

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL APPEAL No. 113 of 2011

JUDGMENT:

This appeal is directed against the judgment of the learned Special Sessions Judge for SCs. & STs. (POA) Act, 1989, Ranga Reddy District at L.B.Nagar, in S.C.No.11 of 2009, dated 25.01.2011, whereby the appellants/ A1 and A2 were convicted for the offences under Section 323 read with Section 34 of I.P.C. and Section 3 (1) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/- each, in default of payment of fine, to undergo simple imprisonment for a period of three months for the offence under Section 323 read with Section 34 of I.P.C., and also sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- each, in default of payment of fine, to undergo simple imprisonment for a period of three months for the offence under Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (POA) Act. Both the sentences were directed to run concurrently.

The gravamen of the charge against the accused, in brief, is that on 22.02.2008 at about 00.10 hours, P.W.1 and her

husband (P.W.2) lodged a joint report in Kukatpally Police Station stating that P.W.2 is doing real estate business and well acquainted with A-1 and A-2, who are residents of same locality and 15 days prior to the date of report, P.W.2 had obtained hand loan of Rs.1,00,000/- from the accused with a promise to return the same on 20.02.2008, but on that day the amount was not returned. On 21.02.2008 night at about 9.00 P.M., both the accused came to the house of P.W.1 and started beating P.W.2 and when P.W.1 intervened she was also beaten by them and also abused them by referring their caste name. In that incident, P.W.2 sustained bleeding injury below the right eye. It is further stated that the accused beat them with a chappal and gave fist blows. Basing on the said complaint, the Police, Kukatpally, registered a case in Crime No.196 of 2008. After completion of investigation, charge sheet has been filed against the accused for the offences punishable under Sections 324, 354 of I.P.C., and Section 3 (1) (ii) (x) (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short "the Act") before the IX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad, who in turn committed the case to the Court of Sessions Division. On committal, the case was taken on file as S.C.No.11 of 2009.

On appearance of the accused, charges under Section 324 read with 34 of I.P.C. and section 3 (1) (x) of the Act read with Section 34 of I.P.C. came to be framed, read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

The prosecution, in order to prove its case, examined P.Ws.1 to 8 and got marked Exs.P1 to P6. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. However, no oral evidence was adduced on behalf of the accused, but Ex.D1-a portion of statement of P.W.2 recorded by the police under Section 161 Cr.P.C. was marked.

The learned trial Judge, on appraisal of entire evidence, both oral and documentary, convicted the accused for the offences punishable under Section 323 read with Section 34 of I.P.C. and Section 3 (1) (x) of the Act and convicted and sentenced them as stated supra. Against their conviction and sentence, the appellants/ accused preferred this appeal.

Learned Counsel for the appellants/accused submitted that the trial Court went wrong in convicting and sentencing

the appellants for the aforesaid Sections. The trial Court ought to have held that the prosecution miserably failed to bring home the guilt of the appellants for the charges leveled against them; that there are no specific overt acts attributed to each of the accused; that the evidence of P.Ws.1 to 3 cannot be taken into consideration since the same was untrustworthy in the eye of law; that the trial Court failed to consider the evidence of P.W.5 and Ex.P4-Medical Certificate in proper perspective; and that there are no ingredients of Section 3 (1) (x) of the Act in the evidence adduced by the prosecution.

On the other hand, the learned Additional Public Prosecutor appearing for the respondent/State submits that the trial Court after evaluating the entire evidence came to the conclusion that there is sufficient material to show that the accused have committed the aforesaid offences, and, therefore, the conviction and sentence passed by the trial Court is justified and no interference is called for from this Court.

In the light of the aforesaid submissions, the point that arises for consideration is whether the conviction and sentence imposed by the trial Court against the appellants/A1 and A2 needs any interference from this Court or not?

In order to prove its case, the prosecution examined P.Ws.1 to 8. Out of them, P.Ws.1 and 2, who are husband and wife, are the victims; P.W.3 is a circumstantial witness; P.W.4 is the panch witness for the scene of offence; P.W.5 is the doctor, who treated P.W.2 and issued Ex.P4-Wound certificate; P.W.6 is the Tahsildar, who issued the caste certificate; P.W.7 is the Inspector of Police, who registered the crime and issued the First Information Report and P.W.8 is the Investigating Officer, who filed charge sheet against the accused.

The evidence of P.W.1 is that on 21.02.2008 during night at about 9.00 P.M when she was at her house, both the accused came there and called "Ore Babu Rao Naakodaka Bytiki Raa" and thereafter they abused as "Mala Naakodaka, Madiga Naakodaka", as such her husband Babu Rao (P.W.2) came out of the house, then both the accused beat him with fist blows and chappals and when she tried to rescue her husband, both the accused gave one blow each to her and dragged her by holding jacket and that she informed the incident to her brother-in-law (P.W.3) and he came to her house and took them to police station. In the cross-examination, P.W.1 admits that she did not mention in Ex.P1 complaint that both the accused shouted at her husband as "Ore Babu Rao Naakodaka Bytiki

Raa" and also dragged her by holding her jacket. She also admits that she is not the scribe of Ex.P1 and her brother-in-law (P.W.3) is the scribe of Ex.P1. She also admits that the alleged incident took place as her husband was due to an amount of Rs.1.00 lakh to Accused No.1.

P.W.2 in his evidence stated that on the date of incident at about 10.30 P.M. while he was at his house, both the accused came and demanded to repay the loan amount of Rs.1.00 lakh, which was taken by him from Accused No.1 and he agreed to repay the same, but both the accused abused him as "Malanakodaka, Madiganakodaka" and beat him with chappal indiscriminately and when his wife (P.W.1) tried to rescue him, both the accused beat her with hands and dragged her away. In the cross-examination, he stated that they went to police station at 9.00 P.M. to give report under Ex.P1, where as in the chief examination he stated that the incident took place at about 10.30 P.M. But, P.W.7-Inspector of Police, who received Ex.P1 complaint and registered the crime, categorically stated that on 22.02.2008 at 00.10 hours night, P.W.1 came to the Police Station and gave Ex.P1-written report. Though P.W.1 stated in her evidence that she informed the incident to P.W.3 through

phone, but P.W.2 in his 161 Cr.P.C. statement, which was marked as Ex.D1, stated that he telephoned to P.W.3.

P.W.3, who is the brother-in-law of P.W.1, stated in his evidence that on 21.02.2008 during night time at about 9.00 P.M., P.W.1, who is his sister-in-law, informed about the incident through phone that both the accused beat her husband (P.W.2) and immediately he went to the house of his brother (P.W.2) and found bleeding to one of the eyes of P.W.2 and also found presence of both the accused. On enquiry, P.W.2 told him that both the accused abused and beat him on the ground that he was evading to repay the loan amount, which was taken from them. Admittedly, P.W.3 is not the eyewitness to the incident and, therefore, his evidence requires no consideration to find out the complicity of accused.

Though, P.W.8-Investigating Officer, in his evidence stated that P.W.2 went to the hospital of P.W.5 on his own accord, but P.W.5-Doctor in his evidence categorically stated that on police requisition, he examined P.W.2 on 21.02.2008 and found a small scratch below the right eye and opined that the said injury is simple in nature. A perusal of Ex.P4-Wound Certificate would show that though P.W.5 noted down the date of examination as 21.02.2008, but no time was mentioned on it.

In the cross-examination, P.W.5-Doctor categorically stated that he did not mention the age of injury in Ex.P4-Wound Certificate. He further stated that the injury can be possible by self infliction. If at all the occurrence has been occurred, according to the prosecution at 9.00 P.M., on 21.02.2008, there is no plausible explanation on the part of the prosecution as to how the police have sent a requisition to the hospital of P.W.5-Doctor for medical examination of P.W.2, without reporting the matter and without getting the F.I.R. registered. Further, there is no explanation on the part of P.Ws.1 and 2 as to whether the injured (P.W.2) had examined himself before lodging the complaint or he has been sent for medical examination by the police after lodging of the F.I.R. Absolutely, there is no evidence on record to show that P.W.2 has been humiliated by the appellants/ A-1 and A-2 publicly in the name of his caste.

On close scrutiny of the entire evidence available on record, it is evident that there are number of contradictions and omissions in the evidence of P.Ws.1 and 2, which would fatal to the case of prosecution. Further, there is absolutely nothing on record pointing out the guilt of the accused for the offences punishable under Sections 323 read with 34 of I.P.C. and Section 3 (1) (x) of the Act. The trial Court has failed to

appreciate the evidence properly and erred in convicting the appellants/accused.

In *S. Govindaraju v. State of Karnataka*¹, the Apex Court held as under:-

"23. It is well settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions were of such magnitude so as to materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which do not affect the core of the case of the prosecution, must not be made a ground for rejection of evidence in its entirety. The trial court, after going through the entire evidence available, must form an opinion about the credibility of the witnesses, and the appellate court in the normal course of action, would not be justified in reviewing the same, without providing justifiable reasons for doing so. Where the omission(s) amount to a contradiction, creating a serious doubt regarding the truthfulness of a witness, and the other witnesses also make material improvements before the court in order to make the evidence acceptable, it would not be safe to rely upon such evidence. The discrepancies in the evidence of eyewitnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, the witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with the other evidence available or with a statement that has already been recorded, then in such a case, it cannot be held that the prosecution has proved its case beyond reasonable doubt."

¹ (2013) 15 SCC 315

In view of the judgment referred to above and for the aforesaid reasons, this Court is of the opinion that the prosecution has miserably failed to prove the guilt of accused beyond all reasonable doubt and the appellants/ A1 and A2 are entitled to benefit of doubt.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/ A1 and A2 in the judgment, dated 25.01.2011 in S.C.No.11 of 2009 on the file of the Special Sessions Judge for SCs. & STs. (POA) Act, 1989, Ranga Reddy District at L.B.Nagar, for the offences punishable under Section 323 read with Section 34 of I.P.C. and Section 3 (1) (x) of the Act, are set aside and the appellants/A1 and A2 are acquitted for the said offences. The bail bonds of the appellants/accused shall stand cancelled and their sureties shall be discharged. The fine amount, if any, paid by the appellants/ A1 and A2 shall be refunded to them.

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

JUSTICE G.SRI DEVI

24.01.2020
Gsn/gkv

