

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY ,THE FOURTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

CRIMINAL APPEAL NO: 780 OF 2012

Appeal filed under Sections 378(1) & (3) of Cr.P.C., against the Judgment dated 16.01.2009 passed in S.C.No. 150 of 2007 on the file of the Special Sessions Judge for SC/STs (POA) Act, Nalgonda.

Between:

The State of A.P., Rep. by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad.

...Appellant/Petitioner

AND

1. Bathini Jayaramulu @ Jaya @ Vijaya, S/o. Pitchaiah, Age: 37 years, Occ: Toddy Tapper, R/o. Pankabanda (V), Nalgonda District
2. Karupothula Muthyalu,, S/o. Sailu, Age: 35 years, Occ: Toddy Tapper, R/o. Pankabanda (V), Nalgonda District
3. Orsu Shankaraiah,, S/o. Anjaiah, Age: 30 years, Occ: Coolie, R/o. Pankabanda (V), Nalgonda District
4. Nallapogula Uppalaiah,, S/o. Chandraiah, Age: 38 years, Occ: Barber and Agriculture, R/o. Pankabanda (V), Nalgonda District

...Respondents/Accused

Counsel for the Appellant : Public Prosecutor

Counsel for Respondents : Sri K. Narasimha Reddy

The Court delivered the following: JUDGMENT

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU

CRL.APP.NO.780 of 2012

JUDGMENT:

This is a Criminal Appeal filed under Section 378 (1) & (3) of Criminal Procedure Code (for short 'Cr.P.C.') against the judgment dated 16-01-2009 in SC.No.150 of 2007 with corresponding Old Sessions Case No.33 of 2007 on the file of Special Sessions Judge for SC/STs (POA) Act at Nalgonda, where under the learned District Judge acquitted the respondents/accused under Section 235 (1) Cr.P.C. for the charges under Section 323 of Indian Penal Code (for short 'I.P.C.') and Section 3(1)(x) of SC/ST (POA) Act, 1989. The appeal has been filed on the following grounds.

2. The judgment of the trial court is contrary to law, weight of evidence and probabilities of the case. The learned trial Judge ought to have seen that the ingredients to constitute offences punishable under Section 323 r/w 34 of I.P.C. and Section 3(1)(x) of SC/ST (POA) Act has been made out by the prosecution against the respondents/accused. The trial Judge committed an error by disbelieving the evidence of prosecution witnesses though it is cogent and reliable. The

trial Judge has brushed aside the evidence of prosecution witnesses without assigning valid reasons. The trial judge has not considered the evidence of prosecution witnesses in its correct prospective.

3. Before adverting to the merits of the appeal, it is just and necessary to extract the brief case of the State against the respondents/accused as per the charge sheet laid against them and also as to how the learned trial Judge dealt with the case.

4. According to the material placed before the Court, it appears that the Sub-Divisional Police Officer (for short 'SDPO'), Bhongiri filed a charge sheet against the respondents No.1 to 4/A1 to A4 for the offences under Sections 323 of I.P.C. and 3(1)(x) of SC/ST (POA) Act. According to the charge sheet filed by the SDPO, Bhongiri, it is alleged that PW.1 is a resident of Panakabanda Village and Madiga by caste which is a notified Schedule Caste. He is a physically challenged person. The respondents/accused are also residents of the same village. A1 and A2 belongs to Gouda community, A2 belongs to Vaddera caste and A4 belongs to Barber community. LW.7 Itikala Krishna, LW.8 Itikala

Chiranjeevi, LW.9 Nimmala Swamy, LW.10 Kurmeti Aruna, PW.6, worked as Auditors of Rural Employment Guarantee Scheme. On 29-12-2006, at about 6.00 p.m., all these Auditors went to Gram Panchayath Office, Panakabanda Village and gathered the villagers before whom they have announced the list of persons, who have worked and who have been working under Rural Employment Guarantee Scheme and asked the villagers to inform if the names of persons who have not worked or included in the list. PW.1 informed the Auditors that the Field Officer by name Padma was not working and one Gaddam Uppalamma though was not working, her name is included in the Scheme. Therefore, the Auditors including PW.6 asked PW.1 to give the said information in writing.

5. The prosecution further alleged that on the same day at about 7.30 p.m., when PW.1 sat on a pail of house of Mohmad Atchaiah, A1 to A4 went there and picked up a quarrel with PW.1 questioning him as to why he complained against the Field Officer Padma and Gaddam Uppalamma. A1 said to have caught hold of the collar of PW.1, pulled him to the ground. A2 and A3 said to have abused PW.1 saying that

"Madiga Lanjakoduka Neekendukura" and A4 kicked him. The prosecution has alleged that PW.3, LW.3 L.Latchaiah, PW.5 intervened and separated him from the accused.

6. It is also alleged in the charge sheet that on 30-12-2006, at about 11 a.m., PW.1 visited police station and presented a complaint against accused and on the basis of the said complaint, PW.7 registered a case in Crime No.91 of 2006 and sent the Case Diary file to the Sub-Divisional Police Officer for further investigation. PW.8 the then SDPO, Bhongiri took up investigation of the case and having concluded the investigation including arrest of accused etc. laid charge sheet as referred above.

7. The trial Court having supplied copies of the charge sheet, examined the accused under Section 228(1) (b) of Cr.P.C. and framed charges under Sections 323 and 324 I.P.C. and Section 3(1) (x) of SC/STs (POA) Act, 1989.

8. Since the accused denied the accusation, the Court below proceeded with the trial during which the prosecution has examined PWs.1 to 8 and marked Exs.P1 to P6. After conclusion of the trial, the accused were examined under Section 313 Cr.P.C. and after hearing both parties, the

Court below came to the conclusion that the prosecution was not able to prove the guilt of the accused for the offences with which they were charged and acquitted the accused under Section 235(1) Cr.P.C.

9. Heard the learned Public Prosecutor as well as the learned counsel for the accused.

10. Now the point for consideration is:

Whether the Court below i.e., learned trial Judge failed to appreciate the evidence of PWs.1 to 8 in a correct perspective and recorded acquittal in spite of the prosecution proving the guilt of accused for the offences under Sections 323 and 324 of I.P.C. and Section 3(1)(x) of SC/STs (POA) Act?

11. As could be seen from the record, it is very clear that based on a written complaint presented by PW.1 about the alleged offence, a case has been registered by PW.7, the then Head Constable and the same was investigated by the SDPO, who was examined as PW.8. According to the averments made in Ex.P1 complaint, it was the case of prosecution that since PW.1 said to have made a complaint before PW.6 and other Auditors, who visited Panakabanda Village against the Field Officer Padma and one Uppalamma, the accused said to have attacked PW.1, abused him by raising his caste and said to have caused him simple injuries.

12. In order to prove the case, the prosecution has examined the alleged victim as PW.1. The Investigating Officers were examined as PWs.7 and 8. One of the Auditors before whom PW.1 said to have made a complaint was examined as PW.6 and other witnesses are circumstantial witnesses.

13. According to the evidence placed before the Court what ever may be the allegations and averments made in the report marked as Ex.P1, the defacto complainant who is examined as DW.1 deposed before the Court that on 29-12-2006 at about 9.00 a.m., Social Auditors visited their village and people gathered at Gram Panchayath office, the Auditors enquired the villagers whether the persons shown in the scheme was really attending, thereby, he raised an objection that the list containing the names of persons, who have not worked under the scheme. At the instructions of the Auditor, he was writing the names of persons who did not attend the work and at that time, A3 got up and abused him in filthy language raising his caste and caught hold of his collar, pushed him and dragged him out of Gram Panchayath office.

14. PW.1 further deposed before the Court that subsequent to the above incident, he went to the house of Mohmad Atchaiah and sat on a pail, in the meantime, A.1 went there and abused him in the name of his caste, caught hold of his collar, pushed him down, therefore, he fell on the floor. A2 abused him by raising his caste and kicked him with his leg. A4 also abused him in the name of his caste. A3 kicked him in his stomach and abused him by raising his caste. Whereas, A1 caught hold of his neck and pressed it. According to PW.1, this incident took place at 7.30 p.m., on 29-12-2006 and he presented a report to police at 11.00 a.m., on the next day.

15. In the cross-examination, certain important omissions have been elicited from PW.1. As per the said cross examination, PW.1 deposed before the Court that he did not state before police that the incident took place in the morning hours at 9.00 a.m., after the arrival of Audit party as no incident took place in the morning. Whereas, according to his first version before the police there was an incident at the Gram Panchayat office at 9.00 a.m., which is not his case during the trial before the Court below. The remaining cross-

examination of PW.1 is in the form of suggestions which clearly indicates that what all he deposed before the Court is not found in his report or in his statement before the police under Section 161 Cr.P.C., PW.1 made altogether different version against all the accused as if, A1 to A4 abused him by raising his caste. PW.1 is defacto complainant and lodged a complaint specifically saying that A1 caught hold of his collar, pulled him to the ground, A2 and A3 abused him in the name of his caste and A4 kicked him. Whereas, the overt acts attributed by PW.1 to the accused before the Court are quite different. PW.2 was examined to prove the caste of PW.1. In fact, there is no dispute about the caste of PW.1. Thereby, evidence of PW.2 may not help the prosecution in establishing the guilt of accused. PWs.3 and 5 are supposed to be the eye-witnesses to the alleged incident. The prosecution given up LW.3 who is also shown as eye-witness.

16. According to PW.3, on 29-12-2006 at about 9.00 a.m., the Auditors visited their village, there was a meeting at Gram Panchayath office at 5.00 p.m., and he went to Gram Panchayath office between 6.00 and 6.30 p.m., He found about 200 to 300 villagers. PW.1 raised an objection to the

names in the list and when PW.1 was preparing a paper as per the instructions of the Auditor, A3 went there and abused PW.1 by raising his caste. Thereafter, PW.1 went to the house of Mohd. Atchaiah and A1 followed him and abused him in the name of his caste, A4 also abused PW.1 by raising his caste and kicked him on his legs.

17. The cross-examination of PW.3 clearly indicates that what all he deposed before the Court is not found in his prior statement and the prior statement of PW.3 before the investigation officer is silent and nothing has been deposed according to his statement.

18. Therefore, the material witnesses PW.1, PW.3 and PW.5 have given a different version. In fact as per Ex.P1 complaint, there were two incidents one in the morning at Gram-Panchayat office and the other incident at the house of Mohmad Atchaiah. According to the allegations in the charge sheet and complaint lodged before the police, nothing was attributed to the accused at the first incident and in fact, there were no overt acts against the accused. Whereas, when the witnesses are examined before the Court, they deposed as if the accused Nos.1 to 4 were also present at the time of

meeting at Gram Panchayath office and when PW.1 was writing a complaint, they said to have assaulted him, abused him and when he went to the house of Atchaiah, the accused also followed him, abused him etc. Therefore, there is a complete contradicting version by PWs.1, 3 and 5 before the Court.

19. Even though, the witnesses have deposed that the incident took place at the house of one Mohmad Atchaiah, the said Atchaiah is not figured as a witness to the incident. It is not the case of prosecution that said Atchaiah was not present at his house. As per the contents of Ex.P1, the offence took place at 7.30 p.m., whereas, according to PW.1, he deposed before the Court that there was an incident at 9.00 a.m., and he did not state anything about the incident said to have taken place at 9.00 a.m., During his cross examination, PW.1 deposed that he did not state before police that there was an incident at 9.00 a.m., after the arrival of Auditor party.

20. Therefore, considering the material contradictions which goes to the root of the case, the learned District Judge disbelieved the case of PW.1 and rightly acquitted the accused. Had there been such an incident at 9.00 a.m., at

Auditor's office and another incident at the house of Mohmad Atchaiah as mentioned in Ex.P1, there could not have been such a complete contradicting version by PWs.1, 3 and 5 before the trial Court. If there was an incident as deposed by PW.1 at the Gram Panchayath office followed by the alleged offence, there could not have been such a different version in Ex.P1 which was the earliest version of PW.1.

21. There is another important aspect which can be considered in the present case is the delay in lodging the report. According to the case of prosecution, the offence took place at 7.30 p.m., on 29-12-2006, whereas the report was presented to police on 30-12-2006. According to the endorsement on Ex.P4, the distance between the place of offence and police station is 4 kms, thereby, there could not have been such a delay in lodging the complaint. As per the narration in Ex.P1, it shows that PW.1 had grievance against two individuals and as per the suggestions given to this witness, it shows there are two groups in the village and one group is supporting one political party and other group is a rival one. In such a scenario, there is every possibility for PW.1 to make deliberations, consultations and to lodge a false

complaint to implicate an innocent person by simply saying that he was abused by raising his caste. The contradictions elicited from PWs.1, 3 and 5 create any amount of doubt whether there was such an incident as narrated by PW.1 on 29-12-2006. Therefore, the Court below rightly acquitted the accused and there is nothing to interfere with such a finding. As such, the appeal is liable to be dismissed.

22. In the result, the appeal is dismissed.

Consequently, Miscellaneous Petitions if any, are closed.

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SD/-K. SRINIVASA RAO
JOINT REGISTRAR



SECTION OFFICER

To,

1. The Special Sessions Judge for SC/STs (POA) Act, Nalgonda. (with records)
2. The Station House Officer, Mothkur Police Station, Bhongir.
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
4. One CC to Sri K. Narasimha Reddy, Advocate [OPUC]
5. **Two CD Copies**

njb
MY

HIGH COURT

DATED:04/01/2024



JUDGMENT

CRLA.No.780 of 2012

DISMISSING THE CRL. APPEAL