

SUPREME COURT OF INDIA

State of Madhya Pradesh

Vs.

Babbu Rathore

Crl.A.No.123 of 2020

(Indu Malhotra and Ajay Rastogi,JJ.,)

17.01.2020

JUDGMENT

Ajay Rastogi,J.,

SLP(Crl.)No.11369 of 2019

1. Leave granted.
2. This appeal is directed against the judgment of the High Court of Madhya Pradesh dated 9th May, 2019 confirming Order of the all Judge dated 24th July, 2015 whereby the respondents have been discharged from the offences under Sections 302/34, 404/34 of the IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989(hereinafter being referred to as “Act, 1989”) at the advanced stage of the trial when almost all the material witnesses have been examined by the prosecution which has given rise to this appeal.
3. The background facts in nutshell are that deceased Baisakhu, in a drunken state met Kamla Prajapati on road to ward no. 10, Pasia, Thana Anuppur, Anuppur, Madhya Pradesh. Kamla Prajapati took him to his house, but the deceased Baisakhu stated that he had to return two hundred fifty rupees to Nasru and requested him to take to his place. Upon insistence of deceased Baisakhu, Kamla Prajapati took him to the house of Nasru where accused Babbu Rathore was drinking liquor. Baisakhu stated that he wanted to have liquor so leaving him there, Kamla Prajapati returned back. When Ujaria Bai, the wife of deceased, went to house of Nasru to inquire about her husband, then Nasru told her that deceased Baisakhu had left with Babbu Rathore. The dead body of Baisakhu was recovered on 14th July, 2011. Information of unnatural death was recorded by police and post-mortem on the body of the deceased was conducted which proved death was unnatural and caused by asphyxia due to strangulation.
4. The preliminary investigation confirmed that the deceased was last seen with the present respondents. After registration of FIR, investigation was conducted by the Sub-

Inspector and charge-sheet came to be filed against the present respondents for offences punishable under Section 302/34, 404/34 of the IPC and Section 3(2)(v) of the Act, 1989. The trial Court took cognizance of the matter and Special Case No. 37/11 was registered.

5. During proceedings in Special Case No. 37/11, statement of the material witnesses PW 2 Narsu, PW 4 Kamla Prajapati and PW 5 Uparia Bai, wife of deceased Baisakhu were recorded. It appears from the record that at the advanced stage of the trial, a grievance was raised by the respondents that they had been charged under Section 3(2)(v) of the Act, 1989 and since the investigation has been conducted by an Officer below the rank of Deputy Superintendent of Police which is the mandate of law as provided under Section 9 of the Act, 1989 read with Rule 7 of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Rules, 1995(hereinafter being referred to as the “Rules, 1995”), the very investigation is faulty and illegal and that deserves to be quashed and set aside and in consequence thereof, further proceedings in trial does not hold good and respondents deserve to be discharged.

6. Learned trial Court, while taking note of Section 9 of the Act, 1989 and Rule 7 of the Rules, 1995 held that the investigation has been conducted by an Officer below the rank of Deputy Superintendent of Police and is without authority and illegal and in consequence thereof, discharged the respondents not from the charges levelled against them under the provisions of the Act, 1989 but also from the provisions of the IPC for which there was no requirement of the investigation to be conducted by an Officer not below the rank of Deputy Superintendent of Police under judgment dated 24th July, 2015 which came to be challenged before the High Court of Madhya Pradesh and dismissed by a cryptic order dated 9 th May, 2019.

7. Learned counsel for the appellant submits that the respondents were charged for offences punishable under Section 302/34, 404/34 of the IPC and Section 3(2)(v) of the Act, 1989 and in the given circumstances, the High Court has committed an apparent error in quashing the proceedings in discharging the respondents on a hyper technical ground that the investigation has been conducted by an Officer below the rank of Deputy Superintendent of Police and discharging the respondents in the given circumstances is not sustainable in law and that too when the trial is at the advanced stage and all the material prosecution witnesses have been examined and the judgment of the High Court needs to be interfered by this Court.

8. Per contra, learned counsel for the respondents, while supporting the order of the High Court, confirming judgment of the trial Court dated 24th July, 2015 submits that if the very investigation was found to be faulty and not in compliance with the mandate of Section 9 of Act, 1989 read with Rule 7 of the Rules, 1995, the structure built up by the appellant could not sustain on the weak foundation, and this fact has not been disputed by the appellant that investigation was conducted by an Officer below the rank of Deputy Superintendent of Police which is the mandatory requirement under Rule 7 of the Rules, 1995, and in the given circumstances, no error has been committed by the learned Special Judge in discharging the respondents and confirmed by the High Court vide its order

impugned dated 9 th May, 2019.

9. For appreciating the rival submissions, we need to refer Section 9 of the Act, 1989 and Rule 7 of the Rules, 1995 which are as under:-

“9. Conferment of powers.—(1) Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,—

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class of group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).” “Rule 7. Investigating officer—{1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer in charge of prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.”

10. By virtue of its enabling power, it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police. Rule 7 of the Rules 1995 provides rank of investigation officer to be not below the rank of Deputy

Superintendent of Police. An officer below that rank cannot act as investigating officer in holding investigation in reference to the offences committed under any provisions of the Act, 1989 but the question arose for consideration is that apart from the offences committed under the Act 1989, if the offence complained are both under the IPC and the offence enumerated in Section 3 of the Act, 1989 and the investigation being made by a competent police officer in accordance with the provisions of the Code of Criminal Procedure(hereinafter being referred to as the “Code”), the offences under IPC can be quashed and set aside for non-investigation of the offence under Section 3 of the Act, 1989 by a competent police officer. This question has been examined by a two-Judge Bench of this Court in *State of M.P. Vs. Chunnilal @ Chunni Singh*¹. Relevant para is as under:-

“ By virtue of its enabling power it is the duty and responsibility of the State Government to issue a notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the Rules provided rank of investigating officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigating officer.

The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the charge-sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence.”

(emphasis supplied)

11. Undisputedly, in the instant case, the respondents were charged under Sections 302/34, 404/34 IPC apart from Section 3(2)(v) of the Act, 1989 and the charges under IPC have been framed after investigation by a competent police officer under the Code, in such a situation, in our view, the High Court has committed an apparent error in quashing the proceedings and discharging the respondents from the offences committed under the provisions of IPC where the investigation has been made by a competent police officer under the provisions of the Code. In such a situation, the charge-sheet deserves to proceed in an appropriate competent Court of jurisdiction for the offence punishable under the IPC, notwithstanding the fact that the charge-sheet could not have proceeded confined to the offence under Section 3 of the Act, 1989.

12. The order impugned is accordingly restricted to the offence under Section 3 of the Act, 1989 and not in respect of offences punishable under the IPC. The Special Case No. 37/11 is restored on the file of the Special Court, District Anuppur(MP) and the trial Court may

proceed further and conclude the trial expeditiously in respect of offences punishable under the IPC in accordance with law.

13. The appeal is partly allowed in terms as indicated above.

14. Pending application(s), if any, stand disposed of.