

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.248 OF 2006

JUDGMENT:

This Criminal Appeal is preferred by the appellant/accused by invoking the provision under Section 374(2) of the Code of Criminal Procedure, 1973 being aggrieved by the judgment, dated 13.12.2005, rendered in SC/ST S.C.No.30 of 2005 by the Special Judge for Trial of Offences Under SC/ST (POA) Act, Medak at Sangareddy, whereunder and whereby, the learned Special Judge found the accused guilty of the offences punishable under Sections 323 and 509 I.P.C. and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and convicted and sentenced him to undergo simple imprisonment for six (6) months and to pay a fine of Rs.500/- in default, to suffer simple imprisonment for one and a half month for the offence punishable under Section 323 I.P.C.; to undergo simple imprisonment for six months and to pay a fine of Rs.500/- in default, to undergo simple imprisonment for one and a half month for the offence punishable under Section 509 I.P.C. and further, to undergo rigorous imprisonment for five years and also to pay a fine of Rs.5,000/- in default, to suffer simple imprisonment for one year 3 months for the offence punishable under Section 3(1)(x) of the SC/ST (POA) Act, 1989.

2. Case of the prosecution, in brief, is as follows:

The Sub-Divisional Police Officer, Siddipet Sub-Division has filed charge sheet against the accused in Crime No.47 of 2004 for the offences punishable under Sections 323 and 509 I.P.C. and Section 3(1)(x) of the SC/ST (POA) Act, 1989 alleging that on 18.7.2004, at 12:00 noon, the *de facto* complainant Vattepally Iylaiah lodged a complaint stating that on 17.7.2004, around 1800 hours, while he was

going to his house after closing his Fair Price Shop existing in GramPanchayat Office, on the way in Chavidi Village, the accused came to him and asked him to get the drain existing in front of his house to be cleaned for which, the *de facto* complainant apprised him to take the matter to the notice of the Sarpanch, but the accused without listening to him, abused him in filthy language by taking his caste name and also beat him on his back with a chappal. When his daughter intervened, the accused abused her also and beat her. Meanwhile, other villagers came and intervened and subsided the matter. Thus, the accused has committed the above said offences and is liable for punishment.

3. On appearance of the accused, copies of documents were furnished to him and after complying with the provisions of Section 209 Cr.P.C., the learned Judicial Magistrate of First Class, Siddipet has committed the case to the Court of Sessions in P.R.C.No.8 of 2005.

4. The accused was examined under Section 228 (1) Cr.P.C. for which, he denied the offences. Charges under Sections 323 and 509 I.P.C. and Section 3(1)(x) of the SCs/STs (POA) Act, 1989 were framed, read over and explained to him in Telugu for which, he denied the same, pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws.1 to 11 were examined and Exs.P-1 to P-11 were marked on behalf of the prosecution. On behalf of the accused, D.W.1 was examined and no documents were got marked.

6. On appreciation of the oral and documentary evidence, the trial Court found the accused guilty of the offences punishable under Sections 323 and 509 I.P.C. and Section 3(1)(x) of the SC/ST (POA) Act, 1989, and accordingly, convicted and sentenced him as stated above. Aggrieved by the conviction order, the present appeal is

preferred by the appellant/accused.

7. Learned counsel for the appellant/accused submitted that the trial Court has failed to notice that the ingredients to constitute an offence under Section 3(1)(x) of the SC/ST (POA) Act are not made out; that the trial Court erred in placing reliance on the highly interested and discrepant testimony of P.Ws.1 to 3 and 5 to 7; that as per the evidence of prosecution witnesses, there is no intentional insult or intimidation with an intention to humiliate P.Ws.1 and 2 as a member of schedule caste; that the evidence of P.Ws.1 to 3 and 5 to 7 cannot be relied on to convict the appellant as they are partisan witnesses; that there are two groups in the village and due to group rivalry, the appellant has been falsely implicated in this case; that there was no motive for the appellant to abuse P.Ws.1 and 2 in filthy language in the name of their caste and also to beat them; that the medical evidence do not corroborate with the oral evidence of P.Ws.1 to 3 and 5 to 7; that the petitioner and the *de facto* complainant were having previous enmity and in fact, the appellant was assaulted by the *de facto* complainant for which, he has also lodged a complaint; that the *de facto* complainant is in the habit of filing number of cases against the villagers and hence, the conviction and sentence recorded by the trial Court cannot be sustained.

8. Learned Public Prosecutor, on the other hand, submitted that the conviction and sentence recorded by the trial Court are in accordance with law and there is no need to interfere with the same.

9. The evidence of P.Ws.1 to 3 and 5 to 7 clearly goes to show that the accused abused P.W.1 in filthy language in his caste name. The evidence of P.W.1 goes to show that at about one year prior to his deposition, after closing his shop at 6:00 P.M., he was proceeding to his house and after passing 50 yards from his shop, the accused showed him the mori i.e., the drainage canal passing from adjacent to

his house and asked him to clean the drainage for which, he stated that it is not his business and better to ask the Sarpanch of their village. Then, the accused replied that the Sarpanch and himself are one and the same and thereafter, the accused abused P.W.1 in filthy language by taking his caste name as “MADIGA LANJA KODUKA, NEE MADIGI PENDLANNI DENGGA” and further, he beat him with a chappal on his right shoulder and also pushed him due to which, he sustained a bleeding injury to his left knee. Then, his daughter Swaroopa came there and asked the accused as to why he was beating his father for which, the accused also abused her as “MADIGA LANJA, NEE MADIGA NU DENGGA” and also beat her with hands and pushed her due to which, she fell down and received a head injury and was attacked with severe head ache for nearly three days. So, the evidence of P.W.1 goes to show that the accused abused him in filthy language by taking his caste name.

10. The evidence of P.W.2 i.e., the daughter of P.W.1 also goes to show that the accused abused her father i.e., P.W.1 in filthy language and beat him with a chappal and when she intervened, he abused her also in filthy language as “MADIGA LANJA, NEEVU ENDUKU VACCHINAVE” and also beat her on her head and on her right shoulder with a chappal.

Further, P.W.3, who is the eye witness to the incident, has stated that the accused abused P.W.1 in filthy language as “MADIGA LANJA KODUKA” and beat him with a chappal on his right shoulder and pushed him down and when P.W.2 intervened, the accused also abused her in filthy language like “MADIGA LANJA EVARIKI CHEPPUTAVO CHEPPUKO” and also beat her with the same chappal.

P.W.5 also stated that the accused abused P.W.1 by saying “MADIGA LANJA KODUKA, NEE PENDLANI DENGGA”.

P.W.6 also stated that the accused abused P.W.1 by saying “MADIGA LANJA KODUKA, NEE PENDLANNI DENGGA” and also beat him with a chappal. He further stated that the accused also abused P.W.2 in filthy language by saying “MADIGA LANJA”.

P.W.7 also stated that the accused beat P.W.1 with a chappal on his back and head and also abused him by saying “NEE PENDLANNI DENGGA, MADIGI PENDLANNI DENGGA.”

P.W.8 is the Mandal Revenue Officer, who issued caste certificates of P.Ws.1 and 2 under Exs.P-2 and P-4. P.W.9 is the Sub-Inspector of Police, who registered a case against the accused. P.W.10 is the Doctor, who examined P.Ws.1 and 2 and issued Medical Certificates – Exs.P-7 and P-9 in respect of P.Ws.1 and 2 stating that they received simple injuries. P.W.11 is the investigating officer.

11. Learned counsel for the appellant could not substantiate the said facts by pointing out the evidence adduced before the trial Court. The suggestions made by the appellant before the trial Court are also denied by the witnesses concerned. The suggestions denied by the witnesses are not having any evidentiary value. Further, from the reading of the evidence more particularly, the aggrieved persons – P.Ws.1 and 2, it is clear that it is supported by P.Ws.3, 5, 6 and 7. Even though P.W.7 claims to be a witness subsequent to the occurrence, the evidence of the aggrieved persons - P.Ws.1 and 2 and the eye witnesses – P.Ws.3, 5 and 6 is not discredited by way of cross examination by the appellant. The learned trial Judge, taking into consideration the manner in which the occurrence took place and also the injuries sustained by the victim in the hands of the appellant, rightly convicted the accused for the offence punishable under Section 323 I.P.C. and from the abusive words mentioned supra, came to the conclusion that an offence under Section 509 I.P.C. is also made out.

As far as the offence punishable under Section 3(1)(x) of the SC/ST (PAO) Act is concerned, it is evident from the record that the *de facto* complaint was abused by the appellant in the name of caste that too, in the presence of the public. The learned trial Judge properly appreciated the evidence and convicted the accused. Hence, this Court is of the view that there are no valid reasons to interfere with the judgment of the trial Court in convicting the appellant/accused for the said offences. At the same time, learned counsel for the appellant submits that the appellant is suffering from several ailments and if he is detained in the prison for a long time, his family would be disturbed and put to a great loss as he has to take care of his entire family.

12. Considering the submission of the learned counsel for the appellant, this Court is of the view that a lenient view can be taken in imposing the sentence. Hence, this Court is inclined to reduce the sentence of imprisonment for the offence punishable under Section 3(1)(x) of the SC/ST (POA) Act imposed by the trial Court against the accused from rigorous imprisonment for a period of five years to simple imprisonment for a period of six months.

13. In the result, the conviction recorded against the appellant/accused in SC/ST S.C.No.30 of 2005 by the learned Special Judge for Trial of Offences under SC/ST (POA) Act, Medak at Sangareddy vide judgment, dated 13.12.2005, for the offences punishable under Sections 323 and 509 I.P.C. and Section 3(1)(x) of the SC/ST (POA) Act, 1989 is confirmed. However, the sentence of imprisonment imposed by the trial Court for the offence punishable under Section 3(1)(x) of the SC/ST (POA) Act is modified and reduced from rigorous imprisonment for a period of five years to simple imprisonment for a period of six months. The sentence of imprisonment imposed by the trial Court for the offences punishable under Sections 323 and 509 I.P.C. and the sentence of fine is not interfered with. All the sentences of imprisonment shall run

concurrently. The period of imprisonment already suffered by the appellant/accused is directed to be given set off under Section 428 Cr.P.C.

14. The Criminal Appeal is, accordingly, partly allowed. Miscellaneous petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE RAJA ELANGO

18.7.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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