

HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL APPEAL No. 1370 of 2011

JUDGMENT:

This appeal is directed against the judgment of the learned Special Judge for trial of Cases under SCs & STs. (POA) Act-cum-V additional District and Sessions Judge, Medak at Sangareddy, in S.C.S.T. S.C.No.25 of 2008 dated 19.09.2011, whereby the appellant/accused was convicted for the offence under Section 3 (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.500/-, in default of payment of fine, to undergo simple imprisonment for a period of fifteen days. However, the appellant/accused was found not guilty for the offences punishable under Sections 353, 323 and 504 of I.P.C.

For the sake of convenience, the parties hereinafter be referred to as arrayed in S.C.No.25 of 2008.

The gravamen of the charge against the accused, in brief, is that on 01.07.2018 at about 7.00 P.M., P.W.1 lodged a complaint stating that the Tahsildar, Zaheerabad, appointed him and P.W.5 for EPIC programme at Shekapur Village and accordingly as a part of the said programme they were conducting survey at Shekapur Village. On 01.07.2008 at about 2.30 P.M., when he was having lunch at primary school, Shekapur Village, the accused came there saying "Enni rojulu neevu survey chesthavura, neeku order evadu

ichadura madiga lanja koduka' and caught hold of his collar and when the Sarpanch (P.W.3) tried to intervene, the accused assaulted him. Basing on the said complaint, the Police, Zaheerabad, registered a case in Crime No.153 of 2008. After completion of investigation, charge sheet has been filed against the accused for the offences punishable under Sections 353, 323 and 504 of I.P.C., and Section 3 (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act") before the Judicial Magistrate of First Class, Zaheerabad, who in turn committed the case to the Court of Sessions Division. On committal, the same came to be numbered as S.C.ST.S.C.No.25 of 2008.

On appearance, charges under Sections 353, 323 and 504 of I.P.C. and section 3 (x) of the Act came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

The prosecution, in order to prove its case, examined P.Ws.1 to 13 and got marked Exs.P1 to P10. After the closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. However, no oral or documentary evidence was adduced on behalf of the accused.

The Special Judge, on appraisal of entire evidence, both oral and documentary, acquitted the accused for the offences punishable under Sections 353, 323 and 504 of I.P.C., but, however found guilty of the accused for the offence under Section 3 (x) of the Act and convicted and sentenced him as stated supra. Against the conviction and sentence, the appellant/accused preferred this appeal.

Learned Counsel for the appellant/accused submitted that there is no iota of evidence to show that the accused abused P.W.1 taking his caste name to attract the provisions of Section 3 (x) of the Act; that there is no material on record to show that the accused went to the spot and picked up a quarrel with P.W.1 and abused him as "Madiga Lanja Koduka"; that P.W.2, who is said to be an eye witness to the incident, in his evidence clearly stated that the accused abused P.W.1 only as "Madiga" but not as "Madiga Lanja Koduka", that itself clearly established that the accused did not abuse and insult P.W.1 and a false complaint has been filed to harass the accused. He further submitted that there are discrepancies in the evidence of P.Ws.1 to 4, who alleged to have witnessed the incident and as such their evidence is absurd and no credence could have been given to their evidence. He also submits that there are material contradictions and omissions in the evidence of the witnesses and on the said count itself, the accused ought to have been acquitted, but

the trial Court without scrutinizing the evidence properly and based on assumptions and presumptions convicted the accused.

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 has committed the aforesaid offence, 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 for consideration is whether the conviction and sentence imposed by the trial Court against the appellant/accused needs any interference from this Court or not?

To attract the proviso to Clause (x) to Sub-Section (1) of Section 3 of the Act, the following ingredients are very much essential.

“1.The person who is accused of, shall not be a member of the Scheduled caste or Scheduled tribe.

2.The person who is aggrieved shall be a member of the Scheduled caste or Scheduled tribe.

3.Criminal intention to insult or intimidate or to humiliate.

4.The occurrence should have taken place in any place within public view.”

Clause (x) to Sub-Section 1 of Section 3 of the Act itself is very clear that whoever not being a member of Scheduled Caste or Scheduled Tribe intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

In order to prove those ingredients, the prosecution examined P.Ws.1 to 13. P.W.1 is the victim and P.Ws.2 to 6 are alleged to have witnessed the occurrence and out of them P.Ws.3 and 6 did not support the case of prosecution. Now the question would be whether the learned trial Judge has properly appreciated the evidence of P.Ws.1, 2, 4 and 5.

The evidence of P.W.1 is that on the date of incident he along with P.W.5, were deputed to conduct survey for issuing photo identity cards to the villagers of Shekhapur village and in the afternoon when he went near the school for having lunch, the accused came there, caught hold of his collar and abused him saying "Madiga Lanjakoduka" and when the accused tried to beat him, he escaped and that the blow hit to P.W.3. In the cross-examination, P.W.1 admits that in the complaint (Ex.P1), he did not mention that P.Ws.2 and 4 have witnessed the incident. P.W.1 also stated that he has not filed any document to show that on the date of incident, he was deputed to work at Shekhapur village.

P.W.2, who was working as V.R.O., in his evidence deposed that on the date of incident at about 2.30 P.M. while he and P.W.1 were having lunch near the School at Shekhapur village, the accused came there, caught hold of the collar of P.W.1 and when he tried to beat him and P.W.3 intervened and slapped the accused. The accused abused P.W.1 in the name of his caste as “Madigoda”.

P.W.4 in his evidence deposed that he is a photographer and on the date of incident while himself, P.Ws.1 and 5 were sitting in the school, the accused came there and picked up a quarrel with P.W.1 for not taking the photographs in his house and abused him as “Madiga Lanjakoduka” and caught hold of the collar of P.W.1 and pushed him.

P.W.5, who was working as a Teacher, in his evidence stated that on the date of incident, while himself, P.Ws.1 and 3 were present in the school at Shekhapur village, the accused came there and picked up a quarrel with P.W.1 and abused him by saying “Lanjakoduka” and thereafter as “Madiga Lanjakoduka” and when P.W.3 intervened, the accused slapped on his cheek, but P.W.3 did not state anything that the accused slapping him on his cheek.

Though P.W.2, in his evidence, stated that the accused abused P.W.1 as “Madigoda”, P.W.5 stated that the accused abused P.W.1 as Lanjakoduka initially and thereafter he adds that the accused abused P.W.1 as “Madiga Lanjakoduka”. In the cross-examination, P.W.5

admits that about 30 persons were present at the time of incident, but the prosecution failed to examine any of them except P.Ws.2 to 6. That apart, P.W.12, who registered a case in crime No.153 of 2008, in his cross-examination, categorically admitted that there is no mention in Ex.P1 with regard to the presence of P.Ws.4 and 5 at the time of incident.

Insofar as the evidence of P.W.4 is concerned, in the cross-examination he admits that he has not filed any document to show that he was engaged by P.W.1 as a photographer. No test identification parade was conducted by the prosecution. Therefore, his presence at the relevant point of time is also doubtful.

The above discussion makes it obvious that the testimony of the sole witness (PW-1) does not inspire confidence and the same is sketchy and improved one and in the absence of independent corroboration, it would not be safer to repose trust in the version of P.W.1. Consequently, the description of incident as stated by P.W.1 in his statement before the trial Court is not worthy of credit and the witness is motivated on account of enmity due to pending litigation and his testimony on the whole becomes unreliable. The trial Court, while appraising the testimony on record, failed to take into account and appreciate the quality of the evidence vis-a-vis other attending circumstances and that it was not justified in recording a finding of conviction based on such shaky evidence/ testimony.

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, I am of the view that the prosecution miserably failed to adduce any evidence to prove that the accused abused P.W.1 by referring his caste name in public view. Therefore, the impugned judgment is liable to be set aside.

In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 19.09.2011 in S.C.S.T. S.C.No.25 of 2008 on the file of the Special Judge for trial of Offences under S.Cs. and S.Ts (POA) Act-cum-V Additional District and Sessions Judge, Medak at Sangareddy, for the offence punishable under Section 3 (x) of the Act, are set aside and the appellant/accused is acquitted for the said charge. The bail bonds of the appellant/accused shall stand cancelled and his sureties shall be discharged.

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

JUSTICE G.SRI DEVI

22.01.2020
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