

THE HON' BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.669 of 2008

JUDGMENT:

This Criminal Appeal is preferred by the appellant-accused against judgment, dated 05.06.2008, passed in S.C.No.632 of 2007 by the Special Sessions Judge for S.C./ S.T. Cases, Anantapur.

The case of the prosecution is as follows:

That on 27.02.2007 at about 9.30 am, the appellant - accused went to the house of PW.7 Nithyananda, who is a kerosene dealer, situated at Munnala village of Anantapur Rural Mandal and asked PW.2 Harish, who is nephew of PW.7 and used to supply kerosene to the customers in the absence of PW.7, to supply kerosene on his coupon and on the coupons of others. On that, PW.2 supplied kerosene on the coupon of the appellant and advised him to approach PW.7 for supply of kerosene on the coupons of others on his return from the fields. Then, the appellant grew wild and picked up a quarrel with PW.2. PWs.1, 3 and 4, who are relatives of PW.7, asked the appellant to approach PW.7 on his return from the fields. But, the appellant enraged himself and abused them in the name of their caste and beat PW.1 with a stick and also kicked him with his legs. On the report given by PW.1, a case for the offences under Sections 324 IPC and 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SC & ST Act') was filed against the appellant and the matter was investigated into. After completion of the investigation, charge sheet was filed.

The Additional Judicial Magistrate of First Class, Anantapur has taken cognizance of the case in PRC No.101 of 2007 against the accused for the above offences. Since the offence is exclusively triable by the

Special Court under the SC & ST Act, the case was committed to the Court of Sessions, Sessions Division at Anantapur. The Sessions Judge has numbered the case as SC No.632 of 2007 and made over the same to the trial Court for the trial and disposal in accordance with law. On appearance of the accused, the offences alleged against him were read over and explained to him, for which he pleaded not guilty and claimed to be tried.

To substantiate its case prosecution examined PWs.1 to 10 and marked Exs.P.1 to P.8. No oral or documentary evidence was adduced on behalf of the accused.

On appreciation of oral and documentary evidence and mainly basing on the evidence of PWs.1 to 4 and 5, the trial Court found the appellant-accused guilty for the offences under Sections 3(1)(x) of the SC & ST Act and 324 IPC, and accordingly convicted and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/- (Rupees five hundred only), in default to suffer simple imprisonment for six months for the offence under Section 3(1)(x) of the SC & ST Act and also to undergo simple imprisonment for a period of six months and to pay a fine of Rs.500/- (Rupees five hundred only), in default to suffer simple imprisonment for a period of two months for the offence under Section 324 IPC. Aggrieved by the same, the present appeal is preferred by the appellant-accused.

Learned counsel for the appellant submitted that the trial Court erred in convicting the accused since there are discrepancies in the evidence of the prosecution witnesses and without properly appreciating the evidence of those witness, the trial Court passed the conviction order against the appellant. He further submitted that except PWs.1 to

4 and 7, who are closely related to each other, there is no other independent witness to support the case of the prosecution and hence, he prays to set aside the judgment under challenge.

Learned Additional Public Prosecutor submitted that the judgment impugned, need not be interfered with since it was passed on proper appreciation of the evidence of the witnesses.

Heard and perused the entire material available on record.

As far as the offence under Section 3(1)(x) of the SC & ST Act, the evidence of PW.1 is as follows:

“...Accused then stated to me “Neevu Evadivaraa Madiga Lanjakodaka.”

The evidence of PW.2 is as follows:

“....Accused then abused PW.1 by saying “Madiga Lanja Naa Kodakallara” and “Madiga Lanjallara” by referring to LW.3 Muthyalakka. Accused then picked up a stick and caused injury on the left leg of PW.1. Accused also kicked PW.1 with legs. Then I came out of the house by crying. Nagamma, Obulesu, Katamaiah and other colony people came and rescued PW.1. After LW.10 Nithyananda returned we informed to him the incident.”

Though PW.3 stated that “Accused then questioned PW.1 by saying “neevu yevadivi, naaku cheppadaniki, he has not stated anything to attract the offence punishable under Section 3(1)(x) of the SC and ST Act.

PW.4, who is the wife of PW.7, stated as follows:

“PW.1 came out of the house and requested accused to come later on. Accused then abused PW.1 “Lanja Naa konda.”

PWs.1 to 4 and 5 are closely related to each other. There is no other independent witness to prove that the appellant abused PW.1 and others in the name of their caste. Therefore, the evidence of PWs.1 to 4

with regard to the offence under Section 3(1) (x) of the SC & ST Act is not believable.

With regard to the offence under Section 324 IPC, according to PW.1, the appellant assaulted him with a stick on his left leg, due to which he sustained bleeding injury and that he has taken treatment as inpatient for three days in the hospital. PW.8 - Doctor, who examined PW.1, deposed as follows:

“... On 27.2.2007 at 3.20 p.m. I examined P.W.1 brought by P.C.1084 of Itikalapalli P.S. On examination I found the following injuries:-

I did not find any external injuries. P.W.1 however, complained blunt injury over the chest.”

Even in his cross-examination, he stated as follows:

“At 3.20 p.m., P.W.1 was brought to hospital. I did not find any external injuries on P.W.1. P.W.1 was not admitted as inpatient. As there is no injury I did not mention the age of injury and description of injury.”

The evidence of PW.1 that the appellant caused injury on his left leg is not supported by the evidence of PW.8.

Therefore, it is evident from the record that there is no independent witness to support the case of the prosecution to prove the offence under Section 3 (1)(x) of the SC & ST Act. Though PW.6 is an independent witness, he turned hostile and did not support the case of the prosecution. Therefore, it is clear that there is no other corroborative evidence except the evidence of PWs.1 to 4 and 5, who are related to each other, to prove the offence under Section 3(1)(x) of the SC & ST Act, against the accused. With regard to the offence under Section 324 IPC, the evidence of PWs.1 and 8 is totally contrary to each other. It is also evident from the evidence of the prosecution witnesses

that PW.4 contested in the Panchayat election against one Kumaraswamy, who was supported by the brother of the appellant and she lost the election. It was also suggested that due to the political rivalry, the present case was foisted against the appellant.

Hence, taking into consideration the discrepancies and the contradictions and also variations in the evidence adduced by the prosecution witnesses, it is highly unsafe to convict the accused for the offences alleged against him and this Court is of the view that the conviction and sentence recorded against the appellant by the trial Court are liable to be set aside.

Accordingly, the Criminal Appeal is allowed setting aside the conviction and sentence recorded by the Special Sessions Judge for S.C./S.T. Cases, Anantapur, vide judgment, dated 05.06.2008, in S.C. No.632 of 2007. The accused is found not guilty of the offences under Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and 324 IPC and he is acquitted for the said charge. The fine amount, paid if any, shall be refunded to the petitioner. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous applications, pending if any, shall stand closed.

RAJA ELANGO, J

August 26, 2016.
KTL