1997 SCC OnLine Kar 438 : (2000) 3 Kant LJ 234

BEFORE H.N. NARAYAN, J.

Mariswamy and Others

Versus

State by the Police of Kuderu Police Station

Criminal Revision Petition No. 286 of 1995

Decided on August 25, 1997

ORDER

1. This revision is directed against the judgment of conviction and sentence passed by the learned II Additional Sessions Judge, Mysore, convicting the accused petitioners for offences under Sections 143, 147, 323 read with Section 149, Section 423 read with Section 149 of the IPC and Section 4(iv) of the Protection of Civil Rights Act of 1955 ('the Act' for short) and to pay a fine of Rs. 50/- each for the offences under Sections 323, 426 and 143 of the IPC with default clause and to suffer S.I. for a period of one month and a fine of Rs. 100/- for the offence under Section 4(iv) of the Act, in default to suffer S.I. for a period of 4 days.

2. The conviction and sentence passed by the learned Sessions Judge is assailed on the ground that the learned Sessions Judge has ignored the important portions of cross-examination of witnesses which are favourable to the accused and that the learned Sessions Judge has misread the evidence in holding that the ingredients of the offence under Section 4(iv) of the Act have been proved and that the Court has erred in not noticing the two warring groups in the village and that the evidence suffers from interestedness and in the absence of pre-meditation or meeting of minds, the prosecution has failed to prove the common object and therefore the judgment of conviction passed by the learned Sessions Judge suffers from manifest illegality and on account of which it is liable to be set aside. It is also contended that the learned Judge ought to have passed sentences only after hearing the petitioners-accused. Even on this ground the judgment is liable to be set aside. Before taking up these contentions urged in the revision, I proceed to record the case of the prosecution in brief:

3. The complainant Makaiah, P.W. 1 belonged to Scheduled Caste. He was a resident of Nennur Hosur Village of Chamarajanagar. There was

a Government bore-well in front of the house of Ex-Chairman Mahadevappa's house. On 29-3-1985 at about 7.30 p.m. P.W. 1-Makaiah went near the bore-well to fetch water. At that time, the 1st accused Mariswamy, who is the son of Ex-Chairman Mahadevappa, who belongs to Kuruba Caste abused him by calling him 'holeya' and not to touch the bore-well and asked him to keep his pot below the bore-well and thereafter he pumped the water and thereby he committed untouchability by not allowing him to touch the bore-well. P.W. 1-Makaiah thereafter took a pot of water to his house. He came back to fetch another pot of water. At that time, A-2 to A-5 were present near the bore-well, they stopped him from approaching the bore-well, then all of them assaulted him on his back with their hands and damaged the plastic pot by kicking it. At that time, P.W. 3-Siddaiah came to his help and questioned them as to

why they were obstructing P.W. 1 from taking water from the bore-well. In the meantime 50 to 60 persons assembled near the place and started pelting stones to the houses and electric bulbs causing damage to the public property. In the said melee, P.W. 1 sustained an injury and he went to the police station and gave an oral complaint as in Ex. P. 1. The Sub-Inspector of Police P.W. 11-Chandrappa recorded his statement and registered a criminal case in Cr. No. 25 of 1985 under Section 4(iv) of the Act and Sections 143, 147, 149, 329, 324 and 427 of the IPC. He directed his police constable to take the FIR to the jurisdictional Magistrate. He visited the place on the very night but did not proceed with the investigation as it was night. On the next day morning he collected panchas and drew up a spot mahazar Ex. P. 2. He seized M.O. 1 the damaged plastic pot under the mahazar. The C.I. who later came to the place made further investigation. After completing the formalities of investigation by recording statements of witnesses, obtaining the medical certificate of the injured persons and caste certificate of P.W. 1 from the concerned Tahsildar, charge-sheet was filed against the accused.

4. The charge-sheet was initially filed before the JMFC which was later transferred to the Special Court and Sessions Judge, Mysore, by a special notification issued by this Court. The accused thereafter entered appearance. They were on bail. Their plea was recorded. The learned Sessions Judge has held a summary trial.

5. In proof of the allegations, the prosecution has relied on the evidence of 11 witnesses, 11 exhibits and 3 M.Os. The accused were examined under Section 313 of the Cr. P.C. They have denied the truth of the prosecution evidence. The learned Additional Sessions Judge upon consideration of this evidence placed by the prosecution as also the defence urged before him was of the opinion that the guilt of the accused under Sections 143, 323 read with Section 149 of the IPC, Section 426 read with Section 149 of the IPC have been established. He has also held that the offence punishable under Section 4(iv) of the Act has also been established beyond reasonable doubt and therefore passed the impugned order against A-1 to A-5. The legality and correctness of this order is challenged in this revision.

6. This is the First Appellate Court insofar as the accused are concerned and though they have invoked the provisions of Section 397 of the Cr. P.C. I have perused the entire evidence on record to appreciate the contentions urged in this revision.

7. Sri H.S. Chandramouli, learned Counsel for the petitioners reiterating the grounds of revision contended that the evidence of P.W. 2 contradicts the statements of P.Ws. 1 and 3 and moreover the evidence of P.W. 3 in particular is not natural. P.W. 3 has not stated that all the accused persons have uttered the same words at the same time and therefore his evidence is like parrot-like evidence and unfit to be relied upon. Reiterating his arguments, Mr. Chandramouli further submitted that there is absolutely no evidence pointing out the guilty finger at A-2 to A-5 in particular. However, he has given up the contention that the learned Sessions Judge has erred in passing the sentence without hearing the accused as offences are summons cases and it is not mandatory for the learned Sessions Judge to hear the accused persons regarding sentence.

8. Sri B.H. Satish, learned High Court Government Pleader however pointing out the evidence of P.Ws. 1 and 4 in particular and the spot mahazar Ex. P. 2 has submitted that the evidence of these witnesses has not been seriously questioned in cross-

examination and it is difficult to discard their evidence to record an order of acquittal. He therefore submitted that even if the entire evidence is scrutinised carefully, there is no good ground calling for interference with the judgment of the Trial Court.

9. In the light of these contentions, the points that arise for consideration in this revision are:

1. Whether the prosecution has proved the charges against A-1 to A-5 beyond reasonable doubt?
2. If so, whether the judgment of conviction recorded by the learned Sessions Judge is justifiable?
3. What order?

10. My findings are in the affirmative for the following reasons:

11. P.W. 9-S.M. Gangadhariah was the Tahsildar of Chamarajanagar Taluk during 1982 to 1986. His evidence discloses that Hosur Village where the incident occurred was situate within the revenue Taluk of Chamarajanagar Taluk. He has issued a caste certificate certifying that P.W. 1-Makaiah belongs to Adi Karnataka Caste which is considered as Scheduled Caste in Karnataka and Ex. P. 3 is the certificate issued by him. P.W. 1 has also deposed before the Cfourt that he belongs to Scheduled Caste. This evidence is not seriously challenged by the defence. Therefore, initially the prosecution has proved that P.W. 1 belongs to Scheduled Caste.

12. The first question is whether the accused 1 to 5 practised untouchability. The word 'untouchability' itself is not defined in the Act. Section 2 which is a definition clause states that:

"In this Act, unless the context otherwise requires,

(a) 'civil rights' means any right accruing to a person by reason of the abolition of 'untouchability' by Article 17 of the Constitution".

13. Even the subsequent Act *viz.*, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1988 has also not defined the word 'untouchability'. Article 17 of the Constitution provides for abolition of untouchability and under that Article the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. The meaning of 'untouchability' came to be explained perhaps for the first time in the history of this Court by Justice N. Sreenivasa Rau (as he then was) in *Devarajiah* v. *B. Padmanna*[1]. That case arose out of Untouchability Offences Act, 1955. Referring to the meaning of the word 'untouchability' it is observed as follows:

> "The Act is obviously a law passed by Parliament in accordance with the provisions of Article 17 of the Constitution of India. It is to be noticed that word 'untouchability' occurs only in Article 17 and is enclosed in inverted commas. This clearly indicates that the subject-matter of that Article is not untouchability in its literal or grammatical sense, but the practice as it had developed historically in this country.
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> In the Act in question also, the word 'untouchability' has been used in the same sense.
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> Comprehensive as the word 'untouchability' in the Act is intended to be, it can only refer to those regarded as untouchables in the course of historical development. A literal construction of the term would include persons who are treated as

untouchables either temporarily or otherwise for various reasons, such as their suffering from an epidemic or contagious disease or on account of social observances such as are associated with birth or death or on account of social boycott resulting from caste or other disputes. The imposition of untouchability in such circumstances has no relation to the causes which relegated certain classes of people beyond the pale of the caste system. Such relegation has always been based on the ground of birth in certain classes".

14. The Supreme Court in *State of Karnataka* v. *Appa Balu Ingale*[2], interpreting the scope of Article 17 of the Constitution has observed as follows:

"The thrust of Article 17 and the Act is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish new ideal for society-equality to the Dalits, at par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant

in the main stream of national life. In interpreting the Act, the Judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light thus shed to annihilate untouchability; to accord to the Dalits and the Tribes right to equality; social integration a fruition and fraternity a reality".

15. The New Webster's Dictionary has given the following meaning to the word 'untouchable'.

"A member of the lowest caste in India whose touch was formerly considered a defilement by Hindus of higher caste".

16. Mahatma Gandhi called these people as 'Harijans' *viz.*, the sons of God and made it his life mission to ward off this black spot on the Hindu community.

17. Henry Meine in his "Ancient Law" has called this act as the most disastrous and demeaning of all human institution. The people who were called as 'Chandalas' in Manusmruti were renamed as Harijans by Mahatma Gandhi. This system practiced in this country by upper caste people as most baneful, hard hearted and cruel social system that could possibly be invented for damning the human race.

18. Realising this practice prevailing in the community in India among the upper caste in particular, the Parliament enacted Protection of Civil Rights Act, 1955. It was the first Act of the Parliament to prescribe punishment for the (Preaching and practice of untouchability) for the enforcement of any disability arising therefrom and for matters connected therewith. Feeling inadequacy of provisions of law protecting the rights of these untouchables, the Parliament introduced the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act redefining and enlarging the scope of the Act and giving more teeth to the powers that be.

19. Therefore, suffice it to call P.W. 1-Makaiah an untouchable as certified by the local Tahsildar. He comes within the Scheduled list.

20. The question for my consideration now is whether the accused have practiced untouchability. Sections 3 and 4 of the Act enumerates various circumstances under which a person is deemed to have practiced untouchability. It is alleged by the prosecution that the accused have committed the offence punishable under Section 4 (iv) of the Act. Section 4(iv) provides that whoever on the ground of 'untouchability' enforces against any person any disability with regard to the use of, or access to, any river, stream, spring, well, tank, cistern, water tap or other watering place, or any

bathing ghat, burial or, cremation ground, any sanitary convenience, any road, or passage or any other place of public resort which other members of the public of (any action thereof).

21. Here is the allegation that A-1 to A-5 called P.W. 1-Makaiah as 'holeya' and obstructed him from taking water from the Government bore-well by touching the bore -well and thereby practiced untouchability.

22. In order to establish this circumstance, the prosecution has relied on the evidence of P.W. 1-Makaiah himself and the evidence of P.W. 3-Siddaiah resident of Harijan colony of the same village. Both these witnesses have clearly stated before the Court on oath that about 8 years back at about 7 p.m. when P.W. 1 went to fetch water from the bore-well situate near the house of ex-Chairman Mariswamy obstructed P.W. 1 by stating that P.W. 1 was a harijan and he should not collect water from the bore-well and abused him by saying

"ಹೊಲೇರು ಬೋರ್‌ವೆಲ್ ಮುಟ್ಬಾರದು".

23. Thereafter A-1 collected water and gave it to him and P.W. 1 came back for collecting one more pot of water. It was at that time that A-2 to A-5 who were also present, obstructed P.W. 1 from fetching water and abused him. It is specifically stated by P.W. 3 that A-1 to A-5 abused P.W. 1 referring to his caste as

"ಹೊಲೆಯ ಬಡ್ಡಿಮಗ ಇಲ್ಲಿಯವರಿಗೂ ಬಂದಾನ, ಬೋರ್‌ವೆಲ್‌ವರವಿಗೂ . . . .".

and all of them assaulted him with their hands. By that time 40 to 50 people gathered near the place and pelted stones.

24. On careful perusal of cross-examination I must say in all fairness to the defence Counsel that nothing worthwhile is elicited to disbelieve their statements. There is no attempt on the part of the cross-examining Counsel drawing the attention of these two important witnesses examined on behalf of the prosecution to their assertions in examination-in-chief. Therefore, the defence has not virtually touched the statement made on oath in examination-in-chief. The only defence put forth by the accused before the Trial Court appears to be that 50 to 60 people gathered at the place of incident and it turned out to be violent leading to the damage to public property. There appears to be no dispute about the after-effect of what appeared to be a trivial affair between P.W. 1 and A-1. Things would have been subsided had A-2 to A-5 did not appear on the scene. They appeared on the scene to justify the action of A-1 in calling P.W. 1 as 'holeya' and obstructed him from touching the bore-well and taking water. That bore-well was a Government bore-well. Therefore, this evidence of P.Ws. 1 and 3 clearly go to prove the incident that occurred between 7 and 7.30 p.m. There was no difficulty for these two persons to identify the accused persons. What happened thereafter is not the concern of the Court as the police appears to have not taken cognizance of the further damage caused to the public property.

25. It is true that P.W. 2-Googemalliah was one of the injured in the said violence, and he has not supported the prosecution. However, his evidence though not helpful to the prosecution, it does not take away the effect of the statements of P.Ws. 1 and 3. His statement therefore is fit to be ignored. The prosecution has no doubt examined P.Ws. 4 and 5, the two other witnesses of the same village. Though they have spoken to such an incident, but have not stated that they were the eye-witnesses to the incident. P.W. 5 in particular has spoken to the presence of P.W. 1-Makaiah and also A -1 to A-5 near the bore-well and also the presence

of M.O. 1-the pot. The evidence of P.Ws. 4 and 5 also shows that immediately after they came to the place, P.W. 1 had informed them of the incident. This is the corroborating piece of material which came to the knowledge of these witnesses immediately after the occurrence.

26. P.W. 1 immediately rushed to the police station which is 7 miles away from the villages in the dead of night and made a oral complaint to P.W. 11 as per Ex. P. 1. It is no doubt true as usual there is some delay in furnishing the FIR to the jurisdictional Magistrate which reached the Magistrate on the next day at about 12.10 p.m. The prosecution has examined P.W. 10-H. Ramu H.C. to explain the delay in submitting the FIR to the jurisdictional Magistrate. Though there is no argument regarding the delay in furnishing the FIR to the Court, the evidence of P.Ws. 1 and 11 clearly shows that the first information reached the police station at about 1 a.m. on the same day. Having regard to the distance to the police station and the time of incident, there is no delay at all in giving information to the police.

27. It is true that the S.I. has referred the injured P.Ws. 1 and 2 to the medical officer for examination and report. The certificates marked through the I.O. discloses that they were examined by the doctor on the following day at about 2.30 p.m. The prosecution case itself is that P.Ws. 1 to 3 were assaulted with hands. Possibility of having sustained visible injuries is not there. Therefore, non-examination of the doctor in my opinion has not at all affected the prosecution case.

28. Incidentally, the learned Counsel for the petitioners made a vain attempt to bring out the infirmity of non-examination of the I.O. It is true that the prosecution case suffers from serious infirmity where an I.O. is not examined to mark the contradictions brought out in the evidence of the witnesses. Unfortunately, in this case not a semblance of omission or contradiction is noticed and therefore, non-examination of the I.O. is not an infirmity at all. I have already referred to the contention that this incident has nothing to do with the group clash between the two rival groups which occurred after the incident. The net result of this discussion in my opinion proves the guilt of all the accused persons under Sections 323, 326 read with Section 149 and Section 143 of the IPC and Section 4(iv) of the Act beyond reasonable doubt. I therefore record my finding on point No. 1 in the affirmative.

29. I have carefully scrutinised the discussion made by the learned Sessions Judge. In my opinion, the learned Sessions Judge has taken care of the entire evidence placed before him in holding the accused guilty of the offences alleged against them. I do not find any infirmity let alone fatal infirmity resulting in manifest illegality requiring this Court to interfere with. Therefore, I find hardly any substance to interfere with the judgment of conviction and sentence passed by the learned Sessions Judge. Therefore, the revision fails and is dismissed. The accused are on bail. Their bail bonds stand cancelled. The accused are directed to surrender before the learned Sessions Judge to suffer imprisonment.

The learned Sessions Judge shall issue NBW to secure the presence of the accused to suffer imprisonment.

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[1.] 1958 Mys. L.J. 88 : AIR 1958 Mys. 84.

[2.] 1995 Supp (4) SCC 469 : AIR 1993 SC 1126.