

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF MARCH, 2015

BEFORE:

THE HON'BLE MR. JUSTICE A.S.PACHHAPURE

CRIMINAL APPEAL No.1267 OF 2010

BETWEEN:

STATE BY

KOLAR RURAL POLICE.

... APPELLANT

(BY SRI.K.NAGESHWARAPPA, HCGP)

AND:

1. SADASHIVA

S/O NANJAPPA

2. BASAVALINGAPPA

S/O NANJAPPA

3. RAJAPPA

S/O NANJAPPA

4. SHIVAKUMAR

S/O VEERABHADRAPPA

ALL ARE RESIDING AT

HOGARIGOLLAHALLI VILLAGE,

VOKKALERI HOBLI,

KOLAR TALUK.

... RESPONDENTS

(BY SRI.SUDANVA.D.S., ADVOCATE FOR

SRI.Y.R.SADASHIVAREDDY, SR. ADVOCATE FOR R1,

SRI.CHANDRAPPA.K.N., ADVOCATE FOR R2 TO R4-ABSENT)

THIS CRL.A. IS FILED U/S. 378(1) & (3) CR.P.C., PRAYING TO GRANT LEAVE TO FILE AN APPEAL AGAINST THE JUDGEMENT DT: 28.4.10 PASSED BY THE II ADDL. S.J., KOLAR IN SPL.C.C.NO.04/09 - ACQUITTING THE RESPONDENT FOR THE OFFENCE P/U/S 448, 323, 506 R/W 34 OF IPC AND U/S 3(1)(x) OF SC/ST (POA) ACT.

THIS CRL.A. COMING ON FOR FINAL HEARING, THIS DAY THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

The State has challenged the Judgment and Order, acquitting the respondents for the charge under Sections 323, 448, 506 r/w. 34 IPC and under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as "the SC and ST Act" for short].

2. The facts reveal that on 07.11.2008 at 8.00 a.m., there was a quarrel between the Neelamma and Subramani and on 10.11.2008, there was a mediation in the Panchayat and both the parties were warned not to quarrel with each other. At 7.30. p.m., when P.W.2-Sakamma was in

the house with her family members, it is alleged that the respondents formed unlawful assembly with common object to cause assault and said to have abused the wife of the complainant by referring to her caste, fisted and kicked her and gave a threat to leave the village. Due to the intervention of P.Ws.3 to 5 and others, the accused were pacified and ultimately on 14.11.2008, P.W.1 approached the Police and submitted his complaint-Ex.P1, which came to be registered in Crime No.393/2008 for the offence punishable under Sections 323, 448, 506 r/w. 34 IPC and under Section 3(1)(x) of the SC and ST Act.

Investigation was taken up. Spot mahazar-Ex.P2 was held. Statements were recorded. As the accused belongs to a major community and the victim belongs to a minority community, the caste certificates-Exs.P5 and 6 were obtained. The injured was examined by the doctor and Ex.P9-injury certificate was obtained. After collecting

the relevant documents, charge-sheet was laid against the respondents for the aforesaid charges.

During the trial, the prosecution examined P.Ws.1 to 9, got marked the documents Exs.P1 to 9 and after recording the statements of the respondents, no oral evidence was led. Anyhow, the respondents got marked Exs.D1 and 2, the contradictions in the evidence of P.Ws.4 and 5.

The trial Court after hearing the counsel for the parties and on appreciation of the material on record, acquitted the respondents of all the charges. Aggrieved by the said order of acquittal, the State has filed this appeal.

3. I have heard learned High Court Government Pleader for the appellant/State and also Sri. Sudarva D.S., learned counsel for the 1<sup>st</sup> respondent. Learned counsel for the other respondents is absent.

4. The point that arises for my consideration is;

Whether the State has made out any grounds to warrant interference in the Judgment and Order of acquittal of the respondents for the charge under Sections 323, 448, 506 r/w. 34 IPC and under Section 3(1)(x) of the SC and ST Act?

5. Learned High Court Government Pleader submits that P.W.2 is an injured witness. She has suffered injury and her evidence has been supported by other witnesses in addition to an independent witness. He submits that there is no reason for the trial Court to grant an order of acquittal. It is his contention that the material placed on record is sufficient to prove the guilt of the respondents for the charge framed and therefore, sought for setting aside the impugned Judgment and Order and to hold them guilty.

On the other hand, learned counsel for the 1<sup>st</sup> respondent supports the Judgment and Order and submits that no grounds are made to warrant interference in the impugned Judgment and Order.

6. Now, as could be seen from the evidence of P.W.8-Dr.Harish and injury certificate-Ex.P9 in respect of P.W.2-Sakamma, who was examined by the P.W.8 reveals that on 10.11.2008 at 9.00 p.m. the following injuries were found:

1. Tenderness over left plaint air was normal.
2. Tenderness over back lower spinal cord movements were normal.
3. Tenderness over the upper gums movement of jaws was normal.

The doctor has certified that these injuries are simple. So, except the tenderness, there is no other injury on P.W.2 and they are all simple injuries.

7. So far as the evidence of P.W.1 is concerned, he is the husband of P.W.2-Sakamma. He is the complainant and though the incident occurred on 10.11.2008, the complaint came to be filed against the respondents on 14.11.2008. There is a delay of 4 days in filing the complaint. The reason that has been assigned by P.W.1 is that he admitted his wife-P.W.2 in the hospital and there were no persons to look-after her and therefore, came late and lodged his complaint to the Police. It is pertinent to note that P.W.2-injured was not admitted in the hospital. She was treated as an out-patient. She has just suffered simple injuries i.e., tenderness at 3 places and P.W.8-doctor does not speak to any fact of admission of P.W.2 in the hospital. Therefore, the explanation offered by P.W.1 relating to the delay cannot be accepted. In the absence of any explanation, the possibility of implicating the persons cannot be over-ruled. It

is in this context that the evidence of the other witnesses has to be looked into.

8. P.Ws.1 to 5 are the eye-witnesses to the incident, whereas P.W.2 is the injured. The incident took place at about 7.30 p.m. As admitted by P.W.5, it was dark at the place of the incident and he also states that as many as 10 to 15 persons were at the place of the incident.

That apart, as could be seen from the evidence of P.W.1, he makes a general statement about each of the accused causing the assault and in fact, nowhere in the complaint or in the evidence there is no reference as to the words used by the accused referring to the caste of the victim. Except stating that abusive words are used, what words actually were used is not stated either in the complaint or in the evidence. Therefore, the provisions of Section 3(1)(x) of the SC and ST Act are not attracted.

9. Though P.W.1 states about the involvement of each of the accused, P.W.2 states only as against accused 1 and 2. P.W.3 also speaks of the part played by accused 1 and 2 and none of the involvement of other accused having been spoken. Therefore, there is no consistency in the evidence of the witnesses as regards the part played by each of the accused.

That apart, P.W.1 is the husband of P.W.2 and P.W.3 is their son. P.W.4 is the brother of P.W.1. All these persons are related to each other closely. They are interested witnesses and their evidence has to be scrutinized cautiously as the incident took place at the night hours. Furthermore, P.W.5 though is an independent witness and speaks of the part played by accused 1 and 2, in the cross-examination he admits that it was dark at the time when the incident took place. He states that he went to the place at 7.30 p.m. and there were as many as 10 to 15 persons. He

cannot give the name of each of the persons as he was in dark. It is for this reason that the trial Court has not accepted the evidence of the witnesses. Though P.W.2 is an injured witness, as the injuries are just tenderness and no external injuries were found, it may not be proper to consider her as severely injured witness.

That apart, this is an appeal against acquittal. The appellate Court will slow in interfering with such order. Even if a second view is possible, the one accepted by the trial Court cannot be disturbed. Considering the aforesaid principle and appreciation of the evidence on record and in the context of delay in lodging the first information report, I do not find any justifiable grounds to warrant interference in the impugned Judgment and Order of acquittal of the respondents for the charges aforesaid.

Consequently, the appeal fails and it is accordingly dismissed.

Sd/-  
JUDGE.

Ksm\*