

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRIMINAL APPEAL NO.848 OF 2009

JUDGMENT:-

Challenge in this Criminal Appeal is to the judgment, dated 16.07.2008 in Special Sessions Case No.23 of 2008, on the file of Special Sessions Judge for S.Cs & S.Ts (POA) Act, Kadapa ("Special Judge" for short), whereunder the learned Special Judge found the accused guilty of the charges under Section 3(1)(x) of S.Cs & S.Ts (POA) Act, 1989 and Section 323 of the Indian Penal Code ("IPC" for short), convicted him under Section 235(2) of the Code of Criminal Procedure ("Cr.P.C" for short) and after questioning him about the quantum of sentence, sentenced him to suffer rigorous imprisonment for six months and to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days for the offence under Section 3(1)(x) of S.Cs & S.Ts (POA) Act, 1989 and further sentenced him to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days for the offence under Section 323 of IPC.

2) The parties to this Criminal Appeal will hereinafter be referred to as described before the learned Special Judge for the sake of convenience.

3) The Special Sessions Case arose out of a committal order in P.R.C.No.2 of 2008, on the file of I Additional Judicial Magistrate of First Class, Proddatur.

4) The State, represented by Sub-Divisional Police Officer, Proddatur, filed charge sheet in Crime No.135 of 2007 alleging as follows:

(i) The accused is resident of Kamanur Village of Proddatur Mandal and he belonged to Kapu caste. L.W.6-Nandyala Syamamma is no other than the sister-in-law of the accused. The defacto-complainant (L.W.1-Peddammunigalla Munaiah), L.W.2-Musaligalla Bala Obaiah, L.W.3-Bhujamgalla Yesaiah and L.W.4-Bannegalla Sathyamaiah, are residents of Kamanur Harijanawada and injured persons. They belong to Mala and Madiga community which comes under the purview of Scheduled Caste. The said fact is very well known to the accused. L.W.5-Adimulam Guru Mohan and L.W.6 were witnesses to the occurrence. L.W.6's husband and accused who are uterine brothers shared their ancestral property equally by leaving one old house and Ac.5-00 cents of land to their mother. After death of their mother, they equally shared the said property. As mother-in-law of L.W.6 was staying with the accused, he was enjoying Ac.5-00 cents of land. L.W.6's husband decided to take the old house into his possession towards his share.

(ii) On 12.10.2007 L.W.6 engaged L.W.1 to L.W.4 for demolition of old wall in order to construct a new wall. At her instructions, L.W.1 to L.W.4 started demolishing the wall. Around 12-00 noon when they were attending the said work, the accused went there and grew wild and abused L.W.1 to L.W.4 in the name of caste as "NEEYAMMA MADIGA GUDDANNI DENGAMADIGA LANJA KODAKALLARA". So abusing, the accused picked up a spade stick and dealt a blow on the left rib of L.W.1, resulting in swelling injury. He also beat L.W.2 and L.W.3 with a spade stick on their left shoulders and caused swelling injuries. He also beat L.W.4 with a stone on his left palm and caused swelling injury. L.W.5 and L.W.6 witnessed the occurrence and intervened and sent the accused. Later, L.W.1 to L.W.4 went to Proddatur Rural Police Station and presented a report. L.W.10-A.S.I. basing on the report registered FIR and referred L.W.1 to L.W.4 to Government Hospital, Proddatur. On the instructions of Superintendent of Police, Kadapa, dated 12.10.2007, L.W.11-SDPO, Proddatur, took up investigation. He visited the scene of offence, observed the same and prepared rough sketch. L.W.7-Dr. K. Annapurnamma, CAS, examined the injured persons and opined that the injuries are simple in nature.

(iii) On 06.11.2007 at 3-50 p.m., accused was arrested at Kamanur bus stop by L.W.11 with the assistance of L.W.9-S.I. of

Police and sent for remand. L.W.9-the concerned Tahsildar issued caste certificates stating that L.W.1 to L.W.3 belong to Madiga caste and L.W.4 belongs to Mala caste which comes under purview of Scheduled Caste. Hence, the charge sheet.

5) The learned I Additional Judicial First Class Magistrate, Proddatur, took cognizance of the case under Section 324 of IPC and Section 3(1)(x) of SC & ST (POA) Act and after complying formalities, the case was committed to the learned Special Court.

6) On appearance of the accused, the learned Special Judge, framed charges under Section 324 of IPC and Section 3(1)(x) of SC & ST (POA) Act and explained the same to him in Telugu, for which he pleaded not guilty and claimed to be tried.

7) In order to establish the guilt against the accused, the prosecution examined P.W.1 to P.W.10 and got marked Ex.P.1 to Ex.P.13. Further during cross examination of P.W.1 Ex.D.1, during cross examination of P.W.2 Ex.D.2 and Ex.D.3 and during cross examination of P.W.3 Ex.D.4 were marked. After closure of the evidence of prosecution, the accused was examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances appearing in the evidence let in by the prosecution, for which he denied the same and reported no defence witnesses.

8) The learned Special Judge on hearing both sides and on considering the oral as well as the documentary evidence, found the accused guilty of the charge under Section 3(1)(x) of SC & ST (POA) Act and further found him guilty of the offence under Section 323 of IPC, convicted him under Section 235(2) of Cr.P.C. and after questioning him about the quantum of sentence, sentenced him as above. Felt aggrieved of the same, the unsuccessful accused filed the present Criminal Appeal.

9) Now, in deciding this Criminal Appeal, the points that arise for consideration are as follows:

(1) Whether the prosecution proved that on 12.10.2007 at 12-00 noon the accused intentionally insulted, intimidated and abused L.W.1 to L.W.4 in the name of their caste in the manner as alleged and whether he caused hurt to L.W.1 to L.W.4?

(2) Whether the judgment, dated 16.07.2008 is sustainable under law and facts and whether there are any grounds to interfere with the same?

Point Nos.1 and 2:-

10) P.W.1 was no other than the defacto-complainant and one of the injured. P.W.2 to P.W.4 were also the injured. P.W.5 was the medical officer, who examined the injured and

issued wound certificates. P.W.6 was A.S.I., who registered FIR. P.W.7 and P.W.9 were so-called witnesses to the occurrence and they did not support the case of the prosecution. P.W.8 was the Tahsildar, who issued caste certificates of P.W.1 to P.W.4 and accused. P.W.10 was the SDPO, who was the investigating officer.

11) For better appreciation, firstly, this Court would like to refer here the substance of the allegations in Ex.P.1, the written report lodged by P.W.1. As seen from Ex.P.1, it is the written report presented by P.W.1 on 12.10.2007 at 10-30 p.m., before ASI concerned. It is scribed report. It alleges that he is aged about 46 years. He used to go to coolie works. On 12.10.2007 he along with three others went to Syamamma house to remove the wall on coolie work. She is related to Nandyala Ramananda Reddy. They do not know about the disputes between their families. Syamamma called him and three others i.e., B. Yesaiah, Satyamaiah, Bala Obaiah. On 12.10.2007 when they were doing work on the wall, the brother-in-law of Syamamma i.e., accused came there and abused them as "MALANA KODAKALLARA" and further abused them in offensive language referring the name of the caste and beat them, as such, they all received injuries. It was all

happened at 12-00 noon. This is the substance of the allegations.

12) Now coming to the evidence of P.W.1 to P.W.4, they spoke to the fact that about one year ago they went to attend coolie work at the old house of L.W.6-Syamamma and that they are not aware of the disputes between Syamma and the accused. Accused is younger brother of husband of Syamma.

13) The evidence of P.W.1 with regard to the incident in question is that the accused came over there at 12-00 noon and started abusing them touching their caste as "MALANA KODAKALLARA", etc. The accused thrown a stone at L.W.4-Satyamaiah by picking it from there. Satyamaiah received bleeding injury on his left palm. The accused beat him (P.W.1) with butt of a spade on his left rib and he received a swelling on his rib. The accused beat L.W.3-Yesaiah on his back with the same spade thrice. Yesaiah sustained swelling on his back. L.W.5-Gurumohan and L.W.6-Syamamma witnessed the accused abusing and beating them, but, they did not interfere at the time of occurrence. Therefore, they left the work and returned to their houses. All of them left to the police station around 8-00 p.m. to report the incident. They could not go to the police station immediately as they did not have bus fare

after the incident. They took money from their family members soon after they returned from work and then proceeded to police station. His son drafted Ex.P.1 and he placed it before A.S.I., Proddatur. Police referred them to the hospital. DSP examined him.

14) The evidence of P.W.2 insofar as the incident in question is that at 12-00 noon accused came there and asked them who asked them to remove the wall and so saying abused them touching their caste as "MALANA KODAKALLARA", etc. He pelted a stone at L.W.4-Satyamaiah by picking it from there. Satyamaiah received stone injury on his left palm. Accused beat P.W.1 with the butt of a spade and he received swelling. The accused beat him (P.W.2) on his right shoulder and he received swelling injury. The accused also shouted against them in the name of caste with offensive language. L.W.5 and L.W.6 witnessed the occurrence, but they did not intervene. So, they left the work and went home. They started from their village at 9-30 p.m. and reached to the police station, Proddatur at 10-00 p.m. Ex.P.1 was drafted by the son of P.W.1. Police sent them to Government Hospital. They went to the police station in the evening soon after taking money from their family members, who returned from the fields.

15) The evidence of P.W.3, another injured, with regard to the incident in question is that at 12-00 noon accused came over to their work place, abusing them as "MALANA KODAKALLARA", etc., and asked them as to who asked you to dismantle the house. The accused beat him and P.W.2 with the butt of a spade and he received swelling on his back. P.W.1 received injury on his left rib. P.W.2 received injuries to his left shoulder. Accused pelted stone at Satyamaiah and Satyamaiah received blow to his left palm. L.W.5 and L.W.6 witnessed the occurrence. Thereafter, they went to the house. After their family members returned to the house, they took money from them and proceeded to the police station.

16) The evidence of P.W.4 with regard to the incident in question is that at 12-00 noon, the accused came to the work place abusing them as in the name of caste in filthy language and while abusing so, he hurled a stone at him. As he raised left hand to ward off the stone, he received injury to his left palm. Accused beat P.W.1 with a spade on his left rib causing swelling injury. Again he beat P.W.2 with a spade on his left shoulder which caused swelling on his shoulder. The accused beat P.W.3 on his back with the same spade, which caused swelling. L.W.5 and L.W.6 witnessed the occurrence. They could not go to station straight away as they did not have money and proceeded

to the station after their family members came from the fields by getting money.

17) P.W.5 was the medical officer, who examined P.W.1 to P.W.4, the injured. Her evidence is that on 12.10.2007 at 11-30 p.m., she examined Peddamunaiahgari Munaiah (P.W.1) and found an abrasion 7 x 1 cm on the left side of his back. On the same day at 11-35 p.m., she examined Museeligalla Bala Obaiah (P.W.2) and found swelling 4 x 4 cm on his left shoulder. On the same day at 11-40 p.m., she examined Bojamgalla Yesaiah (P.W.3) and found an abrasion 5 x 1 cm on the left shoulder without any bleeding. She also examined Bannegalla Satyamaiah (P.W.4) on the same day at 11-50 p.m., and found a lacerated wound 5 x 3 cm incised on the palmar surface aspect of left hand. She issued wound certificates of P.W.1 to P.W.4 under Ex.P.2 to Ex.P.5 respectively. She opined that the injuries sustained by P.W.1 to P.W.4 are simple in nature.

18) P.W.6 was the ASI, who registered the report of P.W.1 as FIR. According to him on 12.10.2007 while he was S.H.O., Proddatur Rural Police Station, at 10-30 p.m. P.W.1 to P.W.4 came to the police station and P.W.1 presented Ex.P.1 written report. He spoke of registration of FIR in Cr.No.135 of 2007 under Section 324 r/w 34 of IPC and Section 3(1)(x) of SC

& ST (POA) Act. Ex.P.6 is the FIR. He sent P.W.1 to P.W.4 to the Government Hospital.

19) P.W.7 and P.W.9 did not support the case of the prosecution. The prosecution got declared them as hostile and during cross examination they denied that they stated before the police as in Ex.P.7 and Ex.P.12 respectively.

20) P.W.10 was the SDPO, who spoke of his investigation.

21) Smt. A. Gayathri Reddy, learned counsel, representing Sri T. Diwakar Reddy, learned counsel appearing for the appellant, would contend that though the incident in question was happened at about 12-00 noon, but the report could be lodged only during the night and according to Ex.P.1, it was presented at 10-30 p.m. The prosecution did not explain the delay properly for lodging of Ex.P.1. P.W.1 to P.W.4 were the injured persons and they were interested witnesses. P.W.7 and P.W.9 did not support the case of the prosecution. It is quite improbable that the accused caused injuries to four persons. The learned Special Judge basing on the interested testimony of P.W.1 to P.W.4, which has no corroboration from the independent source, convicted the accused erroneously, as such, the appeal is liable to be allowed.

22) Sri N. Sravan Kumar, learned counsel, representing the learned Public Prosecutor, would contend that there was cogent evidence to explain the delay to the effect that P.W.1 to P.W.4, the injured, as they had no money to rush the police station waited for the arrival of their family elders and after they returned from the fields, they took money and proceeded to the police station and presented Ex.P.1 report. The prosecution explained the delay properly. P.W.1 to P.W.4 had no reason to depose false against the accused. The so-called political differences set up deserve no merits. The learned Special Judge on thorough appreciation of the evidence on record, rightly convicted, as such, the appeal is liable to be dismissed.

23) Firstly, this Court would like to deal with the delay. It is no doubt true that when the offence in question was happened at 12-00 noon, Ex.P.1 came to be presented at 10-30 p.m. P.W.1 to P.W.4 deposed in their evidence that because they had no money and their family members went to fields and after their arrival and after getting money only, they decided to come to the police station. In my considered view, P.W.1 to P.W.4, the injured witnesses, set up proper reason as to why they could not rush to the police station immediately.

24) Now, it is a matter of appreciation as to whether the evidence of P.W.1 to P.W.4 is believable. Simply because P.W.7

and P.W.9 turned hostile to the case of the prosecution, the evidence of P.W.1 to P.W.4 cannot be thrown out. P.W.9 is no other than Syamamma at whose house, these injured witnesses were working according to the case of the prosecution. Unfortunately, she also turned hostile to the case of the prosecution. Simply because P.W.7 and P.W.9 turned hostile to the case of the prosecution, the evidence of P.W.1 to P.W.4, the injured witnesses, cannot be disbelieved. So, the Court has to scrutinize their evidence with care.

25) Turning to the evidence of P.W.1 in cross examination, it is elicited that he used to attend collie work from 7-00 a.m. to 2-00 p.m. What is evident from his cross examination is that the present MLA hails from their village and he was elected on Congress banner. The present MLA is not amicable with the accused, but indeed they are at logger heads. Nothing is elicited during cross examination as to whether P.W.1 to P.W.4 at one hand and accused at another hand had any differences on account of any political aspects. Though he deposed that they have enough transport facility to their village to go to Proddatur, but his evidence is that because of want of money, they could not go to police station immediately. During cross examination, he denied that nobody caused any injury to him and at the behest of one Raghava Reddy, foisted the case

through him by showing up the injuries sustained otherwise. It is very difficult to accept the defence put forth before P.W.1. Nothing could be seen in the cross examination part of P.W.1 so as to disbelieve his testimony.

26) The evidence of P.W.2 in cross examination means that he used to do coolie work. He denied that he is speaking false to aid the prosecution case against the accused. He denied that accused did not abuse them and did not beat them as mentioned. P.W.3 and P.W.4 also during cross examination denied that they are deposing false.

27) It is to be noted that the defence counsel elicited Ex.D.1 during cross examination of P.W.1, Ex.D.2 and Ex.D.3 during cross examination of P.W.2 and Ex.D.4 during cross examination of P.W.3. Ex.D.1 is relating to the so-called exaggeration made by P.W.1 with regard to the offensive words used by the accused. Ex.D.2 is also the so-called improvements with regard to the offensive words used by the accused. Ex.D.3 is relating to the fact that P.W.2 stated before the police that he received swelling injury on his left shoulder. Ex.D.4 is relating to the fact that he stated before police that he received swelling injury on his right shoulder.

28) As seen from Ex.P.1, there was a whisper basically that accused abused P.W.1 to P.W.4 as "MALANA

KODAKALLARA", etc. Even if certain parts of words spoken by P.W.1 and P.W.2 attributed against the accused is excluded from consideration, but their evidence that accused abused them in the name of the caste as "MALANA KODAKALLARA", etc. had basis in Ex.P.1. The so-called contradictions are not going to the very root of the case of the prosecution. In my considered view, they are trivial in nature. Absolutely, P.W.1 to P.W.4 have no reason at all to implicate the accused falsely. They belong to Scheduled Caste. Accused belonged Forward Caste. They went to coolie work at request of P.W.9 to dismantle a wall. They were not aware of the disputes between the accused and P.W.9. At best when P.W.1 to P.W.4 were found working at the disputed place, accused could have asked them to go away from the place. He was not supposed to abuse them in the name of caste offensively and he was not supposed to attack P.W.1 to P.W.4 indiscriminately with a spade. In my considered view, the prosecution adduced cogent evidence to prove the act alleged against the accused. The delay was properly explained by the prosecution. There were no ill-feelings between the accused and P.W.1 to P.W.4, as such, on account of delay there was no probability for any false implication.

29) Ocular testimony of P.W.1 to P.W.4 has corroboration from the evidence of P.W.5, the medical officer,

coupled with the wound certificates of P.W.1 to P.W.4 marked under Ex.P.2 to Ex.P.5 respectively.

30) Having regarding to the overall facts and circumstances, the evidence adduced by the prosecution is convincing. The learned Special Judge rightly appreciated the evidence on record and rightly found guilty of the offence under Section 3(1)(x) of SC & ST (POA) Act and Section 323 of IPC. Therefore, this Court did not find any ground to interfere with the judgment of the learned Special Judge.

31) In the result, the Criminal Appeal is dismissed confirming the judgment, dated 16.07.2008 in Special Sessions Case No.23 of 2008, on the file of Special Sessions Judge for S.Cs & S.Ts (POA) Act, Kadapa.

32) The Registry is directed to take steps immediately under Section 388 Cr.P.C. to certify the judgment of this Court to the trial Court on or before 06.01.2024 and on such certification, the trial Court shall take necessary steps to carry out the sentence imposed against the appellant and to report compliance to this Court.

33) The Registry is directed to forward the copy of the judgment along with original records to the trial Court on or before 06.01.2024.

Consequently, miscellaneous applications pending, if any,
shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt. 29.12.2023.
PGR

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRL. APPEAL NO.848 OF 2009

Note:-

The Registry is directed to forward
copy of the judgment along with record
to the trial Court on or before 06.01.2024.

Date: 29.12.2023

PGR