

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.358 of 2008

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JUDGMENT:

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1. This Criminal Appeal is filed by the appellant-accused against the Judgment dated 3.3.2008 passed in SC ST S.C.No.71 of 2007 by the Special Judge for SC & ST (POA) Act, Kurnool.

2. The case of the prosecution is as follows:

The appellant-accused does not belong to the Scheduled Caste or the Scheduled Tribe. P.W.1 belongs to Scheduled Caste. On 24.4.2006 at about 8 p.m. P.W.1 went to attend calls of nature in barren land of Ediga Yellappa. At that time, the accused followed her and caught hold of her hand and pulled her towards him with an intention to fulfill his desire. P.W.1 raised cries. On hearing her cries, P.W.3 went there. On seeing P.W.3, the accused left the hand of P.W.1 and tried to run away, but in vain. P.W.2, who is the husband of P.W.1, was away from the village at that time and he returned to village on 26.4.2006. On 26.4.2006 P.W.1 went to the police station along with P.Ws.2 and 3 and reported the matter to the police, on the basis of which, a case was registered against the appellant-accused for the offence under Section 354 IPC and Section 3 (1)(xi) of SCs & STs (POA) Act. After completion of the investigation, charge sheet was filed.

3. The learned Judicial Magistrate of First Class, Atmakur took the case on file and committed the same to the Court of the learned Special Judge for SCs & STs (POA) Act, Kurnool.

4. The learned Special Judge framed charges against the appellant-accused under Section 3 (1)(xi) of the SCs & STs (POA) Act

alternatively Section 354 IPC, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws.1 to 9 were examined and Exs.P1 to P5 were marked on behalf of the prosecution. The appellant-accused got marked Ex.D1 on his behalf.

6. On appreciation of both oral and documentary evidence, the learned Special Judge found the appellant-accused guilty for the offence under Section 3(1)(xi) of the SCs & STs (POA) Act and convicted and sentenced him to undergo simple imprisonment for a period of three years and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for a period of three months. Aggrieved by the same, the appellant-accused filed this appeal.

7. Heard and perused the material available on record.

8. Learned Counsel for the appellant submitted that the evidence of P.W.1 that she went to attend calls of nature to a distance of one furlong from the village at 8 p.m., is not trustworthy and that the presence of P.W.3 at that time is also unbelievable and that the identity of the appellant-accused in the absence of any lights at the place of the alleged occurrence is not established and that the present case was foisted against the accused with a malafide intention to get the compensation from the Government for SC & ST victims and that there is no corroborative evidence on record and that the trial Court has failed to appreciate the evidence in a proper perspective.

9. Learned Additional Public Prosecutor submitted that the prosecution has proved the guilt of the appellant beyond all reasonable doubt by adducing oral evidence and that the judgment of the trial Court does not warrant any interference by this Court.

10. Now the point that arises for consideration in this appeal is:

“Whether the judgment of the trial Court warrants any interference?”

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11. **POINT:**

It is the case of the prosecution that when P.W.1 went to attend calls of nature, the accused caught hold of her hand with an intention to fulfill his lust. The entire case of the prosecution rests on the evidence of P.W.1, who is a victim. Now, it is to be examined as to whether the evidence of P.W.1 inspires confidence of this Court.

12. P.W.1, who is the victim, deposed in her evidence that on the date of incident at about 8 p.m., when she went to the fields to attend calls of nature, the accused came there and caught hold of her hand and at that time, P.W.3 came there and on seeing him, the accused left her hand. Then, P.W.3 took the accused and P.W.1 to the village elders, who advised the accused to render apology by holding the legs of P.W.1. The accused touched her legs and requested her to excuse him. From there, she went to her house. Her husband came to the house on the next day and then, her husband took her to the police station and got prepared a report and submitted the same to the police. Further, it is her evidence that after the occurrence, the accused was caught hold by P.W.3 and he was taken to the elders-P.Ws.5 and 6, who admonished the accused and instructed the accused to render apology to P.W.1 by holding her legs, whereas in the complaint-Ex.P1 report, it is stated by her that the accused caught hold of her hand and when she raised cries, P.W.3 came there and on seeing P.W.3, the accused tried to run away from the place of occurrence. P.W.3 caught hold of him. Thereafter, the accused pushed P.W.3 and ran away. She identified the accused in the lighting of street lights. After arrival of her husband, they lodged the complaint. The evidence of P.W.1 is quite contrary to the contents in Ex.P1 report. Therefore, the evidence of P.W.1 does not inspire any confidence.

13. P.W.3, who is the brother-in-law of P.W.1, deposed in his evidence that P.W.1 went to attend the calls of nature at 8 p.m., on the date of incident and 10 minutes thereafter, he also went to the same fields for answering calls of nature. By the time he reached the fields, he heard the cries of P.W.1 and found the accused catching hold of her hands. Then, he caught hold of the accused and took him to the elders, where the accused rendered apology for the said occurrence by touching the feet of P.W.1. He was not satisfied with the said panchayat and he told before the elders that he would file the case against the accused. The evidence of P.W.3 is also contrary to the contents in Ex.P1 report.

14. P.Ws.5 and 6, who are panchayat elders and who are said to have conducted panchayat, stated in their evidence that P.Ws.1, 3 and 4 along with the accused approached them and P.W.3 stated that the accused misbehaved with P.W.1 and requested them to conduct a panchayat and they compromised the matter and sent them away.

15. The evidence of P.Ws.1 and 3 is quite contrary to Ex.P1 report. Further, in her cross-examination, P.W.1 categorically stated that she does not know the contents written in Ex.P1 report and even though she had forgiven the accused when he rendered apology before the elders, but her husband decided to give the report to the police. So, she went along with him to the police station for giving report. From the above evidence of P.W.1 in her cross-examination, it is clear that she is not interested in prosecuting the matter further.

16. Further, insofar as the offence under Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act is concerned, in order to attract the provisions under the SC/ST (Prevention of Atrocities) Act, there should be an element of racial prejudice or at least the act should have been committed by the accused with the full knowledge that it was being

committed on a member belonged to Scheduled Caste or Scheduled Tribe community. Except saying that P.W.1 belonged to Scheduled Caste or Scheduled Tribe community, no allegation was made or none has spoken to establish that the act was committed because P.W.1 belonged to a lower community. Therefore, the offence under Section 3(1)(xi) of the Act would not attract to the present facts of the case.

17. In the above circumstances and in view of the contradictory statements of P.Ws.1 and 3, placing reliance on their evidence, it is highly unsafe to convict the appellant-accused either for the offence under Section 354 IPC or for the offence under Section 3(1)(xi) of the SCs & STs (POA) Act, which is punishable with minimum imprisonment. Therefore, this Court is of the view that the trial Court has erred in convicting the appellant-accused. Accordingly, the point is answered.

18. In the result, the conviction and sentence imposed by the trial Court against the appellant-accused for the offence under Section 3 (1) (xi) of the SCs & STs (POA) Act in SC ST SC No.71 of 2007 vide judgment dated 3.3.2008 are set aside. Consequently, the appellant-accused is acquitted for the said offence. The fine amount paid, if any, shall be refunded to the appellant-accused. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:29th July, 2016

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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