



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE TWELFTH DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU
CRIMINAL APPEAL NO: 1194 OF 2009

Between:

1. DAVULURI SUBBA RAO,
GADIPARTHIVARIPALEM[V],PRAKASAM,&ANR. S/o. Kotaiah
Cultivation
R/o. Gadiparthivaripalem Village,
Chimakurthy Mandal of
Prakasam District.
2. Davuluri Venkateswarlu S/o. Kotaiah
Cultivation
R/o. Gadiparthivaripalem Village,
Chimakurthy Mandal of
Prakasam District.

...PETITIONER(S)

AND:

1. THE STATE, REP. BY P.P., HYDERABAD. Reptd. by the Public
Prosecutor
High Court of Andhra Pradesh,
Hyderabad.

...RESPONDENTS

Counsel for the Petitioner(s): T SREEDHAR

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER



HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRIMINAL APPEAL No.1194 OF 2009

Between:

- 1) Davuluri Subba Rao, S/o Kotaiah, 45 years,
Cultivation, resident of Gadiparthivaripalem Village,
Chimakurthy Mandal, Prakasam District.
- 2) Davuluri Venkateswarlu, S/o Kotaiah, 42 years,
Cultivation, Gadiparthivaripalem Village,
Chimakurthy Mandal, Prakasam District **(died)**.
.... Appellants/Accused.

Versus

The State, rep. by the Public Prosecutor,
High Court of Andhra Pradesh.

... Respondent/Complainant.

DATE OF ORDER PRONOUNCED : 12.05.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

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

A.V.RAVINDRA BABU, J



*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**
+ CRIMINAL APPEAL No.1194 OF 2009

% 12.05.2023

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! Counsel for the Appellants : Sri T. Sreedhar

^ Counsel for the Respondent : Public Prosecutor
< Gist:

> Head Note:

? Cases referred:

2020 SCC OnLine SC 907
2020 SCC OnLine Bombay 209
(2008) 8 SCC 435

This Court made the following:

**THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU****CRIMINAL APPEAL NO.1194 OF 2009****JUDGMENT:-**

This Criminal Appeal is filed by the appellant Nos.1 and 2 originally, who were the A.1 and A.2 in Sessions Case No.10 of 2008, on the file of Special Judge for Trial of the offences under SCs & STs (POA) Act, Prakasam Division at Ongole ("Special Judge" for short), challenging the judgment, dated 17.09.2009, whereunder the learned Special Judge found A.1 and A.2 guilty of the charge under Section 3(1)(x) of SCs & STs (POA) Act, 1989 and further A.1 under Section 323 of the Indian Penal Code ("I.P.C." for short) and after questioning them about the quantum of sentence, sentenced A.1 and A.2 to undergo simple imprisonment for six months each and to pay a fine of Rs.500/- each, in default to suffer simple imprisonment for 15 days each for the offence under Section 3(1)(x) of SCs & STs (POA) Act, 1989 and further sentenced A.1 to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days for the offence under Section 323 of I.P.C.. By virtue of the said judgment, the learned Special Judge found A.3 not guilty of the charge under Section 3(1)(x) of SCs & STs (POA) Act, 1989 and further found A.2 and A.3 not guilty of the charge under Section 323 of I.P.C.



and acquitted them under Section 235(1) of the Code of Criminal Procedure ("Cr.P.C." for short).

2) The parties to this Criminal Appeal will hereinafter be referred to as described before the trial Court for the sake of the convenience.

3) The Sessions Case No.10 of 2008 arose out a committal order passed in P.R.C.No.51 of 2007, on the file of III Additional Judicial First Class Magistrate, Ongole, pertaining to Crime No.110 of 2007 of Chimakurthy Police Station.

4) The Sub-Divisional Police Officer, Ongole Sub-Division, Ongole, filed a charge sheet under Sections 341 and 323 of I.P.C. and Section 3(1)(x) of SCs & STs (POA) Act, 1989.

5) The case of the prosecution, in brief, according to the charge sheet is as follows:

(i) L.W.1-Jyothi Chandraiah is the *defacto*-complainant and L.W.2-Jyothi Brahmaiah is the brother of L.W.1. L.W.3-Puli Nageswara Rao, L.W.4-Rampathoti Raghavulu and L.W.5-Sudidhala Anjamma are the witnesses to the occurrence. L.W.6-Nasipeddi Hymavathi is the circumstantial witness. L.W.7-Challakolusula Manikantam and L.W.8-Yeddanapudi Sreenu are the co-students of L.W.2, who were playing in the Zilla Parishad High School premises. They were also the witnesses to the first occurrence where the daughter of A.1 slapped L.W.2 and in



retaliation L.W.2 slapped the daughter of A.1 and further A.1's beating L.W.2.

(ii) As usual, L.W.2 attended for morning tuition at the premises of Z.P. High School. On noticing that the tuition master went on Ongole for his personal work, all the students started playing. While so, one Kavita, student of 7th class, picked up a quarrel with L.W.2 alleging that some dust fell on her and held L.W.2 as responsible for the same. Then, L.W.2 who is in the company of L.W.7 and L.W.8 attended to clear the dust and then Kavitha gave a slap on his face for which L.W.2 retaliated with a slap. Then, Kavitha went home and brought her father (A.1) to the school premises, where A.1 without asking reasons, beat L.W.2 with hands on his back in the presence of L.W.7 and L.W.8 and other students. L.W.2 felt ashamed of it, went to palle and narrated the incident to his brother, L.W.1. Then, both L.W.1 and L.W.2 came to the house of A.1 at 8.30 a.m. L.W.1 asked A.1 about the incident. Then, A.1 to A.3 came out from the house in aggressive nature and A.1 and A.2 abused them in filthy language by touching their caste and further A.1 to A.3 beat L.W.1 with hands. L.W.3 and L.W.4 witnessed the occurrence.

(iii) Basing on the report of L.W.1, a case in Crime No.110 of 2007 under Section 323 of I.P.C. and Section 3 (1) (x) of



SCs. & STs. (POA) Act was registered by L.W.13-Sub-Inspector of Police. On 19.07.2007 L.W.14-Sub-Divisional Police Officer, took up investigation as per the orders of the Superintendent of Police, Prakasam District, dated 19.07.2007. He visited Gadiparthivaripalem village, secured the presence of L.W.9-Bodipogu Balaiah and L.W.10-Gaddeti Narasimha Rao, as mediators and prepared rough sketch of the scene. The evidence collected made out the offences alleged against the accused. The investigation did not disclose the offence against Davuluri Seethamma and Davuluri Vimala, whose names were figured in the F.I.R. Further the investigation did not disclose the offence under Section 341 of I.P.C. During the investigation, L.W.14 arrested A.1 and A.2 on 30.07.2007 at 10-30 a.m., at R.T.C. bus stand, Chimakurthy and produced them before the Court for judicial remand. A.3 surrendered before the concerned Court on 19.07.2007 and got bail. L.W.11-R. Prabhakar Rao, Mandal Revenue Officer, Chimakurthy, issued caste certificate of L.W.1 stating that he belongs to Scheduled Caste and also issued caste certificates of A.1 to A.3 stating that they belong to Upper Caste. L.W.12-Dr. N.V. Satish, Civil Assistant Surgeon, Government Hospital, Ongole, issued wound certificate of L.W.1 opining that no opinion could be given, as L.W.1 discharged as



against the medical advice on 16.07.2007 at 5-30 p.m. Hence, the charge sheet.

6) The learned III Additional Judicial Magistrate of First Class, Chimakurthy, took cognizance and after complying the necessary formalities under Section 207 of the Code of Criminal Procedure ("Cr.P.C." for short), committed the case to the Court of Sessions and after numbering of the same by the Sessions Court, the case was made over to the learned Special Judge.

7) On appearance of A.1 to A.3 before the learned Special Judge, a charge under Section 323 of I.P.C. against A.1 as having beat L.W.2-Jyothi Brahmaiah at school premises, charge under Section 3 (1) (x) of SCs. & STs. (POA) Act against A.1 and A.2 as having abused L.W.1-Jyothi Chandraiah and L.W.2-Jyothi Brahmaiah in the name of caste at 8.30 a.m. and further charge under Section 323 of I.P.C. against A.1 to A.3 as having beat L.W.1, were framed and explained to them in Telugu, for which they denied the same and claimed to be tried.

8) In order to establish the guilt against the accused before the learned Special Judge, prosecution examined P.W.1 to P.W.13 and got marked Ex.P.1 to Ex.P.13. After closure of the evidence of the prosecution, the accused were examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances appearing in the evidence let in by the



prosecution, for which they denied the same. In furtherance of the defence, A.3 examined himself as D.W.1.

9) The learned Special Judge on hearing both sides and on considering the oral as well documentary evidence on record, found A.1 and A.2 as guilty of the charge under Section 3(1)(x) of SCs. & STs. (POA) Act and further found A.1 as guilty of the charge under Section 323 of I.P.C. and extended an order of acquittal as against A.3 under Section 3 (1) (x) of SCs. & STs. (POA) Act and further extended an order of acquittal against A.2 and A.3 with regard to the charge under Section 323 of I.P.C. and accordingly, convicted A.1 and A.2 and sentenced them as above. Felt aggrieved of the same, both the unsuccessful A.1 and A.2, filed the present Criminal Appeal. There is no cross appeal filed by the prosecution with regard to the acquittal of the appellants under Section 323 of I.P.C.

10) While so, when the appeal was coming for hearing, Sri Y. Jagadeeswara Rao, learned counsel, representing the learned Public Prosecutor, confirmed the death of second appellant (A.2). Prior to that, the learned counsel for the appellants brought to the notice of this Court that second appellant died and he would place the copy of death certificate in the Registry. Up on confirmation of the above, the Sri Y. Jagadeeswara Rao, learned counsel, representing the learned



Public Prosecutor, confirmed the death of the second appellant, as such, the appeal against second appellant was abated. So, the scope of the appeal is confined to the first appellant/A.1.

11) Now, in deciding the appeal, the points for determination are as follows:

(1) Whether the prosecution before the Court below proved that A.1 on 16.07.2007 at 8-00 a.m., at Zilla Parishad High School premises of Gadiparthivaripalem caused hurt to P.W.2-Jyothi Brahmaiah as alleged within the meaning of Section 323 of I.P.C.?

(2) Whether the prosecution before the Court below proved that the first appellant/A.1 intimidated and humiliated P.W.1-Jyothi Chandraiah and P.W.2-Jyothi Brahmaiah within the public view, as such, committed an offence under Section 3 (1) (x) of SCs. & STs. (POA) Act?

(3) Whether the prosecution proved the charges under Section 323 of I.P.C. and Section 3 (1) (x) of SCs. & STs. (POA) Act against first appellant beyond reasonable doubt?

Point Nos.1 to 3:-

12) Sri T. Sridhar, learned counsel appearing for the appellant, would contend that when the incident was said to be occurred on the date of offence at about 8-30 a.m., the report could be lodged at 8-30 p.m., after the delay of more than 12 hours and the prosecution failed to explain the delay. On the



other hand, the evidence adduced by the prosecution means that after the incident, P.W.1 and P.W.2 within the reasonable time lodged the report with police. The prosecution did not explain anything with regard to the huge delay happened in lodging Ex.P.1, though the police station was at a distance of 15 kilometers from the village. He would strenuously contend that according to the evidence of P.W.11 coupled with Ex.P.9, he examined the injured on 16.07.2007 at 3-37 p.m. P.W.13 deposed that without registering the crime, injured will not be sent to the Government hospital. According to the evidence on record, the injured himself discharged as against the medical advice. Hence, it must have been happened prior to Ex.P.1. Ex.P.1 did not contain anything that P.W.1 went to the hospital and took treatment and discharged himself as against medical advice. The contention of the appellant is that on report from P.W.1, he was referred to the hospital and later the said report of P.W.1 was suppressed as it did not disclose any offence. There were two political fractions in the village as admitted. There were ill-feelings between the *defacto*-complainant party and the accused party and in that view of the matter, the delay is fatal to the case of the prosecution. The contents of Ex.P.1 were totally vague. It means that P.W.1 was studying 9th class and he was beaten at the school. Ex.P.1 goes to prove that it



was not in the hand writing of him. He put up inconsistent version in Ex.P.1. Ex.P.1 did not convey any proper meaning. The investigating officer brought consistency by recording Section 161 of Cr.P.C. statements of P.W.1 and P.W.2 to suit the case of the prosecution. The prosecution deliberately shifted the scene of offence. According to Ex.P.1 coupled with the evidence of P.W.1 and P.W.2, the incident was happened within the house premises of A.1 where the house of A.1 was surrounded by a big compound wall. The place of offence was not within the public view. P.W.2 during the cross examination shifted the scene of offence to a road. Ex.P.2, the crime details form, would disclose that the scene of offence was within the house premises of A.1 and the road was located at a far of place. P.W.3 was a planted and chance witness, who had no probability to witness the events. Even P.W.4 did not support the case. P.W.6 and P.W.7 were not the reliable witnesses. With regard to the incident at the school where it was alleged that A.1 beat P.W.2, P.W.8 did not support the case of the prosecution. The case of the prosecution suffers with inherent infirmities and inherent improbabilities. The Court below disbelieved the case of the prosecution that A.1 to A.3 at the house of A.1 caused injuries to P.W.1. The learned Special Judge having acquitted A.1 to A.3 with regard to the incident happened at the house of A.1, erred



in convicting the accused under Section 3 (1) (x) of SCs. & STs. (POA) Act. With regard to the incident happened at school, the evidence of P.W.2 and P.W.9 suffers with infirmities. The learned Special Judge instead of extending an order of acquittal, erroneously convicted the accused. The prosecution deliberately shifted the scene of offence to bring the accused within the purview of Section 3(1) (x) of SCs. & STs. (POA) Act.

13) The learned counsel for the appellant in support of his contention would rely upon the decisions in (1) ***Hitesh Verma vs. State of Uttarakhand***¹ and (2) ***Dr. Manali and others vs. State of Maharashtra through Police Station in charge and another***². He would further contend that the evidence on record warrants the Court to extend an order of acquittal by giving benefit of doubt.

14) Sri Y. Jagadeeswara Rao, learned counsel, representing the learned Public Prosecutor, would contend that P.W.1 was the injured with regard to the incident happened at the house of A.1 and P.W.2 was the victim with regard to the event happened at the school where A.1 beat P.W.2. The Court below on analysis of the evidence, extended the benefit of doubt with regard to the incident happened at the house of A.1

¹ 2020 SCC OnLine SC 907

² 2020 SCC OnLine Bom 295



in causing injuries to P.W.1. With regard to the abuse made by A.1 and A.2 at the house of A.1 against P.W.1 and P.W.2, the Court below believed the case of the prosecution. P.W.1 to P.W.3 had no reason to depose false. P.W.4 did not support the case of the prosecution. But, P.W.5 to P.W.7 and P.W.9 supported the case of the prosecution. It appears that P.W.1 on his own admitted himself into hospital and later discharged himself. The investigating officer is not aware of this fact and the Sub-Inspector of Police, who registered F.I.R., deposed that he sent P.W.1 to the hospital. He might have deposed the above due to slip of tongue. There was no delay in lodging Ex.P.1. The Court below rightly appreciated the evidence on record and with utmost care and caution acquitted A.1 to A.3 for the other charges and convicted A.1 for the charge under Section 3 (1) (x) of SCs. & STs. (POA) Act and Section 323 of I.P.C., as such, there are no merits in the appeal and the appeal is liable to be dismissed.

15) The case of the prosecution before the Court below depicted two incidents. One was at the school where P.W.2 and daughter of A.1 slapped against each other when P.W.2 tried to remove the dust fallen on her clothes. It was alleged that when she brought A.1, he beat P.W.2. Another incident was at the house of A.1 when P.W.1 and P.W.2 went there to question the



act of A.1 where A.1 and A.2 were alleged to have abused P.W.1 and P.W.2 in the name of caste and beat them with hands and A.3 beat them in hands. As pointed out, the Court below did not find favour with the case of the prosecution that A.1 to A.3 beat P.W.1 at their house and that A.3 abused P.W.1 and P.W.2 in the name of the caste.

16) For better appreciation, it is pertinent to look into Ex.P.1. As held by the Court below, admittedly, Ex.P.1 is found to be vague. A look at Ex.P.1 shows that it did not convey proper meaning. It was in first person as if signatory was studying 9th class, but, Ex.P.1 was signed by both P.W.1 and P.W.2. Though Ex.P.1 was signed by P.W.1 and P.W.2, but the narration of the events were in first person, as such, it creates a lot of confusion. It mentioned the names of five persons and during investigation, the names of Davuluri Seethamma and Davuluri Vimala were deleted by the investigating officer. The names of Puli Nageswara Rao and Rampathoti Raghavulu were shown as witnesses to the occurrence. There need not be any mention about the name of Brahmaiah in the body, especially, if it was written in first person by Brahmaiah. Apart from this, it also convey a meaning as if P.W.1 was studying 9th class. Undoubtedly, it was an ill-drafted report. Therefore, the case of



the prosecution is to be understood with reference to the evidence let in by the prosecution.

17) With regard to the offence under Section 3 (1) (x) of SCs. & STs. (POA) Act, the prosecution examined P.W.1, the defacto-complainant and P.W.2, the younger brother of P.W.1. The prosecution also examined P.W.3, P.W.4, P.W.6 and P.W.7 also to speak about the incident happened at the house of A.1, out of whom, P.W.4 did not support the case of the prosecution.

18) Firstly I would like to refer here the evidence of the above witnesses in substance. According to the testimony of P.W.1, he is working as a mason in Hyderabad. He came down to village on 10.06.2007, as he was suffering with fever. Jyothi Brahmaiah (L.W.2) is his younger brother. By the time of offence, he (P.W.2) was studying 9th class. The offence took place on 16.07.2007. On 16.07.2007 while he was at his house, his younger brother went to tuition class by 6-00 a.m. As the class was not conducted for want of tuition master, his brother and other students were playing in the school compound. While so, dust has fallen on one Kavitha, 7th class student. His younger brother started removing out the dust on her and she slapped him. Then, his younger brother also slapped her. Kavitha went to her house and brought her father (A.1) and A.1 beat his brother. Then his younger brother came to him when he



was at his house at 8-00 a.m. or 8-30 a.m. and informed the incident. Then, he along with his younger brother went to the house of A.1-Davuluri Subba Rao to question as to why he beat his younger brother. The house of A.1 is located half kilometer from his house. When he questioned why Subba Rao beat his brother, A.1 to A.3 caught hold of him and beat him. They abused him while beating him as "*Mala naa kodakallara Akkadanunchi vatchinara adagadaniki*". He again says that A.1 and A.2 alone abused him and A.3 only beat him, but, did not abuse him. The inmates did not intervene. Puli Nageswara Rao and Rampathoti Raghavulu came to their rescue and got them released. Anjamma and others seen the incident. Then, he went to Chimakurthy police station to give report. He got scribed it and gave it to the police. He and his younger brother signed it. He gave the report at 12-00 noon or 12-30 p.m. He sustained injuries on his right side temple. He suffered pains on his body. He was admitted in the Government hospital.

19) Turning to the evidence of P.W.2, he deposed about the incident happened at the school between him and the daughter of A.1 and that the daughter of A.1 slapped him and that he slapped her and that thereafter Kavitha brought her father and her father beat him. Then, he informed the incident to his elder brother P.W.1. Then, P.W.1 took him to the house of



A.1 to question him why he beat him. After going to the house of A.1, his elder brother questioned A.1 why he beat P.W.2. Then, A.1 to A.3 beat P.W.1. A.1 and A.2 abused as "*Malapalli nunchi vatchnaara Adagadaniki – Mala naa Kodakallara*". A.3 did not abuse. He did not sustain any injuries. Puli Nageswara Rao and Rampathoti Raghavulu who were coming by the side of the road came and rescued him and P.W.1. Thereafter, they went to the police station. As P.W.1 sustained injuries, he was brought to the Government hospital, Ongole. His signature is there in Ex.P.1.

20) According to the evidence of P.W.3, he is resident of Ilapavuluru village. On 16.07.2007 he came to Gadiparthivaripalem to settle tobacco accounts. He heard galata near the house of A.1 and A.2. He stood up there near their house on the road. P.W.1 came to the house of the accused to question why his younger brother was beaten. A.1 and A.2 pushed P.W.1 on to the road questioning them whether they came there to question them. A.1 and A.2 abused P.W.1 as "*Mala naa kodakallara adagadaniki Maa Intiki Vatchara*". P.W.1 fell down on the road. A.1 to A.3 kicked P.W.1 and bet him with hands. The wives of A.1 and A.2 simply witnessed the occurrence. It was about 8-00 or 8-50 a.m. One Raghavulu of Gadiparthivaripalem was coming on the road by then. Then he



and Raghavulu separated P.W.1 from the accused and took P.W.1 and P.W.2 to their house.

21) Coming to the evidence of P.W.4, he turned hostile and did not support the case of the prosecution. According to him, he does not know anything about the case. During the cross examination by the learned Additional Public Prosecutor, he stated that he stated before D.S.P. that Rampathoti Raghavulu was taking P.W.1 and P.W.2 towards malapalle in front of his house. So, there is nothing in the evidence of P.W.4.

22) Coming to the evidence of P.W.5, he is a mediator to the examination of scene of offence by the police and according to him, police prepared crime details form and it contains his signature which is Ex.P.2.

23) According to P.W.6 on 16.07.2007 while he was going to attend his fields at 6-00 a.m. and was returning by 8-30 a.m., he reached near the house of A.1, A.1 and A.2 and P.W.1 and P.W.2 were raising cries. A.1 and A.2 abused P.W.1 and P.W.2 touching on their caste by using as "*Mala na kodakallara*". A.1 to A.3 beat P.W.1 with hands and legs on the road. He and P.W.3 were present and witnessed the occurrence.

24) As seen from the evidence of P.W.7, she deposed that on 16.07.2007 at 8-30 a.m., when she was attending to work in her house, she heard the cries towards south of her



house. She came out of her house and witnessed galata in front of the house of A.1 and A.2. P.W.1 and P.W.2 were present there in front of the house of A.1. There was a galata between P.W.1 and P.W.2 and A.1 to A.3. A.1 to A.3 beat P.W.1 with hands and legs and abused them as "*Mala naakodakallara*".

25) Firstly, I would like to deal with as to what was the scene of offence with regard to the offence under Section 3 (1) (x) of SCs. & STs. (POA) Act because the gist of the offence under Section 3 (1) (x) of SCs. & STs. (POA) Act is intimidating or humiliating the Scheduled Caste person within the public view. Though Ex.P.1 was ill-drafted with regard to the narration of certain events in first person but the allegation is that the incident in connection with the offence under Section 3 (1) (x) of SCs. & STs. (POA) Act was happened at the house of A.1. P.W.1 deposed the same in his chief examination as pointed out. It is the contention of the appellant that the scene of offence was deliberately shifted by some of the prosecution witnesses so as to bring the accused within the purview of Section 3 (1) (x) of SCs. & STs. (POA) Act. Under the circumstances, a finding as to what was the scene of offence is of the prime consideration to ascertain as to whether the evidence on record would attract Section 3 (1) (x) of SCs. & STs. (POA) Act.



26) Ex.P.1 reveals the scene of offence is at the house of A.1. Now, turning to the cross examination P.W.1, he deposed that there is a road on the east of the house of A.1. The house is covered by a compound wall up to the height of 9 to 10 feet and that after entering the compound of the house of A.1, he simply asked A.1 as to why he beat his brother and then the incident took place. By that time, A.1 was in verandah. The flooring is an ordinary floor in front of the house of A.1. At this juncture, in the light of the above answers spoken by P.W.1 in cross examination so as to mean that the scene of offence was located inside the premises i.e., the house premises of A.1 and the house premises was surrounded by a compound wall and that after entering into the compound wall premises only, the incident happened, it is pertinent to look into Ex.P.2, the crime details form, prepared by the investigating officer in the presence of P.W.4. As seen from Ex.P.2, it is crime details form. According to column No.4, the investigating officer was required to describe the place of occurrence. So, it narrates that "scene of offence is situated in front of the house of A.1 in two portioned tailed house facing towards east. There is a road running in front of the house from south to north which leads to main village. There is an elementary Z.P. school located on the north-east corner at a distance of 100 yards from the scene of



offence. The house of Sudidala Narayana Reddy, Sudidhala Anjamma and Sudidala Syamamma are on the northern side. There is open place in front of the scene of offence". Therefore, it means that the scene of offence is situated in front of the house of A.1 and further in front of the house of A.1, there is an open place and beyond that open place only, there is a road. Hence, if the answers spoken by P.W.1 in cross examination are considered coupled with Ex.P.10, it means that the house of A.1 was surrounded by a compound wall. The scene of offence was just in front of the house of A.1 and further in front of the scene of offence, there was also open space and after that only, the road was passing from south to north which leads to main village.

27) Now, it is pertinent to look into Ex.P.12 rough sketch of the scene of offence. As seen from Ex.P.12, the investigating officer shown the house of Davuluri Subba Rao. In front of the house, he shown the open space. After that on the road he marked "x" as if it is the scene of offence. So, the column No.10 of the contents in Ex.P.2 as regards the location of the scene of offence are contra to the scene of offence shown by investigating officer in Ex.P.12 rough sketch. If the contents in column No.10 of Ex.P.2 are considered positively, the scene of offence should have been shown in the house premises of A.1.



Therefore, the preparation of Ex.P.12 rough sketch by the investigating officer was nothing but mechanical without bothering to look into the observations at para No.10 of Ex.P.2. Apart from this, the categorical admissions made by P.W.1 in cross examination means that the incident was happened just in front of the house of A.1 i.e., in the premises and the premise was surrounded by a compound wall and the compound wall was with the height of 9 to 10 feet. Even the chief examination of P.W.2 means that the offence was occurred at the house of A.1. In cross examination, he deposed that the incident took place on the road but not within the compound of house of A.1. In the light of the answers spoken by P.W.1 in cross examination as regards the scene of offence as if it was in the house premises of A.1 which was surrounded by a compound wall with a height of 9 to 10 feet and as the above admission was consistent with Ex.P.2, the answers spoken by P.W.2 in cross examination as if the incident took place on the road deserves no merits. For obvious reasons P.W.2 as an afterthought only appears to have deposed such an answer.

28) Turning to the evidence of P.W.3, he claimed that he was resident of Ilapavuluru village. But he claimed that he came to Gadiparthivaripalem to settle tobacco accounts. In cross examination, he admitted that his Tobacco Barney (manufacture



unit) is situated in his village. Therefore, the probability for P.W.3 to come to the village i.e., Gadiparthivaripalem was not shown. Even otherwise, there is every doubt about the evidence of P.W.3 for the reason that when the incident in question was happened which is before the house of A.1 i.e., inside the premises when A.1 was in verandah and when the compound wall is with a height of 9 to 10 feet, it is quiet difficult for P.W.3 to witness as to what happened in the house premises. On the other hand, if P.W.3's evidence is considered, he improved the evidence shifting the scene of offence for obvious reasons. According to him, A.1 and A.2 pushed P.W.1 on to the road and abused him in the name of his caste. Absolutely, it is never the evidence of P.W.1 that he was pushed on to the road where he was beaten. Even it is not the evidence of P.W.2 that P.W.1 was pushed on to the road. Virtually, P.W.3 had no probability to witness the occurrence which was happened in the house premises of A.1.

29) Apart from the above, he deliberately shifted the scene of offence. No reliance can be placed up on the evidence of P.W.3 in my considered view. Similar is the situation in respect of the evidence of P.W.6, who deposed that when he reached near the house of Subba Rao, he found A.1 and A.2 and P.W.1 and P.W.2 were raising cries and they abused P.W.1 and



that too in the name of caste and beat P.W.1 with hands and legs on the road. Therefore, P.W.6 claimed that he witnessed the event on the road. According to P.W.1, the incident was happened inside the premises of the house of A.1, where there was a compound wall with height of 9 to 10 feet. So, there was no possibility to P.W.6 to witness the occurrence. Even otherwise, he shifted the scene of offence to that of the road for the reasons best known. According to P.W.6, P.W.1 and P.W.2 are grandsons to him by courtesy. So, P.W.6 was also interested in the case of the prosecution. Apart from the interestedness, he shifted the scene of offence.

30) According to the evidence of P.W.7, on hearing the cries, she came out and witnessed the galata in front of the house of A.1 and A.2. She deposed that they abused P.W.1 and P.W.2 in the name of caste and beat P.W.1 with hands and legs. During cross examination, the defence counsel elicited that her mother contested in Panchayat elections against Naripeddi Lakshminarayana, who is the relative of the accused, in the year 2006 and was defeated. She did not admit that she deposed as a witness in the murder case of Sudidala Satyanarayana Reddy. She denied that she is deposing false in that aspect. She denied that accused belongs to her rival group. The defence counsel further got recalled her and further cross examined where she



was made to admit that she deposed as P.W.7 in S.C.No.383 of 1996 on the file of I Additional Sessions Judge, Ongole. Therefore, the evidence of P.W.7 was of such a nature that she denied the factum of her evidence in a Sessions Case and later she was made to admit. The above act on the part of P.W.7 did not show bonafidies in her evidence. Apart from this, it is not the evidence of P.W.7 that he entered into the house premises of A.1 and witnessed the occurrence. So, absolutely, the evidence of P.W.3, P.W.6 and P.W.7 as if they witnessed the occurrence when the incident was happened on the road deserves no consideration.

31) Apart from the above, the intention on the part of the prosecution witnesses to shift the scene of offence, especially, P.W.2 during the cross examination and P.W.6 and P.W.7 during chief examination appears to be so as to bring the act alleged against the accused within the purview of public view in the light of the essential ingredients of Section 3 (1) (x) of SCs. & STs. (POA) Act. Ex.P.1 never disclosed that the offence was happened on the road opposite to the house of A.1. P.W.1 categorically admitted in cross examination that the incident was happened in the house premises which was surrounded by a compound wall.



32) It is to be noticed that the Hon'ble Supreme Court in *Hitesh Verma's case (1 supra)* looked into the earlier decision i.e., ***Swaran Singh and others vs. State through Standing Counsel and others***³ and held that the Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Hon'ble Supreme Court while relying on the above and looking into the case of the appellants held that the incident in question was said to be happened in the house and the said place cannot be brought under the purview of a place within public view, as such, quashed the F.I.R.

33) Therefore, in the light of the above principles and looking into Section 3 (1) (x) of SCs. & STs. (POA) Act, this Court is of the considered view that the gist of the provision is committing the offence within public view. So, if the contents in

³ (2008) 8 SCC 435



Ex.P.1 and the chief examination and admissions made by P.W.1 are considered, certainly there would be a doubt as to whether how it could be possible for anybody to witness the occurrence, especially, when the incident was in question was happened within the house premises of A.1 which was surrounded by a big compound wall with a height of 9 to 10 feet. Hence, the place where exactly the appellant was alleged to have abused P.W.1 and P.W.2 while standing in verandah when P.W.1 and P.W.2 entered into premises of A.1 by crossing the compound wall can certainly be held as a place which was not within public view. Probably, keeping in view this, there was a deliberate effort made by P.W.2 that too in cross examination to shift the scene of offence and further P.W.3, P.W.6 and P.W.7 testified as if they witnessed the occurrence as the offence was on the road. In my considered view, the evidence on record warrants this Court to give a finding that the scene of offence was deliberately shifted by P.W.2 in cross examination and P.W.6 and P.W.7. Even the investigating officer erred shifting the scene of offence in Ex.P.12 rough sketch on road contrary to the observations made by him in para No.10 of Ex.P.2. Therefore, absolutely, P.W.3, P.W.6 and P.W.7 had no probability to witness the occurrence which was alleged to be happened in the house premises of A.1. Apart from this, the prosecution did not place



convincing evidence to show that appellant was alleged to have uttered such words within public view.

34) Turning to another decision cited by the learned counsel for the appellant in *Dr. Manali's case (2 supra)*, the Bombay High Court dealing with the allegations that the incident in question was said to be happened in the house was inclined to quash the F.I.R. The said decision is of no importance in the light of reliance placed by this Court on the judgment of the Hon'ble Supreme Court in *Hitesh Verma's case (1 supra)*.

35) It is also the contention of the appellant that though the incident was said to be happened at about 8-00 a.m. or 8-30 a.m., F.I.R. came to be lodged after 12 hours leisurely at 8-30 p.m. and in view of the political groups in the village, the delay is fatal. Further there was a falsity in the case of the prosecution by roping other females in the episode whose role was not established during the investigation, as such, there was every possibility for deliberations and concoctions on account of delay.

36) This Court has carefully looked into the above. According to the averments in Ex.P.1, the incident under Section 3 (1) (x) of SCs. & STs. (POA) Act was said to be occurred in the morning. At 8-00 a.m., the incident was occurred at the school and after that P.W.1 and P.W.2 went to the house of A.1 to



question the act of A.1 in beating P.W.2. When it comes to the evidence of P.W.1, he testified the incident at the house of A.1 after 8-30 a.m. As seen from Ex.P.1, it was received by the Sub-Inspector of Police in the police station at 20-30 hours which means that it was lodged at 8-30 p.m. The evidence of P.W.1 is that he presented Ex.P.1 at 12-00 noon or 12-30 p.m. According to the answers spoken by him in cross examination about 10 persons including him went to the police station to give report. Chimakurthy police station is at a distance of 12 or 13 kilometers from the village. After the incident immediately he went to his house and informed his parents and stayed for one hour and then went to the police station in auto. So, according to him, at around 12-00 noon or 12-30 p.m., he presented Ex.P.1 report. According to P.W.2 in cross examination about 10 persons including him went to police station in an auto for giving report. His evidence means that after the incident they went to their house, waited for some time in the house and thereafter they went to police station. Coming to the evidence of P.W.12, the Asst. Sub-Inspector of Police, he deposed that he is working as Asst. Sub Inspector of Police in Chimakurthy police station since 04.06.2006. On 16.07.2007 while he was in the Chimakurthy police station, P.W.1 came to the police station and presented a report and he registered it as a case in Crime



No.110 of 2007 under Section 323 of I.P.C. and Section 3 (1) (x) of SCs. & STs. (POA) Act. P.W.1 complained that he was suffering from body pains, as such, he sent him to the Government hospital, Ongole. Ex.P.10 is the original F.I.R. During cross examination by the learned counsel for the accused, he deposed that P.W.1 came to the police station between 3-00 p.m. and 4-00 p.m. and gave Ex.P.1 complaint. Now, as evident from the endorsement underneath Ex.P.1, P.W.12 made an endorsement as to the registration of F.I.R. on 16.07.2007 at 20-30 hours. It means that at 8-30 p.m., on 16.07.2007 it was lodged. As evident from Ex.P.10, the time of receipt of information was made as 20-30 hours on 16.07.2007. So, it means that Ex.P.1 was lodged at 8-30 p.m. on 16.07.2007. According to P.W.1 and P.W.2, there was no delay in lodging Ex.P.1, but Ex.P.1 and Ex.P.10 disclose about the delay in lodging Ex.P.1. The delay was around 10 hours almost looking into the evidence of P.W.1 and P.W.2 that after the incident they went to their house stayed some time there and thereafter proceeded to the police station.

37) At this juncture, it is pertinent to look into the evidence of P.W.11, the medical officer, who examined P.W.1 and issued Ex.P.9. P.W.11 testified that on 16.07.2007 at 3-37 p.m., he examined P.W.1 and found abrasion of 2x1 cm., on the



left side of forehead above the eye red in colour and complaining pain on right forearm and on the left side of chest. He took X-ray which does not reveal any fracture. Patient has discharged himself from the hospital without medical advice at 5-30 p.m. on the same day. So, he could not give any opinion regarding nature of injuries. The age of injuries is up to 6 hours prior to his examination. Ex.P.9 is the wound certificate. According to P.W.11, he examined the injured P.W.1 on 16.07.2007 at 3-37 p.m. Now coming to the evidence of P.W.13, the Sub-Divisional Police Officer, in cross examination he deposed that it is true that without registering a case, the injured would not be sent to the hospital for treatment with police escort. Therefore, the evidence of P.W.12 that he referred the injured between 3-00 p.m. to 4-00 p.m. to the hospital was negated for the reason that P.W.1 and P.W.2 came to the police station on 16.07.2007 at 8-30 p.m. only. There was no possibility for referring P.W.1 to the hospital without there being any FIR by then according to the evidence of P.W.13. Hence, the facts and circumstances appears to be such that either there was a report lodged by P.W.1 and P.W.2 between 3-00 p.m. to 4-00 p.m. on the basis of which P.W.1 was referred to the hospital or that P.W.1 himself went to the hospital without reporting the matter to the police, as such, discharged himself



without there being any medical advice. If the evidence of P.W.13 is taken into consideration, there would not have been any occasion to send P.W.1 to the hospital without there being a report by him, especially, in a Medico Legal Case. If P.W.1 went to the hospital on his own and took some treatment and later discharged himself against medico legal advice and later thought of to present report, he would have explained all these things in Ex.P.1. He deposed in cross examination that one Venkata Subba Rao scribed Ex.P.1 report in Chimakurthy police station. There is no dispute that the said Venkata Subba Rao was not examined. It is not the case of the prosecution that Ex.P.1 was written by P.W.1 or P.W.2, though the contents run that it was prepared by narrating the events in first person. Absolutely, the prosecution failed to explain the delay as to why Ex.P.1 could be lodged at 8-30 p.m. when the incident was alleged around 8-30 a.m. The circumstances in which P.W.1 took treatment in the hospital are not explained by the prosecution. The evidence of P.W.11, the Asst. Sub Inspector of Police, goes contra to the endorsement underneath Ex.P.1 at the time of registration of F.I.R. Viewing from any angle, the prosecution failed to explain the delay.

38) Now, this Court has to consider as to whether any prejudice is caused to the accused on account of delay.



According to P.W.1, he admitted that there were two political groups in the village. Apart from this, there was implication of the women folk of appellants in the episode and their names were also shown in the F.I.R. and their names were deleted in the investigation. The Court below did not find favour with the case against A.3. A.3 examined himself as D.W.1 before the Court below, who deposed that he is M.Sc. Graduate, Pudukottai, Tamilnadu State and the prosecution case is false against him and as he is highly educated in their family, he is falsely implicated. The Court below did not find favour the case of the prosecution as against A.3 and exonerated him of the charges. There was an effort made by the defacto-complainant to implicate some innocent personnel also in the case on hand which must have been on account of due deliberations on account of delay. Having regard to the overall facts and circumstances, the unexplained delay in lodging Ex.P.1 can also be a factor to hold that there is any amount of doubt about the bonafidies in the case of the prosecution.

39) In the light of the above, I am of the considered view that the prosecution miserably failed to bring the place of offence as a place within public view within the essential ingredients of Section 3 (1) (x) of SCs. & STs. (POA) Act, as such, the alleged act attributed against the appellant cannot be



brought under the purview of Section 3 (1) (x) of SCs. & STs. (POA) Act. Apart from this, the unexplained delay is fatal to the case of the prosecution.

40) The Court below maintained the conviction against the appellant on the charge that he beat P.W.2 at the school. The evidence of P.W.2 is that he was beaten by A.1 at the school after the daughter of A.1 brought him to the school. The motive for the same is that when the dust fallen on the clothes of the daughter of A.1, P.W.2 removed the same and then she slapped him and then he also slapped her in retaliation, as such, she brought A.1 to the school. P.W.8 in this regard did not support the case of the prosecution. It is P.W.9, who deposed that A.1 beat P.W.2 with hands.

41) Now, it is a matter of appreciation to decide as to whether any reliance can be placed in the evidence of P.W.2 and P.W.9. Even according to P.W.2, the act of him in removing the dust from the clothes of the daughter of A.1 while they were all playing made her to feel angry and slapped him and then he retaliated with a slapping on her, as such, she brought A.1. The evidence of P.W.2 in this regard is that without questioning about what was happened, A.1 beat him. He deposed that he did not receive any injuries. P.W.9 evidence is that A.1 beat P.W.1 with hands. There is no dispute that P.W.2 was not



referred to hospital to know the nature of injuries. According to Section 319 of I.P.C., it defines as what is hurt. According to Section 319 of I.P.C., whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. The evidence of P.W.2 did not disclose that whether he felt any bodily pains, but, on the other hand, it discloses that he did not receive any injuries. He did not explain on which part of body, A.1 beat him. He did not explain as to the manner in which A.1 beat him. So, the evidence of P.W.9 and P.W.2 is totally vague. In the absence of any medical evidence or the evidence of P.W.2 that he felt any bodily pains, it is very difficult to say that A.1 caused hurt to P.W.2. As this Court already pointed out, how P.W.1 gone to the hospital was shrouded mystery. The prosecution did not explain as to why P.W.2 was not referred to hospital. Literally, the evidence of P.W.2 and P.W.9 did not disclose that A.1 caused bodily pain to P.W.2. Apart from this, on account of abnormal delay which remained unexplained by the prosecution, it is unsafe to believe the case of the prosecution.

42) As seen from the judgment of the Court below, the learned Special Judge simply relied upon the chief examination part of P.W.1 to P.W.3 and P.W.6 to P.W.9 so as to convict the accused under Section 3 (1) (x) of SCs. & STs. (POA) Act and Section 323 of I.P.C. He did not discuss as to whether the



prosecution has explained the delay or not. He did not look into the cross examination of P.W.1 that the place of offence was inside the house premises of A.1 which was surrounded by a big compound wall. He did not look into probabilities or improbabilities for P.W.3, P.W.6 and P.W.7 to witness the occurrence. Virtually, the learned Special Judge did not look into the cross examination part of the witnesses. The crucial admissions made by P.W.1 were not looked into. The learned Special Judge did not look into the fact that the prosecution deliberately shifted the scene of offence so as to bring the same within the definition of public view. A look at the judgment goes to reveal that without proper analysis of the evidence on record, the learned Special Judge found guilty of the appellant under Section 323 of I.P.C. and Section 3 (1) (x) of SCs. & STs. (POA) Act. Further on the ground that the evidence was not cleared as to whether which of the accused beat P.W.1 and P.W.2, he exonerated the accused of the charge under Section 323 of I.P.C. As this Court already pointed out, there is no appeal filed by the prosecution regarding the acquittal of A.1 to A.3 under Section 323 of I.P.C.

43) Having regard to the above, I am of the considered view that the learned Special Judge for Trial of the offences under SCs & STs (POA) Act, Prakasam Division at Ongole, did



not analyze the evidence on record properly and erroneously convicted the present appellant, as such, the judgment is liable to be interfered with.

44) In the result, the Criminal Appeal is allowed, as such, the appellant shall stands acquitted of the charges under Section 323 of I.P.C. and Section 3 (1) (x) of SCs. & STs. (POA) Act. The fine amount if any paid by the appellant, shall be refunded to him after the appeal time is over.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt. 12.05.2023.

Note: L.R. copy be marked.

B/o
PGR



THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRL.A.NO.1194 of 2009

Note: L.R. copy be marked.

Date: 12.05.2023

PGR