

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

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Crl.A.M.P.(S.R.)No.20248 of 2014

In

CIMINAL APPEAL No.1035 of 2014

And

CRIMINAL APPEAL No.1035 of 2014

COMMON ORDER:

Crl.A.M.P.(S.R.) No.20248 of 2014 is filed to grant leave to file an appeal challenging the judgment dt.19.12.2013 in Spl.S.C.No.15 of 2010 on the file of I Additional Sessions Judge, Chittoor, acquitting respondents of having committed offences punishable under Sections 341 and 323 IPC and Section 3(1)(x) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in brief 'the Act').

2. The appellant/party-in-person is not present today. Previously also on 03.03.2015, 17.03.2015 and 23.03.2015, she was not present. Since the appellant has not been present on previous three occasions and also on today, after hearing Sri Ch.Srinivas, learned counsel for respondent No.2 and the learned Public Prosecutor this application is being disposed of. Respondent No.3 had died and the appeal against her is abated.

3. The case of prosecution is that on 06.02.2010 at about noon time both the accused obstructed K.Kanthamma (PW.2) from going through the path way near the rice mill,

that they also beat her and when PW.1 and PW.5, son of PW.2 tried to rescue PW.2, the accused abused PW.5 in the name of his caste and also PW.1 by her religion. It is further alleged that at 5.00 p.m. both the accused told PW.1 that she should not come through the passage as PW.1 had come forward to give evidence in support of PW.2 about the incident at noon time; that the accused along with others had beaten them and were trying to kill PW.1 expecting that she would give evidence against them.

4. According to the prosecution, a complaint was given by PWs.1 and 2 to the Judicial First Class Magistrate for protection, which was forwarded to Thamballapalle Police Station for registering the crime. Crime No.13 of 2010 was registered against the accused. They were arrested and sent for judicial remand.

5. The Judicial First Class Magistrate, Thamballapalle, committed the matter to I Additional Sessions Judge, Chittoor.

6. Charges under Sections 341 and 323 IPC and Section 3(1)(x) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 were framed against the accused and they were read over and explained to accused, but they denied the same and pleaded not guilty and claimed to be tried.

7. The prosecution examined PWs.1 to 7 and marked Exs.P.1 to P.5.

8. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and the incriminating material in evidence of prosecution witnesses was put to them but they denied the same.

9. By judgment dt.19.12.2013, the Court below acquitted the accused of the above charges.

10. Questioning the same, the present Appeal is filed.

11. In the grounds of appeal raised by the appellant, it is stated that the judgment of the Court below is bad in law and contrary to the evidence on record. It is contended that the Court below did not observe the evidence and did not record the same in a proper way and it also did not call for a medical report from the doctors; that the appellant intended to argue the case herself but she was not allowed by the Court below to do so; and that the Court below did not consider the evidence of the appellant/PW.1 that she had given evidence in support of PW.2 and therefore the accused bore grudge against her and they tried to kill her. She also alleged that she was beaten up and abused by 15 persons for giving evidence in support of PW.2. She contended that she and PW.2 initially approached Thamballapalle Police Station, but the police personnel therein advised her to compromise the matter with the accused but she did not agree, for which the police officials lodged a fabricated case. She stated that she approached Thamballapalle Judicial First Class Magistrate Court. The police officials including D.S.P. did not issue any notice to

her. It is further alleged that the D.S.P., Madanapalli, changed the petition filed before the Magistrate Court by the appellant/PW.1 and forged her signature on that and in the proceeding dt.07.04.2012, no enquiry was conducted by Anantapur police.

12. A reading of the above grounds of appeal indicates that the appeal is filed only by PW.1 and not by PW.2. Therefore, the acquittal of respondents 2 and 3 for the offence under Section 3(1)(x) of the Act cannot be challenged by the appellant/PW.1, since she does not belong to Scheduled Caste or Schedule Tribe community.

13. The remaining charges are under Sections 323 and 341 I.P.C. A perusal of the evidence on record indicates that the prosecution was lodged against the accused alleging that there were incidents one at noon time on 06.02.2010 and the other at 5.00 p.m. on the same day. The first incident at 12 noon is said to have occurred when PW.2 was obstructed by the accused when she went through a path way near rice mill of the accused, by which time the appellant/PW.1 was alleged to be present there.

14. PW.1 deposed that on 06.02.2010 at about 12 noon while she along with her mother, PW.4 were returning from Darga through a cell phone tower, they saw A.1 and A.2 beating PW.2 saying that the path way belongs to them and PW.2 should not pass through the said way. She stated that she questioned the accused why they were beating PW.2 and then A.1 and A.2 told her that she did not know anything

and asked her to go away. She also stated that PW.5, son of PW.2 and some others came there and PW.5 asked A.1 and A.2 not to beat his mother. But A.1 and A.2 attacked him and torn his banian and beat him. She stated that PW.5 then went to the police station and reported the matter.

15. PW.2 stated that a complaint signed by her was given by PW.5 to Thamballapalle Police. The record perused by the Court below however indicated that Ex.P1 complaint was presented before the Magistrate, Thamballapalle, in the Lok Adalat on 08.02.2010, two days after the incident. The complaint said to have been given to Thamballapalle Police Station is not marked by the prosecution. PW.7 stated that PWs.1 and 2 did not give any complaint directly to the police and that a private complaint Ex.P1 was filed in the Court of Magistrate on 08.02.2010. Thus, the contention of PWs.1 and 2 that PW.2 gave one complaint, signed it and gave to PW.5 who in turn gave it to the police, is found false.

16. Even PW.2 in her cross examination stated that she did not give any complaint to the police on 06.02.2010 and the A.S.I. of Police, Thamballapalle Police Station examined her on phone at 3.00 p.m. while she was at her house. Thus, it is clear that there is no complaint given in regard to the incident involving PW.2.

17. Although, the prosecution examined PW.3 to support the evidence of PW.1, PW.3 completely denied to have seen the incident at 12 noon. PW.1 also in her cross examination

admitted that in Ex.P1, she had not stated that when she and PW.5 were coming to their village they saw the accused beating PW.2. PW.5 deposed that on 06.02.2010 at 12 noon when he was attending his coolie work at a place of half kilometer from the rice mill, he heard the cries of his mother. When the distance between the place where PW.5 was working and the rice mill of A.1 was half a kilometer, it is highly improbable that PW.5 was able to hear the cries of his mother. It is also unnatural that if the accused had beaten PW.2 and her son PW.5 on 06.02.2010 they would keep quiet without going to the police and lodging a complaint against the accused till 08.02.2010.

18. PW.4, the mother of PW.1 deposed that when she was returning from Darga she noticed the accused and PW.2 quarrelling with each other near cell phone tower on the way to her village and when PW.1 asked PW.2 and the accused as to why they were quarreling and advised them not to quarrel, the accused then abused PW.1 and PWs. 1 and 4 returned to their village. PW.1 in her deposition had stated that the accused had assaulted PW.2, but PW.4 stated that the accused and PW.2 only quarreled with each other and did not say that the accused beat PW.2 at all.

19. Having regard to these discrepancies in the prosecution evidence, I feel that it is unsafe to rely on the evidence of PWs.1 to 4. More over, PW.2 had admitted in her cross examination that prior to the incident on 06.02.2010 the accused had given a complaint against

PW.2 and PW.5 that their pigs entered into the house of accused and damaged the articles and the accused had given a complaint against PW.1 alleging that PW.1 assaulted them. This gives an insight into the matter and it appears that as a counter blast to the complaint given by the accused, the present complaint was given stating incorrect facts. Therefore, I am of the opinion that the incident at 12 noon cannot be said to have been proved.

20. Coming to the incident at 5 p.m. involving PW.1 it is the case of the prosecution that since PW.1 wanted to be a witness for the incident which had occurred at 12 noon involving PWs.2 and 5, the accused bore grudge against her and hence beaten her. PW.1 stated that on 06.02.2010 at about 5 p.m. when she was going to attend nature calls, A1 came to her and questioned as to why she was supporting PW.2 and abused her in the name of her caste and beat her. Since PW.1 belongs to the Muslim community, the question of abusing her in the name of her caste does not arise. PW.1 further stated that police did not take any action on her complaint and so she and PW.2 went to the Judicial First Class Magistrate, Thamballapalle, and gave a complaint and that Ex.P1 is the complaint given by her. Ex.P1 was signed by both PWs.1 and 2 and presented to the Judicial First Class Magistrate, Thamballapalle, through Lok Adalat. In Ex.P1, there is no averment that PWs.1 and 2 had given a complaint to the police previously or that the police did not take any action. PW.1 herself admitted that

she has not given any complaint to the police on 06.02.2010. I am of the opinion that if PW.1 had been abused and beaten by the accused at 5 p.m. on 06.02.2010, she would not have kept quiet and would have given complaint to the police on the same day. There is also no evidence on record to show that PWs.1 and 2 had taken any treatment in any hospital for the assault allegedly made on them by the accused. PW.1 has admitted in her evidence that several criminal cases had been filed against her. In the background of the admission of PWs.1 and 2, I am of the opinion that their evidence cannot be considered as reliable.

21. I am satisfied that the Court below has considered the evidence on record. The contention of the appellant that she wanted to argue the case herself, but she was not allowed to do so cannot be accepted, for the reason that the State through Additional Public Prosecutor had conducted the prosecution and at best the appellant could be allowed only to assist the prosecution and not argue the matter herself. When the case is to be tried by the Sessions Court, the appellant cannot contend that the case should have been heard by the Judicial First Class Magistrate, Chittoor. As regard the contention of the appellant that there was an attempt to kill the appellant, considering the findings recorded by the lower Court, there is no possibility of such an attempt at all and it appears that the appellant, with a view to help PW.2 and her son, who were facing a criminal complaint filed against them by the accused, has filed the

present appeal.

22. In this view of the matter, I am of the opinion that the Court below had rightly acquitted the accused and the said judgment of the trial Court is liable to be confirmed.

23. Having regard to these circumstances, I am of the opinion that the court below had rightly acquitted the accused. Therefore, it is not a fit case to grant leave to file appeal. Therefore, Crl.A.M.P.(S.R.) No.20248 of 2014 is dismissed. Consequently, Criminal Appeal No.1035 of 2014 is also dismissed.

24. Miscellaneous applications, pending if any in this Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-03-2015
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