

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No.488 of 2006

AND

CRIMINAL REVISION CASE No.1052 of 2006

COMMON JUDGMENT:

Criminal Appeal No.488 of 2006 is filed by the appellants/A1 to A6 aggrieved by the judgment dated 06.02.2006 in S.C.No.34 of 2000 passed by the learned Special Judge for Trial of SCs & STs (POA) Act, 1989-cum-I Additional Sessions Judge, Srikakulam, convicting them on three counts i.e. for the offences under Sections 147, 323 and 341 IPC and sentencing to pay fine of Rs.1,000/-, Rs.3,000/- and Rs.1,000/- respectively with default sentence while acquitting them for the offence under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the SC ST (POA) Act") and Sections 148 and 326 r/w 149 IPC.

2) Criminal Revision Case is preferred by the *defacto* complainant against the acquittal of accused for the above said offences.

3) The above matters are filed in the backdrop of factual matrix:

a) PW1—*defacto* complainant is the resident of Tallavalasa Village, Srikakulam District and Talayari of the said Village by the date of offence; he belongs to Mala Community; all the accused are residents of the same village and they belong to Kapu Community which is a majority community in the village; the accused did not like PW1 to work

as Talayari. Besides there were land disputes between the two families; while so, on 25.5.1997 at about 9 A.M. while PW1 was trimming the bushes on the northern side of his fencing, accused obstructed for the same; when PW1 replied that still there was poramboke site towards the northern side and they can take the fence from there, the accused grew wild and abused in the name of his caste and proclaimed that they drive him away from the village and went after him. So saying the accused beat him with sticks and when PW1 entered his house the accused chased him and uttered that he would die if his house was set to fire.

b) Out of fear, PW1 escaped from the back side of the house and entered the house of PW2; accused chased and beat him on the forehead and other parts of the body with stout sticks; PW1 received injuries on his head, both ankles, left hand, right eye and on other parts of the body and from the house of PW2, he went to the house of PW3 and there also the accused chased him; ultimately the accused brought PW1 in front of the house of PW4 and tied him with a rope and when they tried to kill him, PW4 requested them not to kill, then they left him there and went away.

c) PW4 went to Amadalavalasa PS and gave intimation to the police; then PW9—S.I of Police, along with his staff and PW4 came to the scene of offence and untied the rope; admitted him in Government Hospital, Amadalavalasa and recorded his statement and registered a case in Crime No.83 of 1997 and conducted investigation in part and subsequently PW10 completed investigation and filed charge sheet against A1 to A6

for the offences under Sections 325, 324, 341 r/w 34 IPC and Section 3(1)(x) of SC & ST (POA) Act.

d) The learned Magistrate took cognizance and committed the case to Sessions Court and it was numbered as S.C.No.34 of 2000. The trial Court on appearance of accused framed charges under Sections 148, 326, 341 r/w 149 IPC and under Section 3(1)(x) of SC ST (POA) Act. The accused denied the offences and claimed to be tried.

e) During the trial, PWs.1 to 10 were examined and Exs.P1 to P7 were marked and M.Os.1 to 3 were exhibited on behalf of prosecution. Exs.D1 to D6 were marked on behalf of accused.

4) The trial Court ultimately found the accused guilty of the charges under Sections 147, 323 & 341 IPC and convicted and sentenced them as stated supra while acquitting them of the charges under Sections 148, 326 r/w 149 IPC and Section 3 (1)(x) of SC ST (POA) Act.

Hence the appeal by the accused against conviction and revision by the *de facto* complainant against acquittal in respect of certain charges.

5) Heard arguments of Sri V. Sudhakar Reddy, learned counsel for appellants, Sri T. Raja Sekhar Rao, learned counsel for revision petitioner and learned Assistant Public Prosecutor.

6) Learned counsel for appellants would submit that the trial Court grossly erred in convicting the accused without considering the fact that

in the same tussle, A1 was injured in the hands of PW1. It is argued that the trial Court should have seen that PW1 was indeed the assailant but foisted a false case against A1 to A6 as counter blast to Crime No. 82 of 1997 of Amadalavalasa PS. It is further argued that prosecution case is concerned, except the interested evidence of PW1 there is no corroboration from other reliable evidence. Though PWs.2 to 4 are said to be the neighbours, however, they are interested witnesses and in fact they have not witnessed any incident and in view of their close affinity with PW1 they were pressed into service by the prosecution. Therefore, the trial Court ought not to have placed implicit reliance on the evidence of PWs.2 to 4. It is further argued that the trial Court ought to have considered that in view of the previous disputes a false case is foisted against the accused. Learned counsel thus prayed to allow the appeal and acquit the accused.

7) Per contra, learned counsel for revision petitioner/*defacto* complainant would argue that trial Court committed a grave error in acquitting the accused of the charge under Section 3(1)(x) of SC ST (POA) Act on the flimsy ground that investigation was not done by the Deputy Superintendent of Police (PW10) but it was done by PW9—Sub-Inspector of Police in violation of Rule 7 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (for short “SC ST (POA) Rules”). Learned counsel would argue in vehemence that though the investigation was initially commenced by PW9, indeed the investigation was conducted by PW10 who is the DSP, which is manifest

from his evidence, as he deposed clearly to the effect that he examined all the witnesses and compared with the statements recorded by PW9 and found their version to be in correct lines and he himself filed charge sheet. Therefore, the trial Court ought not to have given weight to the technicalities to acquit the accused for the charge under Section 3(1) (x) of SC ST (POA) Act. In this regard, he placed reliance on the decisions in *Kailas v. State of Maharashtra*¹ and *Balan v. State of Kerala*². He further argued that trial Court committed error in acquitting the accused for the charge under Section 326 r/w 149 IPC inspite of the fact that the accused caused fracture to the right lower leg of PW1 which is a grievous injury. He thus prayed to allow the Criminal Revision Case.

8) Learned Assistant Public Prosecutor while supporting the judgment in respect of the convictions recorded for the offences under Sections 147, 323 and 341 IPC, however, argued that the trial Court ought to have convicted the accused for the offences under Section 326 IPC and Section 3(1)(x) of SC ST (POA) Act also as submitted by the revision petitioner.

9) In the light of above arguments, the point for determination in this Criminal Appeal and Criminal Revision Case is:

“Whether the judgment of the trial Court is factually and legally sustainable?”

¹ (2011) 1 SCC 793

² 2004 (1) ALT (CrI.) 128 (Ker.)

10) **POINT**: Prosecution case is already set out supra. With regard to incident, the prosecution mainly relied upon the evidence of PWs.1 to 4 and hence the same needs a careful scrutiny.

11a) PW1 deposed that he belongs to SC (Mala) community and working as Talayari of Tallavalasa Village whereas the accused belongs to Kapu community. Prior to incident there were disputes between them. When the accused tried to occupy his house site, his father filed civil suit for perpetual injunction against the accused which was decreed in their favour and since then the accused bore grudge against his community people. Regarding the incident, he deposed that on the pretext of widening the road, the accused cut his fencing and when he questioned about their acts, all the accused grew wild and abused him in filthy language in the name of his caste and further, A1, A3 & A4 beat him with hands on his face and body; A3 beat him on his left forearm with a stout stick and when he tried to escape, A1 and A4 beat him on his right lower leg and A1, A2 and A6 beat him on his head with sticks. Out of fear when he ran into his house and bolted the door, all the accused came to the pial of his house and when they tried to enter into the house, he bolted the door but they pushed the door and thereupon all the accused shouted to set fire of his house; he came out of the house through back door and ran to the house of PW2 but the accused came to her house and threatened her to handover him; when they tried to enter her house, he ran away from the back door of PW2 to the house of Saidada Sriramulu; all the accused went to the house of Saidada Sriramulu as there was no

way for him to escape from the house of Saidada Sriramulu, the accused cornered him and A2 and A3 fisted him in the house of Sriramulu and brought him out and beat him. Further, A3 to A5 beat him with sticks on his knees. Meanwhile, A1, A2 and A6 tied him with rope and dragged him to Kapu Street and tied to the electrical pole and beat him. He further deposed that when G.Narisimhulu, the ex-president objected and asked the accused to take him away from that place, the accused took him to the cattle shed of G.Sreeramulu and there all of them beat him indiscriminately and he fell unconscious. Later, accused carried him and left him on the road in front of his house. He stated that due to fear of the accused, none of the villagers came even to give water. Meanwhile, PW4, who is son of his junior paternal uncle, came and seeing his condition, went to the police station and informed the same and brought the police to the village and they have untied him and took him to the Government Hospital, Amadalavalasa, where his statement was recorded under Ex.P1. From there he was referred to Government Hospital, Srikakulam.

This is the evidence of PW1 with regard to the ghastly acts allegedly committed by the accused.

b) In the cross-examination, he stated that previous case filed by his family members against the accused was ended in acquittal due to compromise. He denied the suggestion that there was no back door to his house. He denied the suggestion that on the date of incident Sramadhanam was conducted under 'Janmabhoomi Scheme' and there

was clearance of bushes in front of his house. He stated that the said programme was conducted to the extreme East of the Well and the road leading to Jonnalavalasa. He denied further suggestion that his community people and the community people of the accused commenced clearing of bushes work on the date of incident in their street. He asserted that the accused have specifically come to his house only to demolish his fencing but they did not come to the work of clearing the bushes in their street. He admitted that he disputed with the accused when they were cutting the cactus plants situated in front of his vacant site. A1 and A2 were cutting the cactus plants with knife. He specifically denied the suggestion that he caused injury to A1 with a knife on the same day and police registered a case against him. He denied further suggestion that since A1 gave complaint, he (PW1) filed a false case against accused. He also denied the suggestion that when he attacked A1, some 30 to 40 villagers pushed him (PW1) and he fell down and sustained injuries. He also denied that he obstructed Janmabhoomi Programme of the village on the date of the incident. He also denied the suggestion that PWs.2, 3 and 4 were not the residents of their village.

c) Thus, a close analysis of the evidence of PW1 would show that accused denied to have committed atrocious acts against PW1 and their case is that on the day of Janmabhoomi Programme when they were cutting the fences, PW1 went there with knife and objected and obstructed their works and caused injury to A1 and on that villagers gathered there and pushed him and thereby he suffered injuries. In the

light of defence put-forth by the accused, the veracity of evidence of PW1 shall be vetted.

d) On a careful scrutiny, I am of the considered view, the evidence of PW1 has a ring of truth around. As per the Ex.P1-statement and evidence of PW1, on the date of incident, when all the accused started cutting cactus fencing situated in front of his house, he objected and stated that it was his house-fence and there was fencing towards further north which they can cut and on that the accused grew wild and attacked him and drove him to different places and ultimately tied and left him in front of his house. The evidence of PW9 coupled with Ex.P7—rough sketch shows that there is a fencing around the house of PW1 and he was found lying in front of his house when police arrived the scene. Thus the testimony of PW1 proved to be genuine. PW1 while stating that he suffered injuries in the hands of accused specifically stated the overtacts of accused. This part of his ocular evidence is supported by the medical witness i.e. PW-6, who is CAS in Government Hospital, Amadalavalasa. She deposed that on 25.9.1997(*sic* 25.05.1997) on requisition from SHO, Amadalavalasa, she examined PW-1 and found following injuries:

- (1) *A lacerated injury of 1" x ¼" over left frontal region, red in colour.*
- (2) *Swelling of left wrist joint and left fore arm. Tenderness present. Red in colour.*
- (3) *Swelling of right eye lid. Red in colour.*
- (4) *Swelling of both knees. Tenderness present. Red in colour.*
- (5) *Swelling of both ankle joints. Red in colour. Tenderness present. X-ray right leg and ankle. Fracture to lower end of fibula.*

e) She opined that wound Nos.1 to 4 are simple and wound No.5 is grievous in nature and all the injuries might have been caused by a blunt object. She accordingly issued Ex.P2—wound certificate. Ex.P3 is the opinion of the radiologist and Ex.P4 is the bunch of X-ray films. In the cross-examination she stated that on the same day she examined A1 and issued wound certificate under Ex. D5. This aspect will be discussed later.

f) PW7 is the Civil Surgeon in Government Headquarters Hospital, Sirkakulam. He deposed that he examined PW1 on 27.05.1997 and took X-rays on different parts and found fracture of right lower ankle fibula. He issued his opinion under Ex.P3. Thus, the testimony of PWs.6 and 7 corroborates the version of PW1 to the effect that he received injuries on 25.05.1997 in the hands of accused. In the cross examination of PW1 nothing useful could be extracted to impeach his credibility regarding his receiving injuries in the hands of accused. The evidence of PW1 that he was chased and beaten by the accused is also corroborated by PWs.2 to 4.

12) PW2 deposed, at the time of incident she was residing at Tallavalasa and she knows PW1 and accused. Regarding incident, she stated that on that day PW1 came to her house after he was beaten by the accused; she observed PW1 with bleeding injuries on his face and he was almost nude and he came running into her house; when she was enquiring PW1, in the meanwhile, A1 to A6 came to her house and demanded her to send PW1 out. She questioned them as to what fault PW1 committed; however, due to threat of accused, her children become

frightened and therefore, she requested the accused to leave the place; she allowed PW1 to go out and while he was leaving, the accused followed him; due to fear she did not come out of the house. In the cross examination she stated that she is the sister-in-law of PW1 by courtesy. She denied the suggestion that she was not the resident of Tallavalasa Village. She stated that since her husband was working at different place, she was residing with her parents at Tallavalasa for the sake of education of her children. She admitted that except the bleeding injury on the face of PW1, she did not observe other injuries. She denied the suggestion PW1 did not come to her house with injuries.

a) Thus, a close scrutiny of her evidence would show that PW1 ran towards her house and tried to take shelter. As accused came in chase and demanded her to leave him, she had to oblige them due to fear. PW2 is an innocent house wife and she has no relationship with PW1 to speak falsehood. Therefore, there is nothing on record to disbelieve her version with regard to the incident.

13) PW3 is the sister of Sreeramulu. She deposed that she knows PW1 who is the Talayari of Tallavalasa and she also knows the accused. Regarding the incident, she deposed that about seven years back at 9.00 AM PW1 came to her house with bleeding injuries in a hurry being chased by the accused. The accused came to her house and took him and when she tried to help PW1, the accused forcibly took PW1 from her house. This is her version regarding the incident.

a) In the cross examination, she stated PW1 and her brothers are agnates. Her house is set apart by three houses from the house of PW1. She stated at the time of incident there was no back door from the house of PW1. She further stated when PW1 came to her house he was wearing pant and shirt. She stated she did not observe injuries on his body. She denied the suggestion that PW1 did not come to her house.

b) When the evidence of PW3 is compared with PW2, there would appear minor discrepancies between two versions. PW2 stated while PW1 came to her house he was almost nude. However, PW3 found PW.1 with pant and shirt. This discrepancy, in my view, will not debilitate the veracity of evidence of PWs.2 and 3 or cut across the prosecution case. The core of their categorical stand that PW.1 rushed to their houses in a hurry while being chased by accused stood unshattered in the cross-examination.

14) PW4 deposed that on 25.5.1997 on knowing that the accused were beating PW1 in front of the house of Gandreddi Narasimhulu, he went there and observed that the accused beating PW1. Due to fear, he could not interfere. He further stated that the accused tied PW1 with ropes. Then, he went and informed PW5 thinking that he would inform police. He gave a slip and he took the slip to the Police Station, Amadalavalasa and informed the incident to PW9—SI and then the SI came to their village in a Jeep along with him and SI observed PW1 tied with ropes, having no clothes on his body and with bleeding injuries. The SI untied

the ropes and they all went to the Police Station along with PW1 and PW1 was sent to Government Hospital, Amadalavalasa.

a) In the cross-examination, he stated that PW1 is his neighbour and while he was in the fields, he heard about the galata and he went there to rescue PW2. He further stated that while proceeding, he heard cries of PW1 and he observed PW1 was being beaten by the accused and he was with bleeding injuries. He stated that he did not state before police that he observed accused beating PW1 from his (PW.4) house. It should be noted that except this contradiction, there is nothing specific in the cross examination to impeach the credibility of his evidence. Ex.D1 is not of much significance, as from where he observed is not a big issue. Thus, as already stated, the evidence of PWs.2 to 4 would cumulatively establish that PW1 was beaten and chased by accused to different places and they tied him with ropes and left in front of his house. This part of the evidence of PWs.2 to 4 staunchly corroborated the evidence of PW1. Even PW9—the IO also deposed that on receipt of information through PW4, he engaged the private vehicle of PW8 and proceeded along with his staff and PW4 to Tallavalasa Village and found PW1 tied with ropes and left him in front of his house. Having found his position critical he untied the ropes and took him to Government Hospital, Amadalavalasa and there he recorded the statement of PW1. Therefore, the position in which the SI found PW1 clearly manifests that accused beat him and tied him and left in front of his house to his fate. Therefore, the prosecution amply established the guilt of accused.

15) Now, coming to the contention of accused though they claimed that on the date of incident, in connection with Janmabhoomi Programme they were removing shrubs in front of his house, they could not establish the same in the cross-examination of any of the witnesses. According to PW1, Janmabhoomi Programme was being conducted in the other part of the Village and no works were going on in front of his house. On the other hand, the accused illegally tried to remove the fencing before his house, which he obstructed. The accused sought to project that A1 received injuries in the hands of PW1 and he lodged a complaint with the police and to overcome the same a false case was foisted by PW1 against accused. As per Ex.D6—requisition, PW1 caused injury to A1 with knife on the leg of A1 and beat him with a stick on his right hand. Ex.D5 is the wound certificate issued by PW6 to A1, as per which, A1 suffered (i) an incised wound of 1"x ½" x ½" on the front right thigh. (ii) Swelling of right palm. (iii) A contusion of 2"x 1/2" on the left forearm. All the injuries were simple in nature.

a) As rightly observed by the trial Court, in Ex.D2—FIR, it appears A1 exaggerated and said as if PW1 attempted to kill him. When holistic view is taken on incidents, the evidence on record would clearly show that PW.1 was beaten, tied with ropes and left in front of his house by accused. PW4 informed the matter to police and they came to the spot and untied PW1 and admitted in the hospital. Whereas A1 who suffered minor injuries in the same incident, immediately rushed to the police station and gave report to the police. Therefore, though PW1 denied of

his causing injuries, as rightly observed by the trial Court, it would appear that there was some scuffle at the first instance but all the accused caused him injuries and tied him and left over and in the meanwhile, PW-4 went and gave report to the police. Therefore, the version projected by the accused that when they were attending Janmabhoomi Programme and removing shrubs, PW1 himself came with knife and attacked them and caused injuries to A1, does not appear to be true version of incident that had occurred.

16) Now, coming to the charges, the trial Court having agreed with the contention of accused that entire investigation was taken up by PW9—SI of Police in contravention of Rule 7 of SC ST (POA) Rules held though the acts of accused fall within the purview of Section 3 (1) (x) of SC ST (POA) Act, still in view of the aforesaid contravention, the accused cannot be punished for the offence under Section 3(1)(x) of SC ST (POA) Act. The trial Court at the same time held that so far as the other charges are concerned, since they were framed under IPC, their investigation is not vitiated.

17) In this regard, the argument of learned counsel for revision petitioner is that it is only a technicality and the same need not be taken into consideration. To consider this argument, Rule 7 of SC ST (POA) Rules is extracted as under:

"7. Investigating Officer- (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The

investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.”

18) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 came into force on 31.3.1995 whereas the incident took place on 25.5.1997. Therefore, as per Rule 7, the offence in this Act shall be investigated by a Police Officer not below the rank of Deputy Superintendent of Police, who shall be appointed by State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. This rule in my view can't be said to be an empty rhetoric. An experienced officer is earmarked for smooth investigation and also to obviate any misuse of the Act.

19) In the instant case, when the evidence of PW9 is taken into consideration, it manifests that almost the entire investigation was conducted by himself. PW9 was SI of Police but not DSP. He deposed that on receiving information from PW4, along with his staff and PW4 went to the scene of offence and untied PW1 and having found his position critical, took him to Government Hospital, Amadalavalasa and admitted him there and recorded his statement and registered the case in Crime No. 83 of 1997 under Section 3(1)(x) SC ST (POA) Act and under Sections 325, 324, 321 r/w 34 IPC and submitted FIR to JFCM Court,

Amadalavalasa. He conducted investigation by inspecting the scene of offence and seized the rope and two sticks (vide MOs.1 to 3). He prepared Ex.P1— observation report and Ex.P7—rough sketch. He secured the presence of PWs.2, 3 4, G. Narasimhulu, 5, 7 & 8 and recorded their statements on the same day and at about 7.00 p.m he arrested all the accused and produced before the Judicial Magistrate of First Class, Srikakulam. He further stated that he handed over the further investigation to PW10—SDPO, Srikakulam. Therefore, it manifests that almost the entire investigation was conducted by PW9. Whereas the evidence of PW10 would show that he visited Tallavalasa Village, took up investigation and visited the scene of offence and perused the documents prepared by the SI of Police and found the same are in correct lines. Though he claimed to have examined PWs.1 to 8, he did not record their statements since they were already recorded by SI of Police and after receipt of wound certificate he filed the charge sheet. The question is, whether PW10 can lawfully claim to have conducted the entire investigation by himself within the ambit of Rule 7 of SC ST (POA) Rules.

20) In my considered view, he had only overseen the investigation already conducted by PW9 and just approved the same and filed charge sheet. The object of Rule 7 SC ST (POA) Rules in appointing DSP rank officer to conduct investigation having regard to his past experience and sense of ability is, he can better appreciate the facts and collect the correct evidence and come to right conclusion whether or not the offence

under SC ST (POA) Act was committed. As already stated he can also perceive any misuse of the Act. If DSP is allowed to just oversee the investigation conducted by SI of Police and affix stamp of approval and file charge sheet, in my considered view, it would water down the avowed object, for which the Rule 7 was incorporated. Therefore, in my considered view, there is a gross infraction of Rule 7 of SC ST (POA) Rules, as rightly observed by the trial Court. In this regard, we have judgment of Hon'ble Apex Court in *State of Andhra Pradesh vs. Viswanadula Chetti Babu*³, wherein the Apex Court observed thus:

***“Para-3** A bare perusal of the Rule would reveal that the State Government/the Director General of Police/ Superintendent of Police after taking into account the experience etc. of a Deputy Superintendent of Police shall appoint him as the Investigating Officer in cases under the above Act. Sub-rule (3) further provides that the Home Secretary and the Social Welfare Secretary to the Government and other officers in charge shall review the working of the Deputy Superintendent of Police and the investigations done by him at the end of every quarter. It is therefore apparent that authority to investigate has to be conferred on a specified officer not below the rank of Deputy Superintendent of Police.*

***Para-4** We are, therefore, of the opinion that in view of the clear mandate of the Rules, it was only a specified Deputy Superintendent of Police who could investigate an offence under the Act. An investigation done by any officer below that rank and not specified as per Rule 7 would not be entitled to investigate any such offence. In the present matter the*

³ 2011(1)RCR (Criminal) 222

investigation has been made by an officer of the rank of an Assistant Sub-Inspector of Police. This was not permissible. We endorse the judgment of the High Court in this respect.

Para-5 *The appeals stand dismissed.”*

Similar view was expressed by the learned Judges of this Court in ***D.Ramalinga Reddy vs. State of A.P***⁴ and ***Public Prosecutor, High Court of Andhra Pradesh vs. Kusuma Mallaiah***⁵. Further, a Division Bench of this Court also expressed same view in ***Viswanadula Chetti Babu vs. State of Andhra Pradesh***⁶. However, it must be noted that a Full Bench of this Court in ***Yanam Satyanarayana vs. State of Andhra Pradesh***⁷, held otherwise to the effect that Rule 7 is not mandatory but only a directory and it is open to the accused or the party aggrieved at the initial stages to raise such objection and invite a decision before the commencement of the trial itself and the same cannot be taken advantage after completion of the entire trial, more so in the absence of showing any substantial prejudice. Accordingly, the Full Bench overruled the judgment of the Division Bench in ***Viswanadula Chetti Babu vs. State of Andhra Pradesh*** (6 supra).

21) It is pertinent to note that though the judgment of the Full bench is in the above lines, in the same case i.e, ***State of Andhra Pradesh vs. Vishwanadula Chetti Babu*** (3 supra), the Apex Court categorically held that in view of the clear mandate of the rules, it was only a specified

⁴ 1999 CRL.LJ 2918

⁵ 2005 Cri.LJ 1162

⁶ 2002 (2) ALD (Cri) 206 (AP)

⁷ 2006 CriLJ 2320 (AP)

Deputy Superintendent of Police, could investigate an offence under the Act and an investigation done by any Officer below that rank and not specified as per Rule 7 would not be entitled to investigate any such offence. Hon'ble Apex Court consequently dismissed the appeal preferred by the State and confirmed the judgment of the High Court of Andhra Pradesh.

In view of the judgment of the Apex Court as extracted supra, the decision of the Full bench of this Court cannot be followed.

22) In *Kailas v. State of Maharashtra* (1 supra), relied upon by the learned counsel for revision petitioner, no doubt the Apex Court made an observation that the Court was surprised over setting aside of conviction on hyper technical grounds that the caste certificate was not produced and investigation by a police officer of the rank of Deputy Superintendent of Police was not done. The Apex Court further observed since no appeal has been filed against that part of the High Court judgment, it need not be gone into.

23) It must be noted that it was only an observation made by the Hon'ble Apex Court in an appeal preferred by the accused. Though, it is trite law that even the obiter of Hon'ble Apex Court has an effect of ratio decidendi, still in view of the categorical decision on the very subject matter by a Coordinate Bench of the Apex Court in *State of Andhra Pradesh vs. Viswanadula Chetti Babu* (3 supra) the judgment in *Kailas v. State of Maharashtra* (1 supra) cannot be followed. For the same

reason, the other judgment cited by Revision Petitioner in *Balan vs. State of Kerala* (2 supra) also cannot be followed.

24) Thus, the Trial Court rightly acquitted the accused for the charge under Section 3(1) (x) SC ST (POA) Act.

25) The trial Court convicted the accused for the offences under Sections 147, 341 and 323 IPC. So far as the conviction under Sections 147 and 341 is concerned, there is no objection for the revision petitioner. So far as the conviction under Sections 323 IPC is concerned, it is argued that since PW1 suffered fracture to his right leg, which is a grievous injury, the trial Court ought to have convicted the accused for the offences under Section 325 and 326 IPC. Hence, this aspect needs to be scrutinized.

26) The trial Court in para-52 of its judgment observed that though one of the injuries suffered by PW1 is a fracture injury, the same will not bring the offence within the purview of Section 326 IPC or even 324 IPC. But the offence would come under Section 323 IPC because the MOs.2 and 3 cannot be said to be deadly weapons.

27) As per the evidence of PWs.6 and 7 and Ex.P2, PW1 suffered five injuries of which, injuries 1 to 4 are simple in nature and injury No.5 being fracture of lower end of right fibula is a grievous injury. As per 7th clause of 320 IPC, a fracture injury comes within the purview of grievous hurt. Therefore, it is evident that PW1 sustained grievous injury in the hands of accused. It is true, as rightly observed by the trial Court MOs.2

and 3 cannot be said to be deadly weapons. The trial Court's observation that in view of MOs.2 & 3, offence cannot be brought within the purview of Section 326 IPC but under Section 323 IPC appears to be correct.

28) To sum up, the trial Court rightly convicted the accused for the offences under Sections 147, 341 and 323 IPC and sentenced them as stated supra. Its recording acquittal for the offences under Sections 148, 326 r/w 149 IPC and for the offence under Section 3(1)(x) SC ST (POA) Act also is legally and factually correct. In that view, I find no merits in the Criminal Appeal filed by the accused as well as the Criminal Revision Case filed by the *de facto* complainant.

29) In the result, the Criminal Appeal and Criminal Revision Case are dismissed by confirming the judgment in S.C.No.34 of 2000 passed by the Trial Court.

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

U. DURGA PRASAD RAO, J

Date: 01.08.2018

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