



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL APPEAL No.842 OF 2009**Between:**

Kuruva Venkataramappa (A-1),
S/o.K.Mallappa, Aged 38 years
R/o.Peddireddypalli Village,
Chilamathur Mandal,
Anantapur District and another. --- Appellants.

And

State of A.P.,
Rep. by Public Prosecutor,
High Court of A.P., Amaravathi. --- Respondent.

DATE OF JUDGMENT PRONOUNCED : 17.02.2021

SUBMITTED FOR APPROVAL:**HON'BLE SRI JUSTICE JOYMALYA BAGCHI**

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the fair copy of the judgment? Yes/No

JOYMALYA BAGCHI, J



*** HON'BLE SRI JUSTICE JOYMALYA BAGCHI**

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Respondent.

! Counsel for the Appellants

**: Smt. D.Sangeetha Reddy/
Sri C.Sharan Reddy**

^ Counsel for Respondent

: Additional Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

This Court made the following :

**HON'BLE SRI JUSTICE JOYMALYA BAGCHI****CRIMINAL APPEAL No.842 OF 2009**

(Proceedings taken up through video conferencing)

JUDGMENT:

1. The Appeal is directed against the judgment and order dated 27.07.2009 in Sessions Case No.633 of 2008 by the learned Special Sessions Judge for trial of cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), Anantapur (for short, 'the learned Special Sessions Judge') convicting the 1st appellant for commission of offence punishable under Section 326 of IPC and 2nd appellant under Section 326 R/w.109 of IPC, sentencing the 1st appellant to suffer Rigorous Imprisonment for three (3) years and to pay a fine of Rs.5,000/-, in default to suffer Simple Imprisonment for six (6) months and 2nd appellant to suffer Rigorous Imprisonment for three (3) years and to pay a fine of Rs.2,000/-, in default to suffer Simple Imprisonment for six (6) months with a further direction that a sum of Rs.3,000/-, on realization of the fine amount of Rs.7,000/-, be paid to PW.1 as compensation under Section 357 of Cr.P.C.

2. The prosecution case, as alleged against the appellants, is to the effect that on 22.01.2008 at 12:30 PM, 1st appellant went to S.C. Colony at Sanaganapalli village; seeing him, PW.2 – H.Yettemma (mother of the injured - informant, PW.1 - H.A.Venkatash), complained that residents of S.C. Colony were not getting drinking water and requested him to provide a tap. Hearing this, 1st appellant become angry and abused Yettamma by calling her '*Madiga Lanja*', and also intimidated her. She informed the said incident to her son *i.e.*, PW.1. On the next day around 07:30 PM, PW.1 found the appellants near the *beedi bunk* (kiosk) of the village. When PW.1 enquired from the 1st appellant why he had abused his mother, 2nd



appellant intervened and instigated the 1st appellant to hit him. Thereupon, the 1st appellant abused him by uttering '**EE MADIGA NAA KODUKUTHO EMVUTHUNDI**', and picked up a big stone and hit PW.1 on the right thigh and right hand. This resulted in fracture of the thigh bone. PW.1 was treated in Government Hospital at Hindupur by PW.11. PW.1 lodged written complaint resulting in registration of the instant case.

3. In conclusion of the investigation, charge sheet was filed against the appellants under Section 326 R/w.109 of IPC and also under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the act of 1989'). Charges were framed against the appellants under Section 3(1)(x) of the Act of 1989 and also under Section 326 of IPC against 1st appellant and under Section 326 R/w.109 of IPC against the 2nd appellant, to which the appellants pleaded not guilty and claimed to be tried.

4. In the course of trial, prosecution examined 14 witnesses and exhibited number of documents including the wound certificate, Ex.P-10, and x-ray films of the injured *i.e.*, Exs.P-11 and 12. Defence of the appellants was one of innocence and false implication.

5. In conclusion of trial, the learned Special Sessions Judge, while acquitting the appellants of the charge under Section 3(1)(x) of the Act of 1989, convicted and sentenced the appellants as stated hereinabove.

6. Sri C.Sharan Reddy, learned counsel appearing for the appellants, argues the genesis of the prosecution case has not been proved beyond doubt. There is wide variance in the versions narrated by PWs.1 and 2 in Court when compared with First Information Report or in their earlier statements. It is further contended that the ocular version of the injured



witness, PW.1, is not corroborated by medical evidence. He accordingly prayed for acquittal of the appellants.

7. On the other hand, learned Additional Public Prosecutor argues the evidence of the injured witness - PW.1 is corroborated not only by her mother, PW.2, but also with other independent witnesses *i.e.*, PWs.3, 4 and 5. There is no dichotomy between the ocular versions of the witnesses when compared with the medical evidence. Hence, the Appeal may be dismissed.

8. I have analysed the evidence on record. PW.1 is the injured and most vital witness. He deposed on 22.01.2008 at 12 noon, there was an altercation between the 1st appellant and his mother Yetteemma, PW.2, over scarcity of drinking water in the S.C. Colony; 1st appellant abused his mother by saying '*Madiga Lanja*'. His mother reported the incident to him. On the next date at 07:30 PM, he met the appellants at the *beedi bunk*. When he enquired of the previous day's incident, 2nd appellant abused him and instigated the 1st appellant to throw a boulder at him. Thereupon, 1st appellant took up a big boulder and threw it at his right thigh causing fracture injury. He also threw a stone on the right hand and forehead causing bleeding injuries. He was shifted to Government Hospital, Hindupur and thereafter to the Government Hospital at Anantapur. X-ray was done in the hospital at Anantapur. One Nagaraju scribed the written complaint, which was lodged before the Police. He proved his thumb impression, Ex.P-1. He was extensively cross-examined on behalf of the defence. He stated 1st appellant kicked him and his mother, PW.2. He fell down in front of the bunk. Thereafter, 1st appellant lifted a stone and threw it at his right thigh.



9. PW.2, Yetteemma, mother of PW.1, has corroborated the evidence of his son. In cross-examination, she, however, claimed that the altercation between herself and the 1st appellant occurred on the day the appellants had hit the victim. She claimed that the appellants have thrown the victim on the ground and hit him on the head and hand with a stone.

10. PWs.3, 4 and 5 have also corroborated the version of PW.1.

11. The other impartial witness in the instant case is the doctor, PW.11, who treated PW.1 at the Government Hospital, Hindupur. He deposed he examined PW.1 on 23.01.2008 at 11:00 PM and found the following injuries:

“1. Laceration of size 1 x 1 c.m. over right thigh red in colour – no bleeding present – deformity present.

2. Pain and swelling over right wrist.

X-ray of right thigh and right fore-arm reveals fracture of distal end of right femur and fracture of distal end of right radius.”

PW.11 opined that the injuries occurred 2 to 6 hours prior to his examination. They are grievous in nature. He proved the wound certificate, Ex.P-10. He opined that the injuries could be caused by a boulder. In cross-examination, he deposed that there was no external injury over the wrist. He also stated that if boulder is used for hitting on the wrist, there would be an external injury. He also admitted that the deformity may be possible due to indirect violence of assault. There was no external injury on the distal end of the right femur. He proved the x-ray films *i.e.*, Exs.P-11 and P-12 as well as the prescription signed by him, Ex.P-13. He admitted there were corrections in the prescription.

12. PWs.12, 13 and 14 are the investigating officers of the case.



13. Relying on the cross-examination of PWs.1 and 2 and the absence of external injury noted by the medical witness, PW.11, Mr.C.Sharan Reddy, learned counsel for the appellants, strenuously argues that the prosecution case of fracture being caused by throwing of boulder (MO.1) is improbable. On the other hand, he submits PW.1 in the course of the scuffle had fallen down and suffered the fracture injury. It is also argued that there was no quarrel between the parties on the previous night and the manner and course of the prosecution case has not been proved beyond doubt. It is true there is some divergence with regard to the averments in the First Information Report and the depositions of the witnesses with regard to the altercation between the 1st appellant and PW.2, Yettemma, over shortage of water supply in the S.C. Colony. While in the First Information Report it is alleged that the incident occurred on 23.01.2008, in Court PWs.1 and 2 claimed that the incident had occurred on the previous day. However, such variation in their depositions does not render the crux of the prosecution case improbable. Evidence of the aforesaid witnesses un-equivocally shows there was an altercation between the 1st appellant and PW.2 over shortage of water. PW.1 had questioned the 1st appellant over such issue. Thereupon, on the instigation of 2nd appellant, 1st appellant hit PW.1 with a stone on his right thigh and wrist. As a result, he suffered fracture injury on the right thigh. Hence, I am of the opinion slight variation with regard to the time of the previous altercation does not affect the intrinsic value of the depositions of PWs.1 and 2 with regard to the assault by 1st appellant resulting in fracture injury. The other challenge to the prosecution case is with regard to the dichotomy between the ocular version *vis-a-vis* medical evidence. PW.11, doctor, has proved the wound certificate as well as the x-ray films. It appears that PW.1 suffered injury on the right hand and a fracture in the



right thigh. Medical Officer opined that such injury may be caused by the boulder (MO.1). As no external injuries were noted, it is contended that the victim may have suffered injuries due to a fall. In this regard reference is made to the cross-examinations of PWs.1 and 2 that the victim had fallen down in the course of the scuffle.

14. I have given my anxious consideration to such submission. No doubt the witnesses claimed that the victim had fallen down in the course of the skirmish. However, the witnesses also emphatically stated that 1st appellant had hit the victim (PW.1) with a boulder on the right thigh and wrist. PW.11, doctor, also accepted that the injuries may be caused by the boulder. Theoretical possibility that similar injury may also be caused by fall, in the given circumstances, cannot come to the aid of the defence. It is settled law that ocular version of an injured witness is to be given due weightage and can be rejected only if the medical opinion wholly rules out his version. No such situation has emerged from the facts of the present case. On the other hand, medical opinion corroborates the version of the injured witness. In these circumstances, I am of the opinion that the conviction against the 1st appellant is proved beyond doubt.

15. Coming to the role of 2nd appellant, I find that the evidence with regard to instigation is an afterthought and not reflected in the First Information Report lodged by PW.1. There is enmity between the parties and therefore possibility of false implication of 2nd appellant on such score cannot be ruled out. Accordingly, I am inclined to extend the benefit of the doubt to 2nd appellant and acquit him of the charge levelled against him. Under such circumstances, conviction of 1st appellant under Section 326 IPC is upheld. Conviction of 2nd appellant under Section 326 R/w.109 of IPC is set-aside.



16. Coming to the issue of sentence, I note that the incident occurred in the course of a quarrel. 1st appellant had been acquitted of the charge under Section 3(1)(x) of the Act of 1989. He does not have criminal antecedents. Thus, balancing the aggravating and extenuating circumstances, I am inclined to modify the sentence imposed on the 1st appellant. Accordingly, he is sentenced to suffer Rigorous Imprisonment for a period of two (2) years and to pay a fine of Rs.5,000/-, in default to suffer Simple Imprisonment for six (6) months more.

17. The period of detention suffered by the 1st appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of Cr.P.C.

18. In the result, the Criminal Appeal is allowed to the aforesaid extent. Bail bond of A-1 is cancelled and he is directed to surrender forthwith and serve out the remainder of the sentence, in accordance with law; failing which the trial Court shall resort to appropriate processes for execution of the sentence. Bail bond of 2nd appellant shall be cancelled after a period of six (6) months in terms of Section 437A of Cr.P.C.

19. As a sequel, miscellaneous applications pending, if any, in this Appeal shall stand closed.

JOYMALYA BAGCHI, J

Date: 17-02-2021.

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