Supreme Court of India
Vidyadharan vs State Of Kerala on 14 November, 2003
Author: Arijit Pasayat
Bench: Doraiswamy Raju, Arijit Pasayat.

CASE NO.:
Appeal (crl.) 278 of 1997

PETITIONER:
Vidyadharan

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 14/11/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T ARIJIT PASAYAT, J Appellant faced trial for alleged commission of offences punishable under Sections 354 and 448 of the Indian Penal Code, 1860 (for short the 'IPC') and Section 3 (1) (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short the 'Act'). He was convicted and sentenced to undergo three months and six months custodial sentence for offences relatable to Section 448 IPC and Section 3 (1)(xi) of the Act respectively. No separate sentence was imposed for the other offence. Aforesaid conviction and sentence was affirmed by the High Court.

Prosecution case which led to the trial is essentially as follows: While the victim (PW-1) was alone in her house on 1.10.1992 at about 2 p.m. the accused entered into her house, went to the kitchen where she was cooking and attempted to catch hold of her hand, that when she attempted to escape from him by running to the front room and attempting to close the door, the accused followed her, opened the door forcibly and caught hold of and grasped her, when she made a hue and cry her brother PW-3 and other witnesses including PW-2 came there, and at that time the accused left PW-1 and pushed down PW-3 from the verandah and went along with his parents who came there hearing the hue and cry.

PW-1 lodged the first information report at the Kannamali Police Station on 2.10.1992 and a case was registered against the accused under Sections 448 and 354 IPC and Section 3 (1)(xi) of the Act. The C.I. of Palluruthy took up the investigation and laid the charge sheet against the accused after completing the investigation.

During trial, nine witnesses were examined to further the prosecution version. One witness was examined to substantiate the plea of false implication raised by the accused. On consideration of the evidence on record, learned Sessions Judge, Ernakulam found the accused guilty and convicted him as aforesaid. According to learned Sessions Judge the offence punishable under Section 3 (1) (xi) of the Act is an aggravated form of an offence punishable under Section 354 IPC and, therefore, no

separate sentence for the latter offence is called for. Appeal before the Kerala High Court did not bring in any relief to the appellant.

In support of the appeal, Mr. K. Sukumaran, learned senior counsel submitted that the evidence on record clearly established that there was false implication. According to him, PW-3, the brother of PW-1 outraged modesty of the appellant's sister after trespassing into their house on 27.9.1992. The sister of the accused was examined as DW-1. She is an unmarried girl and hence the family members counselled her not to make any complaint about the incident to avoid publicity. Apprehending legal action against PW-3 a false case was made with the active support of a communal organisation against the appellant.

The prosecution version is that at about 2.00 p.m. on the date of occurrence i.e. 1.10.1992 accused entered into the kitchen of PW-1 and caught hold of her hands and tried to outrage her modesty. She is a married woman with children. The information was lodged at police station on the next date. This itself shows that there is unexplained delay in lodging the FIR and as the incident involving PW-3 took place on 27.9.1992, as a counter blast a false case was instituted. Additionally, it was submitted that the conviction under Section 3(1)(xi) of the Act is clearly unsustainable and learned Sessions Judge had no jurisdiction to try the offence.

Residually, it is submitted that the incident took place more than a decade back and the appellant has suffered custodial sentence for nearly 3 months and, therefore, after this long passage of time it would not be proper to send the accused back to custody.

We shall first deal with the plea about false implication. It is seen that though there were some delay in lodging the FIR, it is but natural in a traditional bound society to avoid embarrassment which is inevitable when reputation of a woman is concerned. Delay in every case cannot be a ground to arouse suspicion. It can only be so when the delay is unexplained. In the instant case the delay has been properly explained. Further, PW-2 is an independent witness and a neighbour of both the accused appellant and PW-1. There is no reason as to why he would falsely implicate the appellant. A charge under Section 354 is one which is very easy to make and is very difficult to rebut. It is not that art of enmity false implications are made. It would however be unusual in a conservation society that a woman would be used as a pawn to wreck vengeance. When a plea is taken about false implication, Courts have a duty to make deeper scrutiny of the evidence and decide acceptability or otherwise of the accusations. In the instant case, both the trial Court and the High Court have done that. There is no scope for taking a different view.

In order to constitute the offence under Section 354 mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outraged alone for its object. There is no abstract conception of modesty that can apply to all cases. (See State of Punjab v. Major Singh (AIR 1967 SC

63). A careful approach has to be adopted by the Court while dealing with a case alleging outraged of modesty. The essential ingredients of the offence under Section 354 IPC are as under:

(i) that the person assaulted must be a woman;

(ii) that the accused must have used criminal force on her, and

(iii)that the criminal force must have been used on the woman intending thereby to outrage her modesty.

Intention is not the sole criteria of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her witness should receive same weight. In the instant case after careful consideration of the evidence, the trial Court and the High Court have found the accused guilty. As rightly observed by the Courts below Section 3 (1)(xi) of the Act which deals with assaults or use of force on any woman belonging to scheduled Caste or Scheduled Tribe with intent to or dishonour or outrage her modesty is an aggravated form of the offence under Section 354 IPC. The only difference between Section 3 (1)(xi) and Section 354 is essentially the caste or the tribe to which the victim belongs. If she belongs to Scheduled Caste or Scheduled Tribe, Section 3 (1)(xi) applies. The other difference is that in Section 3 (1)(xi) dishonour of such victim is also made an offence. Section 448 provides for punishment relating to house trespass. In order to sustain the conviction under Section 448 IPC it must be found that the intention of the accused was to commit an offence or to intimidate, insult or annoy the complainant. There must be unlawful entry and there must be proof of one or other of the intentions mentioned in Section 441 IPC. In the case at hand evidence clearly establishes the commission of offence punishable under Section 448.

That bring us to the most vital question as to legality of the trial involving offence punishable under Section 3(1)(xi) of the Act.

Pristine question to consider is whether the Special Judge could take cognizance of the offence straight away without the case being committed to him. If the Special court is a Court of Session, the interdict contained in Section 193 of the Code of Criminal Procedure, 1973 (for short the 'Code') would stand in the way. It reads thus: "193. Cognizance of offences by Courts of Session- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

So the first aspect to be considered is whether the Special Court is a Court of Session. Chapter II of the Code deals with "Constitution of Criminal Courts and Offices". Section which falls thereunder says that :

"there shall be, in every State, the following classes of criminal courts, namely:

(i) Courts of Sessions;"

The other classes of criminal courts enumerated thereunder are not relevant in this case and need not be extracted.

Section 14 of the Act Says that:

"for the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act."

So it is for trial of the offences under the Act that a particular Court of Session in each district is sought to be specified as a Special Court. Though the word 'trial' is not defined either in the Code or in the Act it is clearly distinguishable from inquiry. The word 'inquiry' is defined in Section 2(g) of the Code as 'every inquiry, other than a trial, conducted under this Code by a Magistrate or court'. So the trial is distinct from inquiry and inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as a Special Court is to ensure speed for such trial. "Special Court" is defined in the Act as "a Court of Session specified as a Special Court in Section 14" (vide Section 2(1)(d).

Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Why did Parliament provide that only a Court of Session can be specified as a Special Court? Evidently the legislature wanted the Special Court to be a Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a Court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fascicules of provisions for 'trial before a Court of Session".

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 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.

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.

A reading of the concerned provisions makes it clear that subject to the provisions in other enactments all offences under other laws shall also be investigated, inquired into, tried and otherwise dealt with under the provisions of the Code. This means that if another enactment contains any provision which is contrary to the provisions of the Code, such other provision would apply in place of the particular provision of the Code. If there is no such contrary provision in other laws, then provisions of the Code would apply to the matters covered thereby. This aspect has been emphasized by a Constitution Bench of this Court in para 16 of the decision in A.R. Antulay v. Ramdas Sriniwas Nayak (1984 (2) SCC 500). It reads thus"

"Section 4(2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts or various designations."

Section 5 of the Code cannot be brought in aid for supporting the view that the Court of Session specified under the Act obviate the interdict contained in Section 193 of the Code so long as there is no provision in the Act empowering the Special Court to take cognizance of the offence as a Court of original jurisdiction. Section 5 of the Code reads thus:

"5.- Saving- Nothing contained in this Code shall, in the absence of a special provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

This Court in Directorate of Enforcement v. Deepak Mahajan (1994 (3) SCC 440) on a reading of Section 5 in juxtaposition with Section 4(2) of the Code, held as follows:

"It only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the special Act or any special provision excluding the jurisdiction or applicability of the Code".

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 re-iterating the view taken by this Court in Gangula Ashok and Anr. v. State of A.P. (2000 (2) SCC 504) in 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.

The inevitable conclusion is that the learned Sessions Judge, as the undisputed factual position goes to show, could not have convicted the appellant for the offence relatable to Section 3 (1) (xi) of the Act in the background of legal position noted supra. That is accordingly set aside. However, for the offence under Sections 354 and 448 IPC, custodial sentence for the period already undergone which as the records reveal is about three months, would meet the ends of justice considering the background facts and the special features of the case. The appeal is accordingly disposed of.