

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.57 of 2009

JUDGMENT:

1. This appeal is filed by the appellant-accused against the conviction and sentence imposed by the Special Judge for Trial of Cases under SCs & STs (POA) Act, East Godavari District at Rajahmundry, in SC ST S.C.No.88 of 2008 vide judgment dated 12.1.2009.

2. The case of the prosecution in brief is as follows:

The accused used to lend money to illiterates and weaker section of people for higher rate of interest by obtaining their thumb impressions/signatures on the promissory notes. Though they discharged the debt, he used to postpone return of promissory notes. He used to file suits taking advantage of custody of promissory notes with him. One Dhanala Lalitha and Rajagopalam, who are wife and husband, belong to Scheduled Caste-Relli. They are the residents of Biccavole. Rajagopalam is Panchayat Sweeper. His father Appala Swamy took hand loan of Rs.2,000/- from the accused about 18 years back with interest at Rs.10/- per annum and he paid interest. He died about 16 years back. Two years thereafter, the accused obtained thumb impression of Rajagopalam on blank promissory notes. On coming to know about the death of Appalaswamy, the accused demanded them to discharge the debt. About 14 years back, Lalitha obtained loan of Rs.1,000/- from the accused and he obtained thumb impression on blank promissory notes. Though she discharged debt, he did not return the promissory notes. In January 2007, Rajagopalam received court notice and learnt that he was indebted to the accused to a tune of Rs.72,000/-. One month thereafter, his wife Lalitha also received court notice. But for the last two months a sum of Rs.2,000/- was being deducted from the Salary of Rajagopalam to the Kakinada Court. On 9.4.2007 at about 8 a.m., while Rajagopalam along with others was sweeping the road, his wife went there. Meanwhile, the accused was proceeding on a motor cycle and on seeing him, both of them questioned about deduction of Rs.2,000/- from the salary and demanded to return the promissory note. Then, the accused insulted them on the road and abused Lalitha, pushed her down by placing his hand on her chest within the public view and abused her as Relli Lanja and also abused Rajagopalam as Relli Lanja Kodaka. On 9.4.2007 at 21 hours, they lodged a complaint before Biccavole Police Station and the said complaint was registered and investigated into. After completion of the investigation, charge sheet was filed.

3. The learned trial Judge framed charges under Section 3 (1)(x) of the SCs & STs (POA) Act (for short, 'the Act') and Sections 323 and 506 IPC, against the accused, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 11 were examined and Exs.P1 to P11 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court found the accused guilty for the offences under Section 3 (1)(x) of the Act and Section 323 IPC, convicted and sentenced him as follows:

1) to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of two months for the offence under Section 3 (1)(x) of the Act;

2) to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of two months for the offence under Section 323 IPC;

3) The accused is acquitted for the offence under Section 506 IPC.

Aggrieved by the conviction and sentence imposed by the trial Court, the appellant-accused filed the present appeal.

6. Learned Counsel for the appellant-accused contended that there are material omissions in the evidence of the prosecution witnesses and their cannot be relied upon. Further, the learned Counsel pointed out that there was delay in lodging the complaint and the explanation offered by the prosecution cannot be believed and that the trial Court has failed to consider the evidence in proper perspective and therefore, the conviction and sentence imposed by the trial Court are liable to be set aside.

7. The learned Public Prosecutor submitted that there are no substantial grounds to interfere with the judgment under appeal and therefore, the appeal is liable to be dismissed.

8. Now, the point that arises for consideration is:

“Whether the conviction and sentence imposed by the trial court warrant interference by this Court?”

9. **POINT:** Before going into the merits of the case, it is relevant to extract the evidence of the prosecution witnesses.

10. P.W.1-Dhanala Lalitha deposed as follows:

About 20 years back, her father-in-law borrowed Rs.2,000/- from the accused agreeing to repay the same with interest at the rate of 10% p.a. Without discharging the said debt, he died. After his death, the accused obtained signatures of her husband on blank promissory notes. After the death of her father-in-law, they discharged the debt. Though they asked for return of promissory notes, the accused gave evasive reply. Three years after the death of her father-in-law, they discharged the debt and 10 years thereafter, the accused sent a Court notice to them. After noticing that Rs.2,000/- was being deducted from the salary of her husband, they questioned the accused. They placed the matter before elders. But the accused did not respond. On the date of incident she went to Ramulavari temple where her husband was attending to drainage work. L.Ws.3 and 4 were also attending to the said work. Then, the accused came there. When she questioned the accused as to why the salary of her husband was being deducted though they discharged the debt, the accused abused her as “Relli Lanja” and pushed her by placing his hand on her chest. She went to police station along with her husband and lodged a complaint.

11. P.W.2-Dhanala Rajagopalam deposed as follows:

His father borrowed Rs.2,000/- from the accused and after his death, the accused demanded them to repay the debt. He discharged the debt with interest one or two years after the death of his father from out of death benefits. But the accused filed a suit and he received summons from the court. When the accused was seen on the road, he asked him as to why he filed a suit though he discharged the debt. About 15 days thereafter, again he received another notice from the Court. Again, he approached the accused and asked him. He replied that he would settle the matter. One month thereafter, Rs.2,000/- was ordered to be deducted from his salary as per the orders of the Court. About 15 months back, he was at Ramalayam temple along with L.Ws.3 and 4, for attending drainage work. When they questioned the accused about the filing of the suit and attachment of the salary, the accused uttered him as “Relli Vedhava”. The accused pushed his wife by placing his hands on her chest, on account of which, she fell down. When he questioned as to why he did so towards his wife, he again abused him as Relli Vedhava and slapped him.

12. P.W.3-Dhanala Prakasarao deposed as follows:

He is working as sweeper in Biccavole panchayat office. He knew P.Ws.1 and 2 and the accused. There are disputes between P.W.2 and the accused with regard to debts. On the date of incident at about 8 a.m., himself and P.W.2 were attending to drainage work. P.W.1 was coming to P.W.2 for money. At that time, the accused was coming on the said road. When P.W.1 asked the accused about discharge of debt, the accused abused P.W.1 as relli lanja as to why she stopped him on the road, pushed her down by placing his hands on her chest. When P.W.1 intervened the accused slapped him.

13. P.W.4-Gandrothula Nagasubrahmanyam deposed as follows:

On the date of incident on seeing mob at Ramalayam centre, himself and L.W.6 went there and noticed a galata between P.W.1 and the accused with regard to debt. The accused abused P.W.1 as Relli lanja and placed his hands on her chest and pushed her. When P.W.2 intervened, the accused abused him as Relli Lanja Kodaka and left the place on a motor cycle.

14. P.W.5-Shaik Kalisha deposed that on the date of incident, on noticing a galata at Ramalayam centre, he went there and found galata between P.W.1 and the accused with regard to debt. In that altercation, the accused abused P.W.1 as Relli Lanja and pushed her by placing his hands on her chest, as a result, P.W.1 fell down. When P.W.2 intervened, the accused abused him as Relli Lanja Kodaka.

15. P.W.6-Gummadi Krishna deposed that he also borrowed loan from the accused and subsequently, when he went to discharge the debt, the accused neither received the money nor returned the promissory notes and four

months thereafter, the accused filed a suit.

16. P.W.7 is the scribe of Ex.P2-obsersation report of scene of offence. P.W.8 is the scribe of mediators' report. P.W.9 is the then M.R.O. of Biccavole, who issued caste certificates of P.Ws.1 and 2 and the accused. P.Ws.10 and 11 are the police officials.

17. On a perusal of the evidence of the prosecution witnesses, it is evident that the occurrence took place while the accused was passing through the road, where P.Ws.1 and 2 were attending drainage work. Further, galata took place between the accused and P.Ws.1 and 2, when they questioned the accused about the attachment of salary of P.W.2. From this, it is evident that the accused had not intentionally gone to the place, where P.Ws.1 and 2 were working. He had not intentionally gone there to abuse them. It is evident that P.Ws.1 and 2 stopped the accused by waylaying and questioning him. Then, a galata took place, during the course of which, the accused abused them. In Ex.P1-complaint, it is stated that they availed loan of Rs.2,000/- and promised to pay interest at Rs.10/- per hundred and the same was cleared off by them within one month and at the time of taking loan, they executed a promissory note and after discharge of debt, when they asked the accused to return the promissory note, he was postponing the same, whereas it is the evidence of P.Ws.1 and 2 before the Court that the father of P.W.2 borrowed loan amount and after his death, the accused demanded them and P.W.2 executed a blank promissory note and subsequently, they discharged the debt. The evidence spoken to by P.Ws.1 and 2 is contrary to their Ex.P1-complaint.

18. Further, in Ex.P1, it is stated that on the date of incident, while the accused was proceeding on a motor cycle, P.W.2 asked him to return the pronote and then, the accused abused P.W.2. In Ex.P1, it is stated that while the accused was abusing P.W.2, P.W.1 intervened and then, the accused abused her and pushed her by placing his hand on her chest, whereas it is the evidence of P.W.1 that the accused abused her as Relli Lanja by placing his hand on her chest. Except stating so, P.W.1 did not state before the Court regarding the abusive words alleged to have been uttered by accused against P.W.2. Even though the investigating agency examined P.Ws.3 to 5 as eye witnesses to the incident, but Ex.P1 does not disclose the presence of P.Ws.3 to 5 at the time of occurrence. P.W.2 contrary to the contents in his complaint stated before the Court that the accused abused him as 'Relli Vedhava'. P.W.2 did not state before the Court about the words alleged to have been uttered by the appellant against P.W.1. The evidence of P.Ws.1 and 2 is quite contrary to their statement before the police.

19. Further, P.W.3 stated in his evidence that the accused abused P.W.1 as "Relli Lanja". But he did not state about the abusive words alleged to have been uttered by the accused against P.W.2. P.W.4 deposed in his evidence that the accused abused P.W.1 as Relli Lanja and placed his hands on her chest and pushed her and P.W.2 intervened and again the accused abused P.W.2 as 'relli lanja Kodaka'. P.Ws.3 to 5 stated that while the accused was abusing P.W.1, P.W.2 intervened and then, the accused abused him, whereas it is mentioned in Ex.P1 that while the accused was abusing P.W.2, P.W.1 intervened and then, the accused abused her. The evidence of P.Ws.1 to 5 is not consistent and cogent and their evidence suffers from lot of discrepancies. Therefore, their evidence cannot be relied upon.

20. Section 3 (1)(x) of the Act reads as follows:

"Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

The abusive words by including the name of the caste alone would not attract the offence under Section 3 (1) (x) of the Act.

21. Insofar as the offence under Section 323 IPC is concerned, it is the case of the prosecution that the accused caused hurt to P.W.2. But there is no consistent evidence on record that the accused slapped P.W.2. There is no evidence to establish the case as projected by the prosecution. Apart from that, the alleged occurrence took place at about 8 a.m., whereas the complaint was lodged at 9 p.m., There is no proper explanation forthcoming for such delay even though there is evidence on record that the police station is at a distance of ¼ k.m. from the place of occurrence. Therefore, the said delay would be fatal to the case of the prosecution.

22. In view of the foregoing discussion, this Court is of the view that the prosecution has miserably failed to prove

its case beyond all reasonable doubt and the trial Court has failed to consider all the above aspects and therefore, the conviction and sentence imposed by the trial Court against the appellant-accused are liable to be set aside. Accordingly, the point is answered.

23. In the result, the Criminal Appeal is allowed setting aside the conviction and sentence imposed by the Special Judge for Trial of Cases under SCs & STs (POA) Act, East Godavari District at Rajahmundry, against the appellant-accused for the offence under Sections 3(1)(x) of the SCs & STs (POA) Act and Section 323 IPC in SC ST S.C.No.88 of 2008 vide judgment dated 12.1.2009. Consequently, he is acquitted for the said charges. The fine amount paid if any, shall be refunded to the appellant-accused. Bail bonds shall stand cancelled and the sureties are discharged.

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RAJA ELANGO, J

Dated:31st December, 2014
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THE HON'BLE SRI JUSTICE RAJA ELANGO

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31.12.2014

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