



2023:APHC:21170

**HIGH COURT OF ANDHRA PRADESH**  
WEDNESDAY ,THE FIFTH DAY OF JULY  
TWO THOUSAND AND TWENTY THREE

**PRSENT**

**THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU**  
**CRIMINAL APPEAL NO: 1643 OF 2009**

**Between:**

1. VEMURI NAGA RAJU, LAKSHMIPURAM [V], PEDAVEGI [M]. S/o.  
Satyanarayana  
R/o. Lakshmipuram Village,  
Pedavegi Mandal.

**...PETITIONER(S)**

**AND:**

1. THE STATE OF A.P., REP. BY P.P., HYDERABAD. Rep. by Public  
Prosecutor  
High Court,  
Hyderabad.

**...RESPONDENTS**

**Counsel for the Petitioner(s): D SANGEETHA REDDY**

**Counsel for the Respondents: PUBLIC PROSECUTOR (AP)**

**The Court made the following: ORDER**



## HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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**CRIMINAL APPEAL No.1643 OF 2009****Between:**

Vemuri Naga Raju,  
S/o.Satyanarayana,  
Aged 29 years,  
Lakshmipuram Village,  
Pedavegi Mandal,  
West Godavari District. .... Appellant

*Versus*

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

DATE OF JUDGMENT PRONOUNCED : 05.07.2023

SUBMITTED FOR APPROVAL:**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

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
2. Whether His Lordship wish to see  
The fair copy of the judgment? Yes/No

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**A.V.RAVINDRA BABU, J**

**\* HON'BLE SRI JUSTICE A.V.RAVINDRA BABU****+ CRIMINAL APPEAL No.1643 OF 2009****% 05.07.2023****# Between:**

Vemuri Naga Raju,  
S/o.Satyanarayana,  
Aged 29 years,  
Lakshmipuram Village,  
Pedavegi Mandal,  
West Godavari District. .... Appellant

*Versus*

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

**! Counsel for the Appellant** : Sri Mohd. Ismail, learned  
Counsel, Rep. Smt. D.  
Sangeetha Reddy, learned  
Counsel.

**^ Counsel for the Respondent** : Sri Y. Jagadeeshwara Rao,  
Learned Special Assistant,  
Rep. Learned Public  
Prosecutor

**> Head Note:****? Cases referred:**

(2020) 10 SCC 710  
Manu/MH/1421/2006  
2005 (3) Mh.L.J 369  
(2008) 8 SCC 435  
(2008) 15 SCC 582

**This Court made the following:**

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU****CRIMINAL APPEAL No.1643 OF 2009****JUDGMENT:**

The judgment, dated 06.11.2009, in SCs & STs Sessions Case No.04 of 2008 on the file of the Court of Special Judge for trial of cases under the Scheduled Castes and Scheduled Tribes (Prevention Of Atrocities) Act, West Godavari, Eluru (for short, 'the learned Special Judge'), is under challenge in the Criminal Appeal filed by the unsuccessful accused.

2. The appellant as accused faced trial in the aforesaid Sessions Case for the charge under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention Of Atrocities) Act, 1989 (for short, 'the SCs and STs Act'). The learned Special Judge on conclusion of trial found the accused guilty of the charge under Section 3(1)(x) of the SCs and STs Act and convicted him under Section 235(2) Cr.P.C and, after questioning him about the quantum of sentence, sentenced him to undergo Rigorous Imprisonment for a period of six (6) months and to pay a fine of Rs.500/- in default to suffer Simple Imprisonment for one (1) month.



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

4. The SCs & STs Sessions Case No.04 of 2008 arose out of the committal order in PRC No.22 of 2007 on the file of the Court of I Additional Judicial First Class Magistrate, Eluru. The case of the prosecution, in brief, according to the charge sheet filed by the Sub-Divisional Police Officer (SDPO), Eluru Sub-Division, Eluru in Crime No.158 of 2006 of Pedavegi Police Station is as follows:

LW.1 – Yerra Chinna Dharma Rao, S/o. Nagayya is a resident of Dibbagudem, Lakshmipuram Village, Pedavegi Mandal and belonged to Madiga community, which is a Scheduled Caste. Accused is resident of Lakshmipuram Village and he belonged to Yadava community which is not a scheduled caste and it is a Backward Caste. Both the accused and LW.1 are the agriculturists. On 14.10.2006 at about 08:30 a.m. while LW.1 was attending agriculture works in his fields in RS No.624/5, he found the accused – Vemuri Nagaraju, picking thorny bushes from the fields of one Maganti Lakshmi Narasayya and laying the same on the pathway and thereby closing the pathway. Then, LW.1 went to the accused and questioned him as to why he is picking the



thorny bushes from other fields and closing the pathway. Then, the accused abused the complainant in a filthy language by touching his caste (The words are omitted by this Court. The words alleged to have been used by the accused is a sexual abusive word referring to the caste of *de-facto* complainant). At that time, LW.2 – Vemuri Kondayya and LW.3 – Vemuri Venkanna came to the spot and asked as to why he abused LW.1 in such a filthy language. The accused even abused them also. Then LW.1 informed the acts of accused to LW.6 – Kakarla Satya Sri Hari Lakshmana Rao and LW.7 – Maganti Lakshmi Narasimha Rao. They all together informed the incident to the village elders *i.e.*, LW.4 – Chellagolla Venkata Suresh and LW.5 – Bulusu Satyanarayana. When the village elders asked the accused as to why he abused the complainant in such a filthy language touching his caste name, the accused gave arrogant replies and went away. On the advice of village elders, LW.1 presented a report on 17.10.2006 at 09:30 p.m. with delay. Basing on the strength of the report given by LW.1, LW.12 – P.R. Anjaneyulu, HC-865 of Pedavegi Police Station registered the same as a case in Crime No.158 of 2006 for the aforesaid offence on 17.10.2006 at 09:30 p.m. in the temporary absence of SI of Police and sent FIRs to all concerned. LW.13 – Sub-Divisional Police Officer, Eluru took up



personal investigation into the case on 17.10.2006, visited the scene of offence, examined it, prepared the observation report and photographed it. He also prepared the rough sketch of the scene of offence, examined as many as eight (8) witnesses and recorded their statements. LW.2 and LW.3 are the direct witnesses to the occurrence who gave statements against the accused and LWs.4 to LW.7 are the hearsay witnesses. LW.9 – Maganti Hemanteswara Rao and LW.10 – Kakarla Anjaneyulu are the mahazar witnesses for the scene of offence. LW.11 – Y. Anantha Rao, MRO, Pedavegi Mandal, issued caste certificate in respect of LW.1 stating that he belonged to scheduled caste. LW.13, during the course of investigation, arrested the accused on 23.10.2006 at 12:30 p.m. at Dibbagudem Centre and sent him to judicial custody. After completion of investigation, LW.14 filed the charge sheet. Hence, the charge sheet.

5. The learned jurisdictional Magistrate took cognizance of the case for the offence under Section 3(1)(x) of the SCs & STs Act, numbered it as PRC No.22 of 2007 and after completing the formalities under Section 207 Cr.P.C committed the case to the Special Sessions Court and thereupon it was numbered as SCs and STs Sessions Case No.4 of 2008.



6. On appearance of the accused before the learned Special Judge, a charge under Section 3(1)(x) of the SCs and STs Act was framed and explained to the accused in Telugu for which he pleaded not guilty and claimed to be tried.

7. To bring home the guilt of the accused, the prosecution, during the course of trial, examined PWs.1 to PW.10 and marked Exs.P-1 to P-6 and further the learned counsel for the accused during the course of cross-examination of PW.1 got marked Exs.D-1 to D-4.

8. After closure of the evidence of the prosecution, accused was examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing in the evidence let in by the prosecution for which he denied the same. He did not adduce any defence evidence.

9. The learned Special Judge, on hearing both sides and after considering the oral and documentary evidence on record, found the accused guilty of the charge under Section 3(1)(x) of the SCs & STs Act and convicted him under Section 235(2) Cr.P.C. and, after questioning him about the quantum of sentence, sentenced him as above.





10. Felt aggrieved of the same, the unsuccessful accused in the aforesaid SCs and STs Sessions Case, filed the present Criminal Appeal.

11. Now, in deciding this Criminal Appeal, the points that arise for consideration are:

1. Whether the prosecution before the Court below proved beyond reasonable doubt that the accused insulted and intimidated PW.1 – Yerra Chinna Dharma Rao in the name of his caste on 14.10.2006 in his field in the manner as alleged by the prosecution within public view?

2. Whether the impugned judgment, dated 06.11.2009, is sustainable under law and facts?

**POINT Nos.1 & 2:**

12. Turning to the evidence of PW.1, who is the *de-facto* complainant, his evidence in substance is that he is a resident of Lakshmipuram Village. He belonged to Scheduled Caste. He knows the accused, who belonged to Yadava Caste. He (PW.1), Gudla Sarabandhu, Vemuri Nagaraju and Maganti Lakshmi Narasimha Rao are having Ac.3.07 cents in RS No.624/5 in



Lakshmipuram village. Out of which his land is Ac.0.75 cents, Lakshmi Narasimha Rao has got Ac.0.75 cents, Sarabandhu got Ac.0.75 cents and accused got Ac.0.82 cents. On 14.10.2006 at about 08:30 a.m. while he was in his land, accused was closing the Bode canal in the land of Lakshmi Narasaiah. He asked the accused as to why he was closing the Bode canal. Accused stated that he has nothing to do with. He told the accused that he (PW.1) has to draw water from the Bode canal to his land. Then the accused abused him (The words are omitted by this Court. The words alleged to have been used by the accused is a sexual abusive word referring to the caste of *de-facto* complainant). Then, Vemuri Kondaiah and Vemuri Venkanna came there and asked the accused not to abuse him in the name of his caste. Accused even abused them. He informed the incident to MPTC Suresh, who called the accused on the next day morning. Accused came to the house of Suresh. He also went to the house of Suresh. When questioned by the Suresh, accused left without giving any reply. Thereafter, he informed the same to village elders and caste elders but accused did not care the village elders and caste elders. On 17.10.2006, he gave report to Police, which is Ex.P-1. SDPO examined and recorded his statement.



13. Prosecution did not examine the so called LW.2 namely Vemuri Kondayya, though he was cited as a direct witness.

14. On the other hand, prosecution examined Vemuri Venkanna, another so called direct witness, who is no other than brother of father of the accused. So, his evidence is that father of the accused is his younger brother. He (PW.2) is having land adjacent to the land of PW.1. PW.1 is having Ac.0.75 cents in RS No.624/5. Father of accused is having Ac.0.76 cents in RS No.624/5. About three years back on one day at about 08:30 or 09:00 a.m. accused was placing thorny bushes in the Bode canal in the land of another person. PW.1 asked the accused why he did so. Accused abused PW.1 in abusive language (The words are omitted by this Court. The words alleged to have been used by the accused is a sexual abusive word referring to the caste of *de-facto* complainant). He asked the accused why he abused PW.1 touching his caste name. Accused also abused him as *Lanjakodaka* (bastard). His younger brother Kondayya was also present there. SDPO examined and recorded his statement.

15. Prosecution examined PW.3 namely Challagolla Venkata Suresh Babu, the so called person to whom the incident was intimated by PW.1. His evidence is that on 14.10.2006 at about



03:00 p.m. PW.1, PW.2 and Kondayya came to his house and informed that the accused abused PW.1 in his caste name that day morning. Then, he told PW.1 that he will call the accused next day morning. On 15.10.2006 he called the accused. Accused came to his house. He asked the accused as to why he abused PW.1 in his caste name. Accused without giving any reply went away. He asked PW.1 to do whatever he likes. SDPO examined and recorded his statement.

16. PW.4 was the so called village elder, whose evidence is that on 14.10.2006 PW.3 informed him that there was a galata between accused and PW.1 in their fields. PW.3 told him that they have to resolve that issue as PW.1 approached him. On 15.10.2006, he went to the house of PW.3, where a panchayat was convened. PW.3, himself (PW.4), K.S.S. Hari Lakshmana Rao, Veera Venkata Satyanarayana and Anjaneyulu acted as elders. PW.1, accused and his father were also present. As both sides did not agree to settle the dispute, they advised them to approach the Police. He told the same to SDPO, when he was examined.

17. PW.5 is the photographer who took photographs of thorny bushes in a garden in Pedavegi and Ex.P-2 are the photos with negatives.



18. PW.6 is the mahazar witness to the observation of the scene of offence and, according to him, on 18.10.2006 at about 10:00 a.m. PW.3 took him to the scene of offence. SDPO came there and observed the scene of offence and Ex.P-3 is the scene of offence panchanama. Photos were also taken at that time.

19. PW.7 is the then MRO who issued caste certificate of PW.1 stating that he belonged to scheduled caste.

20. PW.8 is the Head Constable, who testified that on 17.10.2006 at 09:30 p.m. PW.1 came to the Police Station and gave a written report, which is Ex.P-1. He registered it as a case in Crime No.158 of 2006 and Ex.P-5 is the original FIR.

21. PW.9 is the concerned SDPO, who took up investigation on 17.10.2006 after receipt of Ex.P-5 FIR. He examined PW.1, PW.2 and Kondayya. On 18.10.2006 he visited the scene of offence in the presence of panchayatdars, PW.6 and Anjaneyulu and also got prepared rough sketch of scene of offence, which is Ex.P-6. He got photographed the scene of offence through PW.5. On 18.10.2006, he examined PW.3, PW.4 and PW.5. On 23.10.2006 at 12:30 p.m. at Dubbugudem centre, he arrested the accused.

22. PW.10 is the successor of PW.9, who filed charge sheet.



23. Sri Mohd Ismail, learned counsel, representing Smt. D. Sangeetha Reddy, learned counsel for the appellant, would contend that, though the offence was alleged to be happened on 14.10.2006 at 08:30 a.m. the report under Ex.P-1 came to be lodged after three and half days without explaining proper reasons for its delay. The evidence of PW.3 and PW.4 means that on the next date of the alleged incident the panchayat was held. PW-1 kept quiet though the panchayat was allegedly held on 15.10.2006. The prosecution did not explain the delay. It is elicited from the mouth of PW.1, PW.3, and PW.4 that father of the accused filed a civil suit against all of them. So, the evidence on record goes to prove that there were ill-feelings between the family of the accused, PW.1, PW.2 and PW.4. Though their evidence was interested and inimical in nature, the learned Special Judge did not scrutinize the evidence with care and caution. PW.2, close relative of the accused *i.e.*, brother of his father was a planted witness whose presence was doubtful and whose presence was not at all probabilized at the time of alleged occurrence. The evidence on record quietly proves that the prosecution miserably failed to explain the delay. In the absence of probabilizing the presence of PW.2 at the time of occurrence and in view of the judgment of the Hon'ble Apex Court in ***Hitesh Verma v. State of Uttarakhand***



**and another**<sup>1</sup>, it cannot be held that the alleged offence was happened within the public view. The accused raised all these contentions before the Court below and the learned Special Judge did not appreciate the evidence in proper perspective and erroneously convicted the accused. The accused was a Teacher working in Upper Primary School. Four or five days prior to the incident, father of the accused was compelled by the mediators to withdraw the civil suit and when he declined to accede to their request, he was threatened that his son will be implicated in a SCs and STs case. Even the father of the accused on 16.10.2006 made a representation to the Police apprehending that his son will be booked under SCs and STs case falsely. Though the accused did not file any proof with regard to the representation but he can as well succeed in his defence basing on the evidence available on record. Learned counsel for the appellant in support of his contentions also relied on the decision of High Court of Bombay at Aurangabad Bench in **Balu B. Galande v. State of Maharashtra and others**<sup>2</sup> and a decision of the High Court of Bombay in **Pradnya Pradeep Kenkare and another v. State of**

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<sup>1</sup> (2020) 10 SCC 710

<sup>2</sup> MANU/MH/1421/2006



**Maharashtra**<sup>3</sup>. He further submits that it is a fit case to extend benefit of doubt in favour of the accused.

24. Sri Y. Jagadeeswara Rao, learned Special Assistant, representing learned Public Prosecutor, would contend that PW.2 supported the evidence of PW.1. Though PW.2 could sell away his land but he had some other land nearer to the scene of offence. So, his presence was quietly possible and probable. Though PW.1, PW.2 and PW.4 were parties to the civil litigation initiated by father of the accused but on that ground their evidence cannot be disbelieved. The prosecution examined PW.3 and PW.4 to explain the delay. Even according to PW.1, the matter was referred to elders to resolve the issue and the accused did not care the advice of the elders. The delay on the part of PW.1 in approaching the Police was categorically established by the prosecution. The learned Special Judge rightly appreciated the evidence as such the Appeal is liable to be dismissed.

25. There is no dispute that accused belonged to Yadava caste, which is not a scheduled caste and it is a Backward Caste. There is also no dispute that PW.1 belonged to scheduled caste. These aspects are not at all in dispute. The offence in question was said

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<sup>3</sup> 2005 (3) Mh.L.J 369





to be happened on 14.10.2006 at about 08:30 a.m. near the so called fields of PW.1 and the accused. Though prosecution cited LW.2 – Vemuri Kondayya as one of the direct witnesses to the occurrence but he was not examined. Prosecution examined PW.2 as a direct witness to the occurrence. PW.3 and PW.4 were not the witnesses to the occurrence.

26. Now, I would like to appreciate the evidence on record with reference to the contentions of appellant as well as prosecution by looking into the cross-examination parts of PW.1, PW.2 and other witnesses.

27. As evident from the evidence of PW.1, Vemuri Satyanarana is the father of accused. Kondayya and Venkanna are the brothers of Vemuri Satyanarayana. At this stage, this Court would like to make it clear that PW.2 – Vemuri Venkanna is no other than brother of the father of the accused as such he is a close relative to the accused. He admitted that Vemuri Satyanarayana filed O.S. No.431 of 2004 on the file of the Court of I Additional Junior Civil Judge, Eluru against him (PW.1), Gudla Sarabandhu and Maganti Brahmanandam in respect of Ac.3.07 cents of land in RS No.624/5 of Lakshmipuram village for permanent injunction. He volunteers that it was dismissed on merits. He denied that after



dismissal of the Suit, he, Sarabandu and Brahmanandam occupied Ac.0.75 cents each out of Ac.3.07 cents in RS No.624/5. Witness ads that they are in possession of the said land for the last 20 years. He did not remember whether he and other defendants in OS No.431 of 2004 took a plea in the written statement that they purchased the land in RS No.624/5 from Vemuri Kondayya and Vemuri Venkanna, brothers of father of the accused. He admitted that Vemuri Satyanarayana, father of the accused, filed another suit in O.S. No.123 of 2006 on the file of the Court Additional Senior Civil Judge, Eluru against him, Sarabandu, Brahmanandam, Kondayya, Venkanna and MRO of Pedavegi for declaration and possession in respect of land in RS No.624/5. Ex.D-1 is the certified copy of plaint in OS No.123 of 2006 along with the sketch showing the lands of Satyanarayana, himself, Brahmanandam and Sarabandu. He and other defendants filed written statement in O.S. No.123 of 2006, which is Ex.D-2. Father of the accused filed a temporary injunction petition (I.A. No.703 OF 2006) in the said Suit, which is Ex.D-3. They filed counter therein which is Ex.D-4. He denied that in the panchayat, father of the accused was asked to compromise O.S. No.123 of 2006 and in case if he did not agree for compromise, he was threatened to file a case against his son under the provisions



of SCs and STs Act. He did not know whether father of the accused gave any representation to SI of Police on 16.10.2006 apprehending a case against his son under the provisions of SCs and STs Act. He denied that they created an incident on 14.10.2006 and gave report on 17.10.2006 with false allegations. He is not the scribe of Ex.P-1 and did not know the scribe of Ex.P-1. He did not mention the names of elders in Ex.P-1. He denied that he demanded the accused to withdraw O.S. No.123 of 2006 to compromise this case. He denied that Ex.P-1 was prepared at the house of PW.3. He denied that he is deposing false and accused never abused him in his caste name.

28. Turning to the admissions made by PW.2, who is the close relative of accused being brother of his father, he deposed that he and his father sold Ac.0.75 cents of land each to PW.1 during the lifetime of his father. He denied that his father under a registered settlement deed, dated 14.02.1990, gifted the entire Ac.3.07 cents in RS No.624/5 to the father of the accused. He admitted that father of the accused filed O.S. No.123 of 2006 on the file of Additional Senior Civil Judge, Eluru against him and others for the purpose of declaration and possession. He admitted that he has no land in RS No.624/5 after he sold his land to PW.1. He got



some other land on the other side of the puntha. He denied that he has no land on the other side of the puntha. He denied that as the father of the accused filed O.S. No.123 of 2006, they all pressurized him to withdraw OS No.123 of 2006 and as he refused to withdraw the said suit, they filed the present false case. He also denied that one week prior to 14.10.2006 a panchayat was convened by Suresh, where the father of the accused was threatened with a case under the SCs and STs Act against him son and that father of the accused gave representation to SI of Police, Pedavegi on 16.10.2006. Accused used to work as a Teacher in a school in Lakshnipuram village. He admitted that SDPO called them to Bungalow where he, his brother – Kondayya and Satyanarayana went. Suresh also came there and DSP asked Satyanarayana to purchase the land for which Satyanarayana stated that why should he purchase his land. DSP asked all of them to go out.

29. As seen from the admissions made by PW.4, he was also one of the defendants in O.S. No.123 of 2006 and Maganti Brahmanandam is his elder brother. He denied that they pressurized the father of the accused to withdraw OS No.123 of 2006 and when he refused to withdraw, PW.3 threatened the



father of the accused with a false case under the SCs and STs Act against his son. He denied that he is deposing false.

30. In view of the above cross-examination, the facts and circumstances are such that PW.1 and others filed written statement in O.S. No.123 of 2006. Though PW.1 deposed that he did not know that they filed written statement in the said suit claiming that they purchased the land from Vemuri Kondayya and Vemuri Venkanna, brothers of father of the accused, but, in view of the evidence of PW.2, brother of father of the accused, his evidence is that he and his father sold Ac.0.75 cents of land each to PW.1 during the lifetime of his father. So, it appears that the contention of the accused is that father of PW.2 gifted the entire extent to the father of the accused. So, it is quietly evident that there are ill-feelings at the time of incident between PW.1, PW.2 and PW.4 on one hand and the father of the accused on another hand. The date of offence was said to be on 14.10.2006. Right from the year 2004 there was contesting civil litigation as above. So, admittedly, in view of the utter ill-feelings between the father of the accused and PW.1, PW.2 and PW.4, they can be termed as interested or inimical witnesses as the case may be. Admittedly, in a case of this nature when there was a hard fighting civil litigation



between the parties, their evidence is to be scrutinized with care and caution. Though the accused did not file copy of the representation said to be given by father of the accused to the concerned Police on 16.10.2006 apprehending filing of false SCs and STs case against his son but the accused can as well succeed basing on the evidence available on record.

31. The contention of the accused is that one week prior to 14.10.2006 in a panchayat held to effect compromise in O.S. No.123 of 2006, father of the accused refused for any compromise as such he was threatened with a false case against his son under the provisions of SCs and STs Act. PW.1 and PW.2 denied this suggestion in their cross-examination. The admission made by PW.2 goes to show that the SDPO called them to Bungalow and then he, his brother – Kondayya and Satyanarayana came and Suresh also came and DSP asked Satyanarayana to purchase the land and Satyanarayana refused to do so by saying that why he should purchase his land. Though, the SDPO refused the suggestion in this regard but the accused can as well rely upon the answers spoken by PW.2 during his cross-examination. So, it all goes to show that even the Police intervened in a civil dispute asking the father of the accused to purchase the land claimed by



him, for which father of the accused raised a query why should he purchase his land. It all goes to show that not only civil litigation was pending but also it was brought to the notice of the Police where the Police also intervened, according to PW.2. All this goes to show that there were ill-feelings between the parties.

32. Now, this Court has to look into whether the evidence of PW.1 and PW.2 stands to the test of scrutiny. It is the contention of learned counsel for the appellant that PW.2 was a planted witness. As this Court already pointed out there were ill-feelings between PW.2 and father of the accused on account of the hard fighting civil litigation. As evident from the answers spoken by PW.2 in cross-examination, absolutely, insofar as RS No.624/5 is concerned he has no land at all as he claimed that he sold away the same to PW.1 but he claimed that he got some other land on the other side of the puntha. The contention of the accused is that PW.2 had no probability to be present at 08:30 a.m. on 14.10.2006 as such he was a planted witness.

33. As evident from the testimony of SDPO – PW.9, he deposed that PW.2 and PW.3 have no land nearer to the scene of offence as per the observation report in Ex.P-3. So, even according to Ex.P-3 coupled with the evidence of PW.9, PW.2 had no lands in RS



No.624/5. His claim that he has some other land was not at all proved by the prosecution. The prosecution did not examine LW.2 – Vemuri Kondayya. Considering the admissions made by PW.2, looking into Ex.P-3, coupled with the evidence of SDPO and considering the defence of the accused, in my considered view, the very presence of PW.2 at the scene of offence in the manner as claimed by him is highly doubtful. Apart from that, there was bitter animosity between PW.2 and the father of the accused. So, the evidence of PW.2 is also to be scrutinized with care and caution. It is to be noticed that according the decision cited by learned counsel for the appellant in **Hitesh Verma** (1<sup>st</sup> *supra*), the gist of the offence under Section 3(1)(x) of the SCs and STs Act is insulting or intimidating a scheduled caste member within the public view. The Hon'ble Apex Court in **Hitesh Verma** (1<sup>st</sup> *supra*) by looking into its earlier decision in **Swaran Singh v. State**<sup>4</sup>, held at Para No.14 as follows:

“14. Another key ingredient of the provision is insult or intimidation in "*any place within public view*". What is to be regarded as "*place in public view*" had come up for consideration before this Court in the judgment reported as Swaran Singh v. State {(2008) 8 SCC 435}. The Court had drawn distinction between the expression "public place"

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<sup>4</sup> (2008) 8 SCC 435





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 Court held as under:

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the 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, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "*place within public view*" with the



expression "*public place*". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies".

34. Turning to another decision of the High Court of Bombay at Aurangabad Bench in ***Balu B. Galande*** (2<sup>nd</sup> *supra*), it was held that the humiliation made in public should be audible and visible to attract the provisions of the SCs and STs Act. Its audibility and visibility could be satisfied if independent person would be actually present.

35. Turning to another decision of the High Court of Bombay in ***Pradnya Pradeep Kenkare*** (3<sup>rd</sup> *supra*), it was held that the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public.

36. In view of the above, especially the principle laid down by the Hon'ble Apex Court in ***Hitesh Verma*** (1<sup>st</sup> *supra*), this Court is of the considered view that though there is no dispute that the place of offence is said to be open field which is accessible to



public but what is the criteria is presence of public at the time of offence in question to attract the essential ingredients of Section 3(1)(x) of the SCs and STs Act. Here, the presence of PW.2 was highly doubtful. Apart from that, he was an inimical witness towards the accused. Considering the same, I am of the considered view that the prosecution failed to prove the essential ingredients *i.e.*, the place of offence was in public view at the time of offence in question.

37. It is to be noticed that prompt lodging of FIR in any case is of utmost importance. Though the offence in question was said to be happened on 14.10.2006 at 08:30 a.m., the report came to be lodged after three and half days. The delay in lodging the FIR is not in dispute. As there were ill-feelings existing between the prosecution party and the accused party as such presence of PW.2 was highly doubtful, a prompt lodging of FIR would have lent an assurance to the case of prosecution. According to the case of the prosecution, the delay was occurred as the matter was referred to elders. But as seen from the evidence of PW.3, on 15.10.2006 he called the accused but did not follow his advice. According to PW.1, MPTC Suresh called the accused on the next date and the accused did not follow the advice and then he informed the



incident to village elders. It is to be noticed that the names of the so called village elders were not there in Ex.P-1. However, the prosecution examined PW.4, the so called villager elder, who deposed that mediation was conducted on 15.10.2006 in the house of PW.3. PW.3, he (PW.4), K.S.S. Hari Lakshmana Rao, Veera Venkata Satyanarayana and Anjaneyulu acted as elders and both parties did not agree to settle the dispute. So, it is quietly evident that the alleged efforts made by the elders came to an end on 15.10.2006 itself. So, on 15.10.2006 report was not lodged. Even on the next date it was not lodged. At the fag end of 16.10.2006 the report was lodged. So, the prosecution miserably failed to explain the *bona-fide* reasons in lodging Ex.P-1 report to the Police by PW.1.

38. The very object of prompt lodging of FIR in a criminal case is to ensure that there would not be any embellishments, fabrications and deliberations *vide State of Andhra Pradesh v. M. Madhusudhan Rao*<sup>5</sup>. So, here on account of bitter ill-feelings existing between the prosecution party and the accused party, the un-explained delay in lodging Ex.P-1 report is fatal to the case of

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<sup>5</sup> (2008) 15 SCC 582



the prosecution. So, admittedly, the abnormal delay in lodging Ex.P-1 report was not explained by the prosecution satisfactorily.

39. Having regard to the above, I am of the considered view that the evidence adduced by the prosecution before the learned Special Judge is not at all convincing to hold that accused humiliated and intimidated PW.1 in the public view on 14.10.2006 at 08:30 a.m.

40. As seen from the judgment of the learned Special Judge, the accused raised a contention that the prosecution failed to explain the delay and further there were ill-feelings between the accused party and the prosecution party in view of the existing civil disputes. The learned Special Judge did not find merit in the contentions of the accused that there were ill-feelings in view of the civil litigation. He further made a finding that in a case of this nature, the delay is bound to occur. It is to be noticed that appreciation of evidence by the learned Special Judge when the accused canvassed a contention that there was abnormal delay in lodging the report and there were ill-feelings between the prosecution party and the accused party is not on right lines. The learned Special Judge did not discuss as to how there was a probability for PW.2 being present at the time of occurrence,



especially when he had no lands at the disputed survey number and he did not furnish the survey number of the land where he had lands nearer to the scene of offence. Apart from that, he was an inimical witness. In my considered view, the learned Special Judge did not look into the admissions made by the prosecution witnesses properly. The learned Special Judge did not look into the admissions made by PW.2 that the Police convened a meeting where they compelled father of the accused to purchase land claimed by him. All these things go to reveal that the probability of the manufactured version or embellished version on account of the delay cannot be ruled out.

41. Having regard to the above, I am of the considered view that it is a fit case to hold that the prosecution before the Court below failed to prove the charge against the accused beyond reasonable doubt as such the appellant-accused is liable to be acquitted by giving benefit of doubt.

42. In the result, the Criminal Appeal is allowed by setting-aside the judgment in SCs & STs Sessions Case No.04 of 2008, dated 06.11.2009, on the file of the Court of Special Judge for trial of cases under the Scheduled Castes and Scheduled Tribes (Prevention Of Atrocities) Act, West Godavari, Eluru as such the



appellant-accused is acquitted under Section 235(1) Cr.P.C. for the charge under Section 3(1)(x) of the SCs & STs Act. The fine amount, if any, paid by the accused, shall be refunded to him after Appeal time is over.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

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**JUSTICE A.V.RAVINDRA BABU**

Date: 05.07.2023  
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