

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No. 716 of 2006

JUDGMENT:

This appeal is filed by appellants/accused aggrieved by the judgment dated 24.05.2006 in SC ST SC No.54 of 2005 passed by the Special Judge for SC & ST (POA) Act, Kurnool, whereby the learned Judge convicted the accused for the offence punishable under Section 3(1)(x) of Schedule Castes & Schedule Tribes (POA) Act, 1989 and sentenced to under go RI for six months and to pay a fine of Rs. 500/- each and also convicted for the offences punishable under Sections 447, 323, 506 r/w 34 IPC and sentenced them to undergo RI for three months.

2) The prosecution case is thus:

On 3.10.2003 morning hours when the accused 1 to 3 passing through the agricultural land of PWs 1 to 3, PW-1 objected and stopped their tractor and double bullock cart; in the evening hours of the same day at about 5.00 p.m, when the said accused again trespassed their land with tractor and double bullock cart, she objected them; A1 abused her in the name of her caste and threatened her to cut throat and throw her underneath the tractor and pushed her on the ground. On seeing the incident, her husband (PW-2) came there and questioned about their manhandling. Then, all the accused dragged him and beat him with hands, legs and chappals indiscriminately. On the complaint of PW-1, the Sub-Inspector of Police, Chagalamarri Police Station registered a case in Crime No. 87 of 2003 under Sections 447, 323, & 506 IPC and Section 3(1)(x) of

SC & ST (POA) Act and the Sub-Divisional Police Officer, Allagadda has investigated the case.

3. During the course of trial, PWs 1 to 8 were examined and Exs P-1 to P-10 were marked on behalf of prosecution and no oral and documentary evidence was adduced on behalf of accused.

4. The trial Court on consideration of evidence on record held that the prosecution could establish the guilt of the accused beyond reasonable doubt and accordingly convicted the accused for the offence punishable under Section 3(1)(x) of Schedule Castes & Schedule Tribes (POA) Act, 1989 and sentenced them to under go RI for six months and to pay a fine of Rs. 500/- each and also convicted the accused for the offences punishable under Sections 447, 323, 506 r/w 34 IPC and sentenced them to undergo RI for three months and directed that all the sentences shall run concurrently.

5. Heard arguments of Sri N. Aswartha Narayana, learned counsel appearing for appellants/accused and learned Assistant Public Prosecutor for respondent/complainant.

6. Assailing the impugned judgment of the trial Court, learned counsel for appellants would firstly argue that the trial Court convicted the accused on surmises without there being any cogent and plausible evidence. In expatiation, he would argue that though the trial Court convicted the accused for the offence under Section 3 (1)(x) of SC & ST (POA) Act and Sections 447,506 & 323 IPC, the evidence on record, however does not

establish any of these offences. He would submit that except the interested evidence of PWs. 1 to 3, no independent evidence was placed by the prosecution. PWs 4 & 5, who are said to be independent witnesses, did not support the prosecution case in respect of the charged offences. They only stated that some galata took place between the accused and PWs 1 to 3 and except that they have not stated any thing touching the commission of aforesaid offences. In that view, he argued, the trial Court ought not to have placed implicit reliance on the interested evidence of PWs 1 to 3 who are the complainant, her husband and son, in the back drop of the dispute between the accused and the complainant in respect of the cart track that is passing through their lands.

a) Secondly he argued that there is discrepancy regarding the date of commission of offence. PW-1 in Ex.P-1 stated that the offence took place on 3.10.2003, whereas in the evidence she did not mention specific date of offence. While so, PW-2, deposed in his evidence that the offence took place on 2.10.2003. PW-3 deposed as if the offence took place on 3.10.2003. PW-4 and PW-5 did not specifically mention about the date of offence. This discrepancy leads to a reasonable doubt as to the occurrence of the incident itself.

b. Thirdly, arguing on the delay in lodging the report, he would submit that irrespective of occurrence of the incident on 2.10.2003 or 3.10.2003, there is considerable delay in lodging FIR as PW-6, stated that PW-1 went to the police station on 4.10.2003 at 7.00 a.m and presented written

complaint. It would show, the complainant and her family members created a false case about the incident.

c. Fourthly, with regard to injuries suffered by PWs 1 & 2, he argued that PW-7, who examined them, stated that the injuries found on their person could be caused by fall on a rough surface. Therefore, the injuries have to be held as self-inflicted for the purpose of this case. He thus prayed to allow the appeal and set aside the judgment of the lower court.

7. Opposing the appeal, learned Assistant Public Prosecutor argued that though PWs 1 to 3 are the relations, still they are the victims and therefore, their evidence can be accepted. She argued that PWs 1 and 2 have received injuries in the hands of the accused and the doctor issued Exs P-5 and P-6 wound certificates to them and therefore, the evidence of PW-7 would corroborate the evidence of PWs 1 & 2 regarding their receiving injuries in the hands of accused. PW-3 who is their son and working in that field at the relevant time of the incident happened to witness the incident and therefore, he was a natural witness and hence, his evidence also can be accepted. It is argued that the evidence of PWs 1 to 3 would manifest that the accused have first abused PW-1 when she obstructed them from going through their cart tract exclusively belonging to the complainant, they pushed her and when PW-2 intervened, the accused have beaten him and also abused him touching his caste, besides A1 threatened PW-1 with dire consequences and therefore, all the offences levelled against the accused were established by cogent evidence.

8. Learned Assistant Public Prosecutor would further argue that though PWs 4 & 5 turned hostile still they deposed about the occurrence of galata on the specific date and time at the cart track of the complainant. Therefore, their evidence to that extent can be taken as corroboration for the evidence of PWs 1 to 3 only with regard to the particulars of the abuses made by accused were not spoken to by PWs 4 & 5 because of the long distance at which they were present at the relevant time of the incident and on that count the entire evidence of PWs 4 & 5 need not be discarded.

a) Regarding discrepancy about the date of occurrence of incident, she argued that the incident indeed occurred on 3.10.2003 which was reported to police on 4.10.2003. As on the evening of the incident they were held up in the hospital, the matter was reported to police on the early morning of 4.10.2003. PWs 1 & 2 are the rustic villagers and illiterates, and therefore, the discrepancy, if any regarding date of occurrence of incident need not be viewed with magnifying glasses.

9. In the light of the above arguments, the points for determination are:

- (i) Whether the prosecution could able to establish the guilt of the accused, for the offences under Sections 447, 323 and 506 IPC and Section 3(1)(x) of SC & ST (POA) Act, 1989 beyond reasonable doubt; and
- (ii) Whether the conviction and sentence recorded by the trial Court is factually and legally sustainable?

POINT:

10. As per Ex. P1 complaint lodged by PW-1, the incident took place on 3.10.2003 at about 5 p.m at their land in S.No. 402 when she was attending agricultural work in her land. A2 was on the western side of the land of complainant and towards further west, the land of one Baludu, who is the brother of PW-1, is situated. About one year prior to the incident, the accused have taken on lease the land of said Baludu. On the morning of incident, when PW-3 was attending agricultural work in their land, the accused were proceeding on bullock cart through the cart track which was passing between the lands of complainant and the accused. On that, PW-3 objected them from passing through cart track, as it belonged to them and accused have no right to pass. Again in the evening when PW-1 was working in her field, seeing the accused passing through the cart tract, she objected. On that, the accused abused her in filthy language “Madiga Lanja nee chenu kontamu ninnu tractor kinda vesthamu”. On seeing the same, when PW-2 went to rescue PW-1, all the three accused pushed PW-2 and abused him as ‘madiga na kodaka nee chenu cheppu kontamu’ and beat him with hands and legs. This is the gist of the complaint.

11. The prosecution in order to establish its case, relied upon the evidence of PWs 1 to 5. PW-1 is the complainant, PW-2 is the husband of PW-1, PW-3 is the son of PWs 1 & 2 and PWs 4 & 5 are the independent witnesses.

12. PW-1 deposed in tune with her complaint allegations. She also stated that PWs 4 & 5 witnessed the incident. As already stated, in her evidence she did not give the specific date of incident but she deposed that the incident took place about three years prior to the incident. In the cross-examination, she stated that herself and her husband were hospitalised for about three days and bandage was applied to their injuries and her son was not beaten by the accused. Her evidence regarding the dispute is that since the accused have no right to proceed through their field that is the cart track, she objected for their going along with their bullock cart and tractor and thereby, the incident occurred thereby galata took place. She stated that she herself and her husband are illiterates. She admitted that PW-4 is her son-in-law and PW-5 is the dayadi of her husband. Regarding the topography of the scene of occurrence, she deposed that their land is situated in between the land of A1 & A2. The land of Baludu is being cultivated by the accused on lease basis and the said lease hold land is on the northern side of the land of A2. Regarding the incident she stated on that day she went to the field at about 5.00 p.m carrying lunch to her husband and son and she denied the suggestion of filing of a false case against the accused on the ground that Baludu refused to give his land to them for cultivation on lease basis. This is the evidence of PW-1.

13. When evidence of PW-1 is scrutinised carefully, it reveals about the occurrence of some incident regarding the cart track that was passing between their land and the land of A2. In this context, it is pertinent to verify Ex. P-8 sketch filed by I.O. As per Ex. P-8, the disputed cart track is

passing in between the land of complainant and A2. While so, the land of Baludu is shown to the west of the land of complainant as well as A2. It is the case of the prosecution that the accused have taken the land of Baludu on lease basis and while passing through the disputed cart tract along with their tractor and bullock cart and in that context a galata had occurred.

14. It is pertinent to note that the disputed cart track is not shown in the exclusive land of PWs-1 to 3 but it is shown as lying between the land of complainant as well as A2. Further, neither PWs 1 to 3 nor the I.O produced any documents showing that the cart track exclusively belong to the complainant. The accused are disputing the ownership of PWs 1 to 3 over the cart track and it would appear they insisted for going through the cart track claiming right therein. In that back drop, the conclusion of the trial Court that the accused have committed the offence under Section 447 IPC is unsustainable. Section 441 IPC defines the criminal tress pass, which reads thus:

441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

a) Section 447 IPC is the punishment Section. When it is not established that the disputed cart track is either owned or in exclusive possession of the complainant, it is difficult to conclude that the accused

have committed tress-pass into the land particularly when they themselves make a counter claim in respect of the property. Therefore, the charge under Section 447 IPC, in my considered view, is unsustainable.

15. Section 506 IPC is concerned, it is the case of PW-1 that when she obstructed the accused from proceeding on the cart track, all the accused abused her in the name of her caste by saying “Madiga Lanja ma bandiki addamu raavaddu thokkinchukuni pothamu”. PW-2 also deposed in similar manner and also deposed about accused abusing him and beating him when he went to rescue PW-1.

16. Coming to PW-3, he stated that when PW-1 obstructed accused going to their land, the accused abused in the name of their caste by saying “Madiga lanja and pushed her” and also abused his father in the name of caste saying “Madiga na kodaka” and after abusing him in such a way all the accused beat him with sticks.

17. When the evidence of PWs 1 to 3 is analyzed, admittedly, PWs 1 to 3 are the interested witnesses and they are relations. Further, there is a dispute between them and accused in respect of the cart track. In that view, their evidence alone cannot be taken into consideration for deciding the guilt of the accused. Hence, invariably the Court has to verify the evidence of PWs 4 & 5, who are also shown as eye witnesses by the prosecution.

18. PW-4 is the son in law of PW-1 and 2 and PW-5 is the dayadi of PW-2. PW-4 deposed that in the year 2003, when he went to the field of

Gaddam Bala Nagaiah (PW-5) to attend cooli work at about 5 p.m he noticed the quarrel going on in between A1 and PWs 1 & 2 in the land of PW-1. Since he was away he could not hear the abusive words used by the accused on PWs 1 & 2. He further stated that there was a quarrel in between them regarding rasta. After the quarrel, he went away to his house. He admitted that the statement was recorded by the Deputy Superintendent of Police (DSP). He did not state before DSP that the accused abused PWs 1 & 2 in the name of their caste. Since this witness did not speak about the accused abusing PWs 1 & 2 touching their caste, he was declared hostile by the Additional Public Prosecutor and cross examined. The witness denied to have stated as contained in Ex. P-2- his earlier 161 Cr.P.C statement.

19. Then coming to PW-5, he deposed that he is having lands on the western side of the land of PW-2 and he knows PWs 1 to 3 and also the accused. He stated that the incident took place about three years prior to his evidence at about 5 p.m in the field of PW-2. At that time, while he was attending the work in his field along with PW-4, he noticed that the accused and PWs 1, 2 & 3 quarrelling and on that he went there and saw PW-1 stating the accused that they should not go along their field and when she stated so, the accused in turn stated that they would go in that way only. While they were quarrelling each other he went away to his house. Since he did not depose in favour of prosecution regarding the accused abusing PWs 1 & 2, the Additional Public Prosecutor declared him hostile

and cross examined. This witness denied to have stated as contained in Ex.P-3.

20. Now, a perusal of evidence of PWs 4 & 5 would show that they have not supported the prosecution with regard to the accused abusing PWs 1 & 2 and causing injuries to them and hence, they were declared hostile. The law on appreciation of evidence of hostile witnesses is no more *res integra* vide **Paulmeli and another vs. State of Tamil Nadu tr. Insp. of Police**¹

21. As per the above precedential jurisprudence, the Court need not discard the entire evidence of the witnesses who turned hostile, but it can accept that part of the evidence, which is reliable.

22. In the instant case, both PWs 4 & 5 are related to PWs 1 to 3. PW-4 is the son in law of PW-1 and PW-5 is the dayadi of PW-2. Admittedly, at the relevant time of incident, PWs 4 & 5 were attending agricultural work in the field of PW-5, which is nearer to the scene of offence. Therefore, their evidence assumes importance despite they were declared hostile by the prosecution. Their evidence would support the evidence of PWs 1 to 3 only to the extent that there was a tussle between PWs 1 to 3 and accused. PW-5 clearly deposed that when PW-1 obstructed the accused not to go in the disputed cart way, the accused claimed that they would go in that way as they have some right. It is already stated supra, the prosecution has not produced any iota of evidence showing that the disputed cart track

¹ MANU SC 0505 2014

exclusively belongs to the family of PWs 1 to 3. So from the evidence of PWs 1 to 5, it is clear that at the relevant time, a dispute did take place in between PWs 1 to 3 and A1 and A2 regarding the cart track. The prosecution could establish its case to this extent.

23. So far as the abuses offered by the accused touching the caste of PWs 1 and 2 is concerned, PWs 4 & 5 though happened to be the close relations to PWs 1 to 3, they did not support their version. In the light of the existing disputes regarding cart track, the evidence of PWs 1 to 3 regarding the accused offering abuses on them cannot be taken into consideration. It would appear that they have over emphasised and introduced the abuses allegedly made by the accused only to implicate the accused for the offence under Section 3(1)(x) of SC & ST (POA) Act and under Section 506 IPC. So their evidence to that extent cannot be accepted. Unfortunately, the trial Court has not considered this aspect in proper perspective. Therefore, the charges under Section 3(1)(x) of SC & ST (POA) Act and Section 506 IPC are not sustainable.

24. Now coming to the offence under Section 323 IPC, the evidence of PWs 1 to 3 to a large extent was corroborated by PW-7 who found injuries on the person of PWs 1 & 2 and issued Exs. P-5 and P-6 wound certificates. So the ocular evidence of PWs 1 to 3 is corroborated by the medical evidence. It is true PW-7 stated that injuries could also be possible when they fall on the rough surface. However, mere possibility of the occurrence of injuries also by falling on a rough surface will not

weaken the prosecution case. Therefore, the injuries suffered by PWs 1 & 2 in the hands of A1 to A3 can be believed. It is true that there is a discrepancy as to whether PW-2 was beaten by sticks or with hands or with chappals alone. It should be kept in mind that the incident was occurred in the year 2003 and the evidence was taken in the year 2006. In view of the time lag, such a discrepancy cannot be ruled out. The basic fabric of their evidence regarding accused beating them is not shattered.

25. Argument about discrepancy in the date of offence is concerned, it is true that in the evidence of PW-2, he stated as if the incident was occurred on 2.10.2003. Ex. P1 would show that the incident was occurred on 3.10.2003 and report was given on 4.10.2003. Further in Exs P-5 & P-6 wound certificates, PW-7 mentioned as if he examined PWs 1 & 2 on the evening of 2.10.2003 and the injuries he found on their bodies were simple in nature and might be caused three to four hours prior to the examination.

26. As per Ex.P1 report, the incident was occurred on 3.10.2003 and whereas as per the evidence of PWs 2 & 7, Exs 5 & 6, the incident was occurred on 2.10.2003. As rightly observed by the trial Court, it would appear the compliant had reported to police promptly on 2.10.2003 itself and they were referred for medical examination on 2.10.2003. However, while lodging FIR, to cover the delay, it appears, the police instructed the complainant to mention the date of occurrence as 3.10.2003 forgetting that the doctor already examined them on 2.10.2003 itself. However, the discrepancy regarding the date of occurrence will not shatter the

prosecution case as the occurrence of incident has ring of truth around it. All the witnesses have categorically stated about the occurrence of incident. Of course, with regard to the abuses and threat said to be offered by the accused, PWs 4 & 5 have not supported the prosecution and concerned offences are accordingly omitted. So, at the outset, on a conspectus of facts and evidence, this Court is of the considered view that the prosecution could able to establish the guilt of A1 to A3 only for the offence under Section 323 IPC but failed in respect of the rest of the offences.

27. Therefore, this Criminal Appeal is partly allowed and the conviction and sentence recorded by the trial Court in SC ST SC No. 54 of 2005 against the accused for the offences under Section 3(1) (x) of SC and ST (POA) Act, 1989 and Sections 447 and 506 IPC are set aside and accordingly they are acquitted. However, the conviction and sentence recorded by the trial Court for the offence under Section 323 IPC is upheld. The remand period if any undergone by the accused shall be given set off under Section 428 Cr.P.C.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 16.07.2018
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