

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL APPEAL No.1015 OF 2016

ORDER:

This Criminal Appeal, under Section 372 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the complainant to set aside the Calendar and Judgment in SC ST S.C. No. 46 of 2012 dated 14-11-2014 passed by the Special Judge For Trial of Cases Under S.Cs. & S.Ts.(POA) Act-Cum- X Additional District & Sessions Judge, East Godavari at Rajahmundry, acquitting the Respondents 1 and 2/ A.1 and A.2, for the offence punishable under Section 3 (1) (x) of S.Cs. & S.Ts. (POA) Act, 1989 (for short 'the Act') and Section 506 read with 34 of Indian Penal Code, 1860 (for short 'I.P.C.').

The case of the prosecution, in brief, is that the appellants have been living in cattle shed by the side of Teki drain at Kudupuru Village and has been grazing cattle. A.1 and A.2, who are respondents 1 and 2 herein, has been harassing him frequently, and failed to pay Tractor Fare and rent for Ac.2.00 of land and also took away the hay. They also damaged the crop allowing the she-buffalo into their field on the ground that they were indebted to a tune of Rs.2,000/-. They used to cut ropes of their buffaloes, the appellants also used to search for them in the neighbouring villages and bring them back. Respondents 1 and 2 abused them raising their caste as 'Madiga Lanja, Madiga Lanjakodaka' and threatened to see their end. That on 04.08.2011 during midnight, respondents 1 and 2 stealthily took away one milch buffalo and one Chivudu buffalo and three year old young buffalo, worth Rs.1,00,000/-. That

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out of suspicion, a report was lodged against the respondents 1 and 2. The trial court after following necessary procedure framed charges for the offences punishable under Section 506 read with 34 I.P.C. and Section 3(i) (x) of the Act.

During trial, P.Ws.1 to 11 were examined and Exs.P.1 to P.10 were marked. After closure of prosecution evidence, respondents 1 and 2 were examined under Section 313 Cr.P.C. and marked the relevant portion of Ex.P.1 report as Ex.D.1.

Upon hearing argument of both the counsel, the trial court disbelieved the charges leveled against the respondents 1 and 2, and found them not guilty for both charges and acquitted them under Section 235(1) Cr.P.C.

Aggrieved by the Calendar and Judgment acquitting the respondents 1 and 2 for the said charges, the present appeal is filed on various grounds mainly contending that Ex.P.7 and evidence of P.W.9 clinchingly proved that the appellant belongs to Scheduled Caste, but the trial court did not assign any specific reason to disbelieve the evidence of P.W.9 and Ex.P.7 and committed an error in holding the appellants are not members of Scheduled Caste. The trial court also erred in coming to the conclusion that the delay of 28 days in giving report is fatal since it is not explained. On the other hand, the evidence of P.Ws.1 to 3, who are the victims, clinchingly establish that they also belongs to Scheduled Caste and the respondents 1 and 2 threatened to kill them which attracts the offence punishable under Section 506 read with 34 I.P.C. and abusing them in filthy language raising their caste name is an offence punishable under Section 3(i)(x) of the Act, but the trial

court on erroneous appreciation of evidence acquitted both the respondents, committed an error and prayed to set aside the same.

During hearing, learned counsel for the appellant would contend that the evidence of P.W.9 coupled with Ex.P.7 is sufficient to establish that the appellant belongs to Scheduled Caste and the reason assigned by the learned Sessions Judge to disbelieve the evidence of P.W.9 and Ex.P.7 is not based on any provision under the Act and thereby such finding is liable to be set aside. Similarly, the evidence of P.Ws.1 and 2 is worthy of credence and in the absence of eliciting anything to discredit their testimony, the learned Sessions Judge ought not to disbelieve their evidence, but committed an error and prayed to set aside the Calendar and Judgment, convicting the respondents 1 and 2 for the said charges.

Whereas Sri T.Singaiiah Goud, learned counsel for respondents 1 and 2, supported the Calendar and Judgment in all respects. The appellant is the 'victim' as defined under Section 2(wa) of Cr.P.C., being the complainant who suffered injury is entitled to file an appeal under the Proviso to Section 372 of Cr.P.C. against the Calendar and Judgment. But the scope of the appeal against the acquittal is limited and unless there are compelling circumstances to interfere with such finding, the court shall not normally interfere.

In **Ramesh and Others v. State of Haryana**¹ the Apex Court discussed about the scope of interference of the appellate court in appeal filed against the Calendar and Judgment acquitting the accused with reference to various provisions of the Cr.P.C.

¹ 2016 (12) SCALE 246

explaining the duty of the appellate court in an appeal against acquittal. At paragraph 21 of the said Judgment, the Apex Court categorically held the scope of interference in an appeal against acquittal is undoubtedly narrower than the scope of appeal against the conviction. Section 378 of the Code of Criminal Procedure, 1973 confers upon the State a right to prefer an appeal to the High Court against the order of acquittal. At the same time, sub-section (3) thereof mandates that such an appeal is not to be entertained except with the leave of the High Court. Thus, before an appeal is entertained on merits, leave of the High Court is to be obtained which means that normally judgment of acquittal of the trial court is attached a definite value which is not to be ignored by the High Court. In other words, presumption of innocence in favour of an accused gets further fortified or reinforced by an order of acquittal. At the same time, while exercising its appellate power, the High Court is empowered to re-appreciate, review and reconsider the evidence before it. However, this exercise is to be undertaken in order to come to an independent conclusion and unless there are substantial and compelling reasons or very strong reasons to differ from the findings of acquittal recorded by the trial court, the High Court, as an appellate court in an appeal against the acquittal, is not supposed to substitute its findings in case the findings recorded by the trial court are equally plausible. The scope of interference by the appellate court in an order of acquittal is beautifully summed up in the case of **Sanwat Singh v. State of Rajasthan**² in the following words:

² 1961 SCR (3) 120

“The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of acquittal is founded; (2) the principles laid down in Sheo Swarup's case afford a correct guide for the appellate court's approach to a case in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) "substantial and compelling reasons", (ii) "good and sufficiently cogent reasons", and (iii) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which lead it to hold that the acquittal was not justified.”

The similar principle is reiterated in **State of Rajasthan v. Sohan Lal and Others**³ and in **Govindaraju @ Govinda v. State by Sriramapuram Police Station and another**⁴. Thus, the duty of the appellate court in an appeal against acquittal is to re-appreciate, review and reconsider the evidence on which the acquittal is based. On re-consideration of evidence on record, If the appellate court finds the verdict of acquittal to be perverse or against the settled position law, it is duly empowered to set aside the same.

On the other hand, if the trial court had appreciated the entire evidence in right perspective and recorded the findings which are plausible and the view of the trial court does not suffer from perversity, simply because the appellate court comes to a different conclusion on the appreciation of the evidence on record, it will not

³ 2004(2) ALT (Cri.) (SC) 120 (D.B.)

⁴ (2012) 4 SCC 722

substitute its findings to that of findings recorded by the trial court. Thus, the scope of appellate court under the provisions of the Code of Criminal procedure in an appeal against the acquittal are limited in view of the law declared by the Apex Court in **Ramesh and others v. State of Harayana** (1supra) and a similar view is expressed by the Apex Court in **M.Dhandapani v. R. Muthu Naliappan And Others**⁵

Keeping in mind the specific guidelines laid down by the Apex Court, now I must appreciate the evidence with reference to the finding recorded by the trial court. The first and foremost finding recorded by the trial court is, for the offence punishable under Section 3(i)(x) of the Act, that the appellant do not belong to Scheduled Caste, as he is professing Christianity attending Church. But the appellant besides examining himself as P.W.1 examined P.W.9-Tahasildar and produced Ex.P.7- Caste Certificate issued by P.W.9, but the trial court disbelieved Ex.P.7 as it is not in the prescribed proforma and it was not issued upon enquiry conducted by the Village Revenue Officer or Revenue Inspector. P.W.9 pleaded ignorance whether P.W.1 visits Church. Since Ex.P.7 is not in prescribed proforma and it does not contain the recommendation or enquiry by Village Revenue Officer and Revenue Inspector, the authenticity of the same is doubtful.

As per the material on record, P.Ws.1 and 2 admitted that they are professing Christianity attending Church and praying Jesus and now the question is whether on account of their attending to Church would deprive them to claim benefits of the Act

⁵ AIR 2009 SC 868

i.e. S.Cs. & S.Ts. (POA) Act, 1989. An identical question came up before this Court in **Chinni Appa Rao and Others v. State of Andhra Pradesh and Another**⁶. The Single Judge of this Court placing reliance on the Judgment of the Apex Court in **Soosai v. Union of India**⁷ held that when a person professed Christianity, he is ceased to be a member of Scheduled Caste or Scheduled Tribe and not entitled to claim benefits being the member of Scheduled Caste invoking the provision under Section 3(i)(x) of the Act. The Judgment of this Court still holds good law and it is binding precedent on this Court. Therefore, by applying the principle laid down in the above Judgment, when P.W.1 is professing Christianity, he is disentitled to invoke the provisions of the Act. In view of the judgment of this Court in **Chinni Appa Rao and Others v. State of Andhra Pradesh and Another** (5supra) the respondents 1 and 2 are not liable for punishment for the offence punishable under Section 3(i) (x) of the Act.

The other reason assigned by the trial court is that the certificate marked as Ex.P.7 is not in the prescribed proforma. For issue of community certificates, there is a regulation known as the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 and Rules 1997 framed thereunder. Section 4 of the said Act permits the competent authority notified by the Government to issue Community Certificate, on an application made to it under Section 3, after satisfying itself about the genuineness or otherwise of the claim made therein and thereafter issue a community certificate within such period and in such form as may be

⁶ 216 (1) ALD (CrL.) 545

⁷ AIR 1986 SC 733

prescribed. Section 2(c) of the said Act defines 'Competent Authority' it means any officer or authority authorised by the Government by notification to perform the functions of the competent authority under this Act, for such area or for such purposes as may be specified in the notification.

Similarly, Section 2(i) of the said Act defines the words 'Scheduled Casts and Scheduled Tribes'. It means the words scheduled castes and scheduled tribes shall have the meanings respectively assigned to them in clause (24) and clause (25) of Article 366 of the Constitution of India. The Government notified the authorities competent to issue certificate by notification in the Annexure-I of the said Act. For issue of community certificate to the persons belonging to Scheduled Caste, the Mandal Revenue Officer not below the Rank of Deputy Tahasildar are competent authorities, as specified in Annexure-I of the said Act. Here P.W.9 issued Community Certificate certifying that P.W.1 belongs to Scheduled Caste. But as seen from Section 4 of the said Act, such competent authority can issue a certificate after satisfying itself about the genuineness or otherwise of the claim on an application made to it under Section 3 of the said Act in the prescribed proforma. Section 3 of the said Act permits any person belonging to any of the Scheduled castes, Scheduled Tribes or Backward Classes may in order to claim the benefit of any reservation provided to such Castes, Tribes or Classes either for any public appointment or for admission into any educational institution in the State or outside the State for the students of the State or any other benefit under any special provisions made under clause (4) of Article 15 of the

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Constitution of India or for the purpose of contesting for elective post in any local authority or for elective posts in the Co-operative Institutions, make an application in such form and in such manner as may be prescribed to the competent authority for issue of a community certificate. Similarly, Clause (2) of Section 3 of the said Act permits any person belonging to a Scheduled Tribe may, for the purpose of claiming any benefit or protection meant for Scheduled Tribes may make an application. So, it is clear from Section 3 of the said Act, application for issue of Community certificate by the competent authority under section 4 of the said Act shall be made by a person belonging to Scheduled Caste or Scheduled Tribe or Backward class. In the present case, P.W.1 did not make an application under Section 3 of the said Act, but during investigation the police collected such certificate from P.W.9. P.W.9 is incompetent to issue such certificate, but the request of the police to issue such certificate on the application made by the Member of Scheduled Caste under Section 3 of the said Act. That apart, there is a prescribed proforma for issue of such certificate to the community certificate to the persons belonging to scheduled caste and scheduled tribes. Under the said Rules, Form II is an appropriate application under Section 3 of the said Act for issue of caste certificate and Form III is the appropriate proforma for community, nativity and date of birth certificate issued by competent authority. But Ex.P.7 is not in Form III which is prescribed under the said Act. Therefore, the trial court disbelieved the community certificate marked as Ex.P.7 coupled with the evidence of P.W.9, since it was not in Form-III, proforma for issue of

community certificate by the MRO who is competent authority under Section 4 of the said Act.

The conclusions arrived by the trial court are plausible and based on evidence and when the conclusions are plausible, this court except for strong and sufficient reasons cannot substitute its opinion independently even after appreciation of evidence in view of the law declared by the Apex Court in **Ramesh and Others v. State of Haryana** (1supra). Therefore, this finding recorded by the trial court is based on sound reasoning which does not call interference of this court while exercising power under Section 372 Cr.P.C.

The second ground for acquitting the respondents 1 and 2 is abnormal delay in lodging the complaint with the police i.e. 28 days. Ex.P.1 is the report to the police for the incident that occurred about 28 days prior to the lodging the complaint. The allegations made against the respondents 1 and 2 is that they abused the appellant in filthy language raising his caste name about 28 days prior to Ex.P.1. Explanation offered by the petitioner before this court is that the matter was referred to elders, P.W.4, for settlement and due to pendency of the matter before the elders, the appellant did not lodge the complaint with the police. But strangely in this case the alleged elders did not support the case and turned hostile. Therefore, the explanation for the delay was not explained properly with substantitive piece of evidence. In those circumstances, the trial court rightly disbelieved the prosecution version on account of such abnormal delay of 28 days in lodging the complaint, which do not disbelieve him to lodge the complaint, since there is a possibility of improvement in embellishment on account of consultations

during such period. Such an unexplained delay is fatal to the case in view of the Judgment of the Apex court in **Balwinder Singh v. State of Punjab**⁸. The facts of the above case are that there was a delay of 5 days in lodging the first information report and on the own admission of the defacto complainant, explanation was offered, and the same was not accepted, since the other witnesses did not support the case of prosecution for the delay. Maintaining silence for 5 days without any proper explanation, the Apex Court found the accused not guilty only on account of unexplained delay. But in the present case, the delay is 28 days, the appellant maintained silence for 28 days, and the explanation offered by him is not plausible and justifiable since it was not supported by P.W.4, who turned hostile during trial. Therefore, disbelieving the case on account of unexplained delay, the finding recorded by the trial court thereon, does not call interference of this court in view of the declared by the Apex Court.

Coming to the evidence of P.Ws.1 to 3, P.W.1 testified about the incident and in the cross-examination of P.W.1, the counsel for the respondents 1 and 2 could elicit several facts with regard to professing Christianity, who invoked the provisions of Section 3(i)(x) of the Act claiming all other benefits. Therefore, the trial court disbelieved the evidence of P.Ws.1 to 3 as their evidence does not inspire the confidence and noteworthy of credence. In those circumstances, this court after re-appraisal of entire evidence cannot substitute its opinion when the finding recorded by the trial court are plausible and supported by reasons. Therefore, I am

⁸ AIR 1996 SC 607

unable to interfere with the finding recorded by the trial court while acquitting the respondents for the offence punishable under Section 506 read with 34 I.P.C. and Section 3(i)(x) of the Act in view of the limited jurisdiction of this court in an appeal against acquittal. Hence, I find no merits in the appeal and it is liable for dismissal.

In the result, the criminal appeal is dismissed, confirming the Calendar and Judgment in SC ST SC No.46 of 2012 dated 14.11.2014 passed by the Special Judge, SCs & STs Court-cum- X Additional District Judge, East Godavari, Rajahmundry.

The observations and findings, if any, recorded in the earlier paragraphs regarding the validity of the Caste certificate under the provisions of the Act will have no bearing in claiming benefits under various welfare legislations and the findings are limited for the purpose of deciding the Sessions case.

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

M. SATYANARAYANA MURTHY, J

Date:20.01.2017
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