

THE HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL APPEAL No. 904 OF 2008

JUDGMENT:

The appellants herein are A.1 to A.3 and A.7 respectively, in Sessions Case No.10/S/2006 on the file of the Special Judge for trial of Cases under the SCs and the STs (PoA) Act, 1988, Guntur. They preferred the present appeal challenging the Judgment dated 16.07.2008 passed in the said Sessions Case whereunder and whereby- A.1 and A.2 were convicted of the offence punishable under Section 326 IPC and sentenced to rigorous imprisonment for a period of five years and to pay fine of Rs.100/- each; A.3 was convicted of the offence punishable under Section 324 IPC and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.100/-, and A.7 was convicted of the offence punishable under Section 323 IPC and sentenced to undergo rigorous imprisonment for a period of three months and to pay fine of Rs.100/-. In default of payment of fines, the accused were directed to undergo further simple imprisonment for a period of 15 days.

2. A private complaint was lodged by 1st respondent / complainant against A.1 to A.7, alleging as follows.

A.1 to A.6 are residents of Nizampatnam village and mandal. A.7 was working as a Police Constable in Nizampatnam police station. A.1 to A.3 were doing centering business (slab works). As the complainant was also doing the same business and was getting more work, A.1 to A.3 were in inimical terms with the complainant and bore grudge against him. A.4 to A.6 are near and dear of A.1 to A.3. While the complainant was arranging stars on the Christmas eve, A.1 to A.3 asked him to stick their names on the stars along with his name. But, he did not agree therefor, as the same was being done with his own expenditure. On that, A.1 to A.3 bore grudge and threatened him that they would see his end if he did not stick their names. On 17.6.2003 at about 7.30 PM, while the complainant was going to house of Mehaboob Jani's daughter for collecting rent and centering material, A.1 to A.3 attacked him with iron rods, sticks and knife. A.1 beat him on mouth with stick which caused dislocation of two teeth and bleeding blood injury; A.2 beat with iron rod on

right leg as a result of which his right leg was broken and he fell down. A.3 rushed towards him with a knife to attack him, but he escaped from the attack, but A.3 did not leave him and stabbed him with knife on left leg, and he was indiscriminately beaten by them. A.4 to A.6 instigated them saying that they would help financially and provide help from police if they face any trouble. P.Ws.3 and 4 witnessed the incident.

It is further alleged that after the attack, A.1 to A.3 dragged the complainant towards house of A.3 and placed him in front of house of A.3, and thereafter A.4 and A.5 fetched A.7, who kicked him with leg having shoe saying in filthy language 'levara naa kodaka, mala lanjakodaka, nee natakalu ika chaalu'. Mean while, P.Ws.3, 4, 6, 7 and another rushed there and questioned A.7. The complainant was dragged towards police station. By that time, wife of A.3 was present in police station. Police sent him to G.G.H., Repalle in mid night and he was treated there up to 12.7.2003. Thereafter also, he was suffering from pain and bandage was tied to him, and so, he got treated in a private hospital. The complainant sent a

report to police higher authorities against A.1 to A.7, but no action was taken. Hence, the private complaint.

3. After recording sworn statements of the complainant and other witnesses, the private complaint was taken on file as P.R.C.No.39 of 2005 on the file of the II Additional Junior Civil Judge, Repalle for the offences punishable under Sections 307, 120B and 109 IPC and 3 (1) (x) of the SCs and STs (PoA) Act, 1988, and the same was committed to the Court of Session, which numbered the same as S.C.No.10/A/2006.

4. The learned Special Judge framed charge for the offence under Section 307 IPC against A.1 to A.3; under Section 307 read with 109 IPC against A.4 to A.6; under Section 324 IPC against A.7 and under Section 3 (1) (x) of the SCs and the STs (PoA) Act, 1988 against A.7. The plea of the accused is one of denial.

5. To substantiate his case, the complainant examined P.Ws.1 to 9 and got marked Exs.P1 to P11. On behalf of

accused, D.W.1 was examined and Exs.D1 and D2 were got marked.

6. After hearing both sides and appreciating the evidence on record, the learned Special Judge found the appellants guilty, accordingly convicted and sentenced them, as stated *supra*, while acquitting them of the charges under Sections 307 and 120B IPC and 3 (1) (x) of the SCs and the STs (PoA) Act, 1989. Challenging the same, the accused filed the present Criminal Appeal.

7. Heard the learned counsel for the appellants, the learned counsel for 1st respondent/complainant and the learned Additional Public Prosecutor appearing for 2nd respondent/State. Perused the record.

8. Learned counsel for the appellants submitted that admittedly, even as per the recitals in private complaint, there are previous disputes between the complainant and A.1 to A.3, and a case in S.C.No.262 of 2004 on the file of the Principal Assistant Sessions Judge, Tenali was filed by wife of A.3 for the offence under Section 354 IPC against

the complainant wherein the complainant was found convicted and the same was confirmed in the Criminal Appeal, and so, as a counter blast to the same, the present private complaint was lodged by the complainant. He submits that there is abnormal delay of five months in filing the present private complaint, and the private complaint was filed without complying with the procedure mandated under law. He submits that the evidence of P.Ws.3 to 7 is interested and there is no independent corroboration to the ocular testimony of P.W.2. He submits that the medical evidence does not corroborate the ocular testimony, and the learned Special Judge, having extended the benefit of doubt to other accused in respect of the said offences, ought to have extended the same benefit of doubt to the appellants in respect of the said offences.

9. Learned counsel appearing for 1st respondent/complainant submitted that there is clinching evidence against the appellants with regard to the offences for which they were convicted by the learned Special Judge. He submits that mere delay in setting the criminal law into

motion, by itself, is not a ground to doubt the case of the complainant, and the complainant explained the delay satisfactorily. He submits that as police concerned did not take appropriate action, the complainant approached the Magistrate concerned by lodging the private complaint. He submits that there are specific overt-acts against the appellants, and considering these aspects, the learned Special Judge rightly convicted and sentenced the appellants and there are no grounds to interfere with the impugned judgment.

10. The learned Additional Public Prosecutor appearing for 2nd respondent-State too concurred with the submissions of the learned counsel for 1st respondent/complainant.

11. Now, the point for consideration is whether the prosecution is able to bring home the guilt of appellants with regard to the offences for which they were convicted by the learned Special Judge, beyond all reasonable doubt, and whether the judgment passed by the learned Special Judge needs any interference by this Court?

12. It is a case registered based on a private complaint lodged by 1st respondent/complainant (P.W.2). According to the allegations in the private complaint, there were differences between the complainant and A.1 to A.3, as both parties were doing centering business and as the complainant was getting more works than A.1 to A.3. The other accused A.4 to A.6 are near and dear of A.1 to A.3. It is further alleged that as the complainant did not agree for sticking names of A.1 to A.3 on Christmas stars, a scuffle arose between them. It is alleged that on 17.6.2003 at about 7.30 PM, while the complainant was going to house of Mehaboob Jani's daughter to collect money, A.1 came and beat on his face with a stock, as a result of which one tooth was broken and the other teeth loosened. A.2 beat him on his right leg with rod, due to which he sustained fracture below his right knee. When A.3 attempted to stab P.W.2 on his stomach with knife, he escaped from the said blow, but A.3 again stabbed on his left leg ankle. A.4 to A.6 instigated A.1 to A.3 to attack P.W.1. Thereafter, he was taken to house of A.3, where A.7 came and abused him touching his caste name.

13. The learned Special Judge found the accused not guilty of the offences punishable under Sections 307 IPC and 307 read with 109 IPC, and also found A.7 not guilty of the offence punishable under Section 3 (1) (x) of the SCs and the STs (PoA) Act, 1989. However, the learned Special Judge found- A.1 and A.2 guilty of the offence punishable under Section 326 IPC; A.3 guilty of the offence punishable under Section 324 IPC and A.7 guilty of the offence punishable under Section 323 IPC, accordingly convicted and sentenced them.

14. It is the main contention of the learned counsel for the appellants that in a case of this nature, where there is abnormal delay in lodging the private complaint and where there are strained relations between the parties, medical evidence plays a pivotal role, but the ocular testimony is not corroborated with the medical evidence. It is his further contention that in view of the abnormal delay in lodging the private complaint and in view of the admitted differences and strained relationship between A.1 to A.3 and P.W.2, corroboration from independent witnesses is

required to the evidence of P.W.2, but P.Ws.3 to 7 are interested witnesses, and in view of the same, conviction cannot be based on the evidence of the prosecution witnesses. He further submitted that on the same day of the incident, wife of A.3 filed a case against the complainant, which was registered as S.C.No.262 of 2004 on the file of the Principal Assistant Sessions Judge, Tenali for the offence under Section 354 IPC wherein the complainant was found convicted and the same was confirmed in the Criminal Appeal, and so, as a counter blast to the same, the present private complainant was lodged by the complainant. In view of the aforesaid chequered events, it has to be examined whether the complainant is able to establish his case beyond reasonable doubt or whether the appellants are entitled to benefit of doubt.

15. In his evidence, P.W.2, the injured witness, reiterated the allegations in the private complaint. P.W.1 worked as Civil Assistant Surgeon, Government Hospital, Repalle. On 18.06.2003, he examined P.W.2 and found as many as 12

injuries. He issued Ex.P1-wound certificate and opined that injury Nos. 1 and 5 are grievous in nature and all other injuries are simple in nature. He admitted in cross-examination that the aforesaid injuries can be caused by fall. He further deposed that P.W.2 was treated by Dr. Siva Prasad Sripathi, Dentist of Government Hospital, Repalle. Exs.P7 and P8 x-rays were marked through him. In cross-examination, he deposed that he cannot say to whom the x-rays belong.

16. P.W.9 worked as Dental Assistant Surgeon, Community Health Centre, Repalle at the relevant point of time of the incident. He deposed that on 20.6.2003, P.W.1 referred P.W.2 to him and he treated P.W.2 and found two dental injuries which are grievous in nature.

17. A perusal of the evidence on record goes to show that there is variance between the oral evidence and medical evidence. According to oral evidence of P.W.2, one overt-act each is attributed against A.1 to A.3 that A.1 beat on his face with a stick, due to which one tooth was broken; A.2 beat him on right leg with a rod due to which he

sustained fracture below right knee, and A.3 stabbed on his left leg ankle. But, as seen from the medical evidence, as many as 12 injuries were noticed by the Doctor P.W.1, who examined P.W.2 within 6 to 12 hours after the incident. Therefore, there are no corresponding overt-acts in the evidence of P.W.2 relating to the other injuries noted in Ex.P1, and it is not explained as to how those injuries were sustained by P.W.2. Further more, as pointed out by the trial Court, the Radiologist concerned is not examined to prove X-rays under Exs.P7 to P9. Therefore, the complainant has not come forward with correct version of the incident and the origin and genesis of the incident has been suppressed.

18. Further more, it is the contention of the learned counsel for the appellants that this case is foisted as a counter blast to the case filed by wife of A.3 against P.W.2 i.e. S.C.No.262 of 2004 on the file of the Principal Assistant Sessions Judge, Tenali for the offence under Section 354 IPC (relating to crime No.18 of 2003 of Repalle police station), which ended in conviction, which was affirmed by

the appellate Court. P.W.2 admitted in his cross-examination, the factum of filing the said case and his conviction in the said case. It is stated by him that by the time he was taken to the police station on the date of the incident to present the report, wife of A.3 was already there. It is suggested to P.W.2 that he sustained the injuries due to his fall on the same date and time when he outraged modesty of wife of A.3 while he was running from back door, but the same is denied. From the aforesaid evidence, it is clear that on the same day of the incident, a case in crime No.18 of 2003 of Repalle police station, was registered against the complainant at the instance of wife of A.3 for the offence under Section 354 IPC.

19. Admittedly, P.W.2 lodged the private complaint after lapse of about five months of the incident. The alleged incident occurred on 17.06.2003 and the private complaint was lodged on 05.11.2003. There is no satisfactory explanation from P.W.2 for the abnormal delay of about five months in lodging the report. He only stated that no police approached him, and as such, he represented to the higher

police officials. Copy of the police report allegedly sent by P.W.2 to police is not filed. No doubt, mere delay in setting the criminal law into motion, by itself, is not a ground to disbelieve the entire version of P.W.2. But, in view of the strained relations between P.W.2 and the accused and in view of the cases pending between P.W.3 and wife of A.3 for the offence under Section 354 IPC relating to an offence that occurred on the same day of the incident, the delay assumes significance. As stated supra, there is no satisfactory explanation offered by P.W.2 for the delay. In the circumstances, it can be inferred that the private complaint appears to have been drafted after discharge of P.W.2 to suit the injuries mentioned in Ex.P1. Therefore, in the circumstances of the case, delay renders the circumstances questionable. Time and again, the object and importance of prompt lodging of the First Information Report has been high-lighted. A delayed report not only gets bereft of the advantage of spontaneity, the danger of introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations also creeps in, which casts

a serious doubt on its veracity. Delay in lodging the First Information Report, more often than not, results in embellishment and exaggeration, which is a creation of an afterthought. The various aforesaid lapses cumulatively affect the overall sanctity of the prosecution case, making it fall short of the threshold of 'beyond reasonable doubt'. Therefore, in the circumstances of the case, in view of the strained relations between the parties and lodging of report by wife of A.3 against P.W.2 for the offence under Section 354 IPC, which ended in conviction, the unexplained delay in lodging the private complaint goes to the root of the case. Further more, the weapons of offence are not produced before the Court, and on the same evidence, the trial Court acquitted A.4 to A.6 of the charges levelled against them and also acquitted the appellants of the other offences.

20. In view of the foregoing discussion, this Court has no hesitation to hold that there is no corroboration between the medical evidence and the ocular testimony, and there is unexplained delay in lodging the private complaint which

would go to the root of the case, particularly in the light of the strained relations between the parties, and therefore an implicit reliance cannot be placed on the evidence of prosecution witnesses to base the conviction. Therefore, this Court is of the opinion that the complainant failed to establish the guilt of the appellants with regard to the offences for which the trial Court convicted them, beyond reasonable doubt, and the appellants are entitled to benefit of doubt. The trial Court has not considered the evidence on record in right perspective and erred in convicting and sentencing the appellants. Hence, the impugned judgment passed by the trial Court is liable to be set aside.

21. In the result, both the Criminal Appeal is allowed, setting aside the convictions and sentences recorded against the appellants, in the judgment dated 16.07.2008 in Sessions Case No.10/S/2006 on the file of the Special Judge for trial of Cases under the SCs and the STs (PoA) Act, 1988, Guntur. The appellants are found not guilty of the said charges and are accordingly acquitted of the said

charges and are set at liberty. Fine amounts, if any, paid by them shall be refunded to them.

Consequently, miscellaneous petitions, if any, pending in the Criminal Appeal shall stand closed.

K. SREENIVASA REDDY, J

Date: 18.6.2025
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HON'BLE SRI JUSTICE K. SREENIVASA REDDY

CRIMINAL APPEAL No. 904 OF 2008

Date: 18.6.2025

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