which hit her ankle. Then he caught hold of the aanchal of her sari and hold her left hand, whereupon, she abused him. In spite of seeing her aunt, the appellant did not leave her hand then she pushed and abused him and saved herself. She told her aunt about the incident and her aunt also abused the appellant, whereupon, he left the spot and ran away. When he was escaping, Kotwarin came there and the incident was narrated to her and thereafter the report was lodged after two days of the incident. Report is Ex. P/1. In the cross-examination there are contradictions about the left hand or right hand, which hardly matters. These are not the major contradictions.

14. Rajwati Bai (PW-2) had stated that the prosecutrix told her the incident. There were Bharat, Baldu and Agasia Bai present. She was told the incident at the house of Bharat. She asked them to lodge the report. This witness told that Parmila Bai told, her that the appellant caught hold of her hand and clothes. She has not been cross-examined. Her statement is reliable, which supports the happening of incident.

15. Agasia Bai (PW-3) has stated that the complainant Parmila Bai is her niece. She supports the evidence of Parmila Bai because she was present along with the complainant at the time of incident and she also witnessed the incident and abused the appellant. She narrated the story of incident to Kotwarin.

16. Balduram (PW-4) also supports the evidence of Parmila Bai. According to him, on hearing the sounds, he reached the place of incident and they narrated the story to him that the appellant caught hold of her hand and clothes. He has also not been cross-examined.

17. Tirath Ram (DW-1) stated about the old enmity, but he stated that he does not know about the incident. Similarly, Parema Bai (DW-2) has also stated about the old enmity and denied about knowing the incident.

18. From the above discussion it is clear that the prosecutrix was Gond by caste and the appellant was of Sahu by caste, and he intentionally pressed the toe of the prosecutrix and tried to outrage her modesty. The witnesses have nowhere

rebutted. There is no reason to disbelieve on their statements. The witnesses have supported the statements of each other. The incident has taken place on 28-3-1992 and the report was lodged on 30-3-1992.

19. So far as the delay of lodging F.I.R. is concerned, the Apex Court in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* : AIR 1983 SC 753 : 1983 Cri LJ 1096 had opined as follows:

A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours. She would have to brave the whole world. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. It would almost inevitably and almost invariably result in mental torture and suffering to herself. The fear of being taunted by others will always haunt her. She would feel extremely embarrassed in relating the incident to other being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. The parents of an unmarried girl as also the husband and members of husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. The reluctance to face interrogation by the investigating agency, to face the Court, to face cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent. In view of these and similar factors the victims and their relatives are not too keen to bring the culprit to book. And when in the face of factors, the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.

20. In the present case, the incident took place on 28-3-1992 and the incident thereof was lodged on 30-3-1992 at about 9 O' clock. Fearing social status attained in the society the family members of the prosecutrix might have lodged the F.I.R. belatedly and other similar reasons as mentioned in the case of Bharwada Bhoginbhai Hirjibhai (supra) might have caused in lodging the F.I.R. belatedly which, I am of the view, makes a difference and does not have given effect to in the present one since the evidence of the prosecutrix is corroborated by F.I.R. Ex. P1 as also by the testimony of all other witnesses.

21. Thus, it is clear from the above discussion without any doubt that the appellant is found guilty of committing atrocities punishable under the Act of 1989. The trial Court after evaluating the evidence available on record has rightly come to conclusion that the appellant is guilty of having committed offence under Section 3 (1)(xi) of the Act of 1989 and I find no reason nor justification to interfere with the said finding and conclusion of the learned trial Court. The conviction of the appellant under Section 3(1)(xi) of the Act of 1989 is thus well merited and does not call for interference. The second ground of attack advanced by the learned Senior Advocate also fails.

22. So far as the last submission advanced by the learned Senior Advocate is concerned, I am of the view that sentence of 18 months R.I. would be too harsh. Therefore, the substantive sentence of rigorous imprisonment of 18 months awarded to the appellant deserves to be modified to the effect that the substantive sentence of appellant is reduced to 6 months simple imprisonment from 18 months R.I. awarded by the trial Court. Sentence of fine is maintained. It is accordingly ordered that the appellant shall undergo 6 months simple imprisonment. Thus, the substantive sentence is accordingly reduced.

23. The appellant is on bail. His bail bond is hereby cancelled. It is directed that appellant shall surrender before the Special Judge, failing which, the Special Judge shall take appropriate steps to secure his presence to carry out the sentence awarded by this Court. Thus, the appeal is partly allowed to the extent as indicated above.