

HONOURABLE SRI JUSTICE RAJA ELANGO

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CRIMINAL APPEAL No.23 of 2007

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JUDGMENT:

This criminal appeal is preferred by the appellant – accused by invoking the provision under Section 374 (2) of the Code of Criminal Procedure being aggrieved by the judgment, dated 22.12.2006 rendered in S.C. No.43/S/2004, by the Special Sessions Judge – cum – IV Additional Sessions Judge, Guntur, whereby and whereunder the learned sessions Judge convicted the appellant for the offences punishable under Sections 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (POA) Act (for short ‘the Act’) and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for (15) days, and further sentenced to pay fine of Rs.1,000/- in default to suffer simple imprisonment for (15) days for the offence punishable under Section 353 IPC.

2. The brief facts of the case are that the appellant – accused is a TDP worker and he used to go to the Government offices for submitting the representations of the people. Similarly, he represented the problem of Poojala Singaiah, whose name was written by mistake as Chambaiah, in the birth and death register of MRO’s office, Sattenapalli. The MRO (PW.4) entrusted the work of verification and submission of report to the RDO, to PW.5. As PW.5 was on other duty, PW.1 was placed as in charge of PW.5. On 28.01.2003, the accused went to the office and asked PW.1 to send the report. PW.1 informed him that he needs some time to send the proposals. Immediately, the accused grew wild and behaved high handedly with PW.1 and threatened him that he would get him suspended within three days, caught hold of his shirt and abused him by touching name of caste of PW.1.

On the report given by PW.1, the Assistant Sub-Inspector of

Police (PW.6) registered a case in Crime No.22 of 2003 under Sections 353 IPC and 3 (1) (x) of the Act. The Sub Divisional Police Officer (PW.8) visited the scene of offence, examined the witnesses and recorded their statements. The accused was arrested on 29.01.2003 and was sent for judicial remand. After completion of investigation, the police filed charge sheet.

3. After taking cognizance of the charge sheet filed by the Investigating Agency, the learned Magistrate took the case on file. Thereafter, as the case was exclusively triable by the Court of Sessions, the same was committed to the trial Court for disposal in accordance with law. On appearance of the accused, the trial Court framed charges under Section 3 (1) (x) of the Act and 353 IPC against the accused, read over and explained to him in Telugu, for which, he pleaded not guilty and claimed for trial.

4. To substantiate its case, prosecution got examined P.Ws.1 to 8 and marked Exs.P-1 to P-4. On behalf of defence, no oral or documentary evidence was adduced.

5. After evaluating the oral and documentary evidence, the learned trial Judge found the accused guilty of the offence punishable under Section 3 (1) (x) of the Act and 353 IPC and sentenced him as stated above relying on the evidence of PWs.1, 2 and 4. Aggrieved by the judgment of the learned trial Judge, the appellant – accused filed the present appeal.

6. Heard the learned counsel for the appellant and learned Public Prosecutor and perused the material available on record.

7. PW.1 is the aggrieved person and PW.2 is the eye-witness to the occurrence. PW.1 stated in his evidence that the accused abused him in the name of his caste and also caught hold of his shirt, and the accused proclaimed that even the police cannot take any

action against him. PW.1 stated that immediately he reported the same to the MRO and as per the advice of the MRO, he lodged the complaint. He stated many things in his report, which were not deposed before the Court. PW.2 also stated in his evidence that the accused came to the room of PW.1 in a drunken stage and abused PW.1 in the name of his caste. According to PWs.1 and 2, the incident occurred at about 4.30 p.m. The complaint was lodged by PW.1 at 7.45 p.m. The police station is situated at a distance of 250 yards away from the place of occurrence. The reasons for the delay were also not explained by PW.1. Apart from that, PW.4 has specifically stated that PW.1 has not stated the exact manner in which he was abused by the accused. From the cross-examination of PW.1, the following answers were elicited:

- “i) The accused did not know me.
- ii) I saw the accused for the first time in my room.
- iii) I have no acquaintance with the accused prior to the incident.”

8. Further, it is elicited from the other witnesses also that by seeing a person or by his name, the caste of that person cannot be known to another person. In the present case, the accused is not aware of the community of PW.1 to abuse him by touching the name of his caste. This point is not properly appreciated by the trial Court. From the evidence of the prosecution witnesses, it is evident that the accused had a quarrel with PW.1, but at the same time, as per the answers given by PW.1, the accused is not having any acquaintance with him nor P.W.1 is a known person to the accused. When the accused has no acquaintance with PW.1, it cannot be expected that the accused knew the caste of P.W.1. Therefore, the case of the prosecution that the accused abused P.W.1 in the name of his caste, cannot be believed. In view of the above, the conviction and sentence imposed by the trial Court against the accused for the offence under

Section 3 (1 (x) of the Act is liable to be set aside.

9. As far as the offence punishable under Section 353 IPC is concerned, as discussed above and also in view of the specific evidence adduced PWs.1, 2 and the MRO- PW.4, this Court is not inclined to interfere with the findings of the trial Court in this regard. Hence, the conviction recorded by the trial Court against the accused for the offence punishable under Section 353 IPC is confirmed.

10. In the result, the Criminal Appeal is partly allowed. The conviction recorded by the trial Court against the appellant – accused for the offence punishable under Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is set aside and the accused is acquitted of the said offence. Fine amount, if any, paid by the appellant - accused with regard to the said offence shall be refunded to him. Bail bonds shall stand cancelled and the sureties are discharged.

But the conviction and sentence recorded by the trial Court against the accused for the offence punishable under Section 353 IPC are confirmed. Miscellaneous petitions filed in this criminal appeal, if any, shall stand closed.

RAJA ELANGO, J

July 31, 2014.

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