

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL No.378 of 2009

JUDGMENT:

The accused in S.C.No.04 of 2008 preferred this appeal challenging the conviction and sentence imposed against him for the offences punishable under Sections 323 and 506 IPC finding him guilty for the same, while acquitting him for the offences punishable under Sections 341 IPC and 3 (1) (x) of SCs and STs (POA) Act, by the Special Judge for Special of offences under STs and STs(POA) Act, Vijayawada.

The case of the prosecution in brief is that the brother of the accused was the contesting candidate for the office of Vice President in the election of gram panchayat and in support of his brother contesting candidate, the accused approached Peteti Gandhi--Pw.1 and asked him to see that his sister-in-law, who is elected as Gram Panchat member, to support the elder brother of the accused in Vice President elections was to be held on 18.08.2006.

On 19.08.2006 while Peleti Gandhi—PW.1 along with Konda Rambabu-PW.2 was coming on his motor cycle towards Vijayawada side from Kandrika village and on the way at Kandrika centre, the accused approached PW.1 and wrongfully restrained him and asked the reason for not supporting his brother by his sister-in-law and abused him as 'Neeyamma, Madiga Lanja Kodukullara' and slapped on his cheek and also searched for a knife to kill him. Thereafter PW.1 escaped from the scene of

offence and reported the same to police. On the strength of the complaint, the police issued FIR.

During investigation, the police examined as many as 12 witnesses and recorded their statements under Section 161(3) Cr.P.C. The Investigating agency visited the scene of offence, and prepared rough sketch of the scene of offence vide Ex.P.11 and collected caste certificate from PW.10 the MRO, Vijayawada. After completion of investigation, the Police filed charge sheet against the accused before I Metropolitan Magistrate, Vijayawada.

After taking cognizance of the offence, I Metropolitan Magistrate, Vijayawada, after following the necessary procedure under Sections 207 to 209 Cr.P.C. and having found that it is a case exclusively triable by a Court of Sessions, committed the case to Sessions Division and in turn the Sessions Division transmitted the same to Special Judge for trial of offences under SCs and STs (POA) Act.

After securing the presence of the accused, the Special Judge framed charges for the offences under Section 341, 323, 506 IPC and under Section 3 (1) (x) of SCs and STs (POA) Act and the contents were read over and explained to the accused in Telugu, the accused pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution, Pws. 1 to 14 were examined and Exs. P.1 to P.11 were marked. Exs. D.1 and D.2 were on behalf of accused.

After closure of the evidence on prosecution side, the accused was examined under Section 313 Cr.P.C. explaining the

incriminating material that appeared against him in the prosecution witnesses, the accused denied the same and reported no defence.

Upon hearing both the counsel, the Special Court, while acquitting the accused for the offence under Section 341 IPC and under Section 3 (1) (X) of SCs and STs (POA) Act, found him guilty for the offences punishable under Sections 323 and 506 IPC and convicted him to undergo SI for a period of one year and to pay fine of Rs.250/- with default sentence for each of the offences and further directed that the substantive sentences shall run concurrently.

Aggrieved by the Judgment, the present appeal is filed on various grounds, mainly contending that the Special Court did not appreciate the evidence and false case is foisted only on account of election dispute regarding election of Vice President of the Panchayat by the brother of A.1. But, the material on record did not support the prosecution version on material aspects regarding occurrence of offence. The Special Court did not insist independent corroboration to the testimony of PWs. 1 and 2 and thereby committed an error in finding him guilty for the said offences and prayed to set aside the conviction and sentence imposed against the appellant for the offences under Sections 323 and 506 IPC.

During hearing, Sri K. Suresh Reddy, while reiterating the contentions, drawn the attention of this Court to certain admissions in the cross examination of Pws. 1 and 2 regarding the incident to contend that the incident was not occurred as stated by Pws. 1 and 2 and the doctor was not examined to prove the

injuries voluntarily caused on the body of PW.1 and more particularly, when PW.1 testified that he was referred to hospital and sustained scratch injuries on his neck and flank. In the absence of any medical evidence, finding appellant guilty for the offence punishable under Section 323 and 506 IPC is erroneous, and prayed to set aside the conviction recorded by the Special Court and sentence imposed against him.

Learned Public Prosecutor for the State of Andhra Pradesh totally supported the judgment of the Special Court in all aspects.

In view of the rival contentions, the points that arise for consideration are :

- 1) Whether the accused caused hurt voluntarily on the body of PW.1?
- 2) Whether the accused threatened PW.1 with an injury to the person or reputation or the property, thereby intimidated criminally and if so liable for punishment under Section 506 IPC ?

Point No.1: In view of the specific contentions raised by the appellant, this Court being the appellate Court has to re-appraise the entire evidence to come to an independent conclusion, uninfluenced by the findings of the Special Court and, therefore, I would like to re-appraise the entire evidence available on record. PW.1 is the victim, who is the alleged injured in the incident. But, the Special Court found the appellant not guilty for the offences under Sections 341 and 3 (1) (x) of SCs and STs (POA) Act, while finding him guilty for the offences under Sections 323 and 506

IPC. Section 323 IPC deals with punishment for voluntarily causing hurt and the hurt is defined under Section 319 of IPC and it is as follows:

“ whoever causes bodily pain, disease or infirmity to any person is said to cause hurt”.

PW.1 allegedly sustained a slap injury on the cheek, but the same is not substantiated by any evidence. However, PW.1 clearly stated that he was slapped on the left cheek while saying that ‘Champesta, Narikesta’ and the accused also insulted him by abusing in filthy language raising his caste name and searched for a knife in the nearby shop. Causing slap injury on the cheek would amount to hurt within the definition of Section 319 IPC. PW.1 did not speak anything about sustaining of any scratch injury on the neck and flank. But the consistent evidence of PW.1 that the accused slapped him on the left cheek is suffice to conclude that appellant caused hurt voluntarily. Though PW.1 stated that on 20.08.2016 he approached the Assistant Commissioner of Police and Payakapuram Police Station on 20.8.06 and hospital as he was referred to the hospital by the police, he did not obtain any certificate from the hospital to prove that PW.1 sustained any injury i.e., hurt. Mere failure to prove any external injury itself is not a ground to disbelieve the evidence of PW.1 and since his evidence regarding slap injury on the cheek is consistent from the beginning. Therefore, non examination of the doctor, though he was referred to the medical examination by itself, is not fatal, more particularly, when the injured person himself testified that the accused caused hurt voluntarily.

One of the contentions raised by the learned counsel for the appellant is that there were disputes between the accused and the *de facto* complainant regarding election of gram panchayat for the office of Vice President. There is consistent evidence in the complaint regarding the request made to support his brother in the election for the post of Vice President, at best, it is relevant under Section 8 of Evidence Act. But it is not substantive piece of evidence. However, motive is one of the circumstances either to commit an offence or foist a case, since it is a double edged weapon. On this ground also, the evidence of PW.1 cannot be brushed aside and the appellant cannot be acquitted.

PW.2, who was accompanied along with PW.1 at the time of incident and also present at the time of actual occurrence of the incident, narrated about the incident and in the cross examination of PW.2, the counsel for the petitioner could elicit nothing except to falling of PW.2 on ground. Therefore, in the absence of any evidence to impeach the trustworthiness of PW.1, the Court cannot discredit the testimony of accused as the evidence of PW.2 inspires confidence of this Court. As discussed above, I have no reason to discredit the evidence of PWs. 1 and 2 with regard to occurrence.

The other witnesses did not support the prosecution case. However, the independent corroboration is required only when the evidence of injured witnesses is not free from doubts. Hence, I find no reason to disbelieve the evidence of PWs. 1 and 2.

Therefore, I find no error in the judgment passed by the Special Court, since the Special Court did commit no error in finding him guilty for the offences under Sections 323 and 506

IPC, hence finally cannot be disturbed while exercising power under Section 374 of Cr.P.C and hence, the finding of the Special Court is hereby confirmed.

Point No.2: The other allegation made against the appellant is that the appellant threatened PW.1 to kill him while saying that “Narikesta Champesta’ and also searched for a knife in nearby shop. These words are sufficient to cause criminal intimidation, as defined under Section 504 IPC, which runs as follows:

Intentional insult with intent to provoke breach of the peace:

“Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both”.

The evidence of PWs. 1 and 2 is consistent on this aspect and the Special Court believed the evidence by appreciating the testimony of PWs. 1 and 2, who are independent witnesses, accepted the evidence in toto as their credibility was not impeached in the cross examination. Consequently, the conviction and sentence imposed by the Special Court against the accused cannot be disturbed while exercising power under Section 374(2) of Cr.P.C.

With regard to sentence, the sentence prescribed for the offence under Section 323 IPC is one year or with fine which may extend to Rs.1000/-, or with both. Here, the appellant was convicted for the offence punishable under Section 323 IPC and sentenced to undergo imprisonment for one year and to pay a fine of Rs.250/-. But, taking into consideration the facts and

circumstances of the case including the genesis, I deem it appropriate to convert the sentence of imprisonment into fine of Rs.1000/- for each of the offences, to meet the ends of justice.

In the result, this Criminal Appeal is partly allowed while confirming the conviction of the accused, but sentence of imprisonment is converted into a fine of Rs.1000/- for each of the offences and the fine amount, if any paid, shall be given set off as part of the fine.

Miscellaneous petitions, if any, pending in this criminal appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 11th April, 2017

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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