

Nazeemuddin Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Dec-24-1998

Reported in : 1999(1)ALD685; 1999(1)ALD(Cri)190; 1999CriLJ1773

Judge : Vaman Rao, J.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 354; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 107

Appeal No. : Crl. A. No. 765 of 1993

Appellant : Nazeemuddin

Respondent : State of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mr. C. Praveen Kumar, Adv.

Judgement :

1. This appeal arises out of judgment of the Special Sessions Judge for trial of cases under SCs and STs (Prevention of Atrocities) Act dated 8-7-1993 rendered in CC No.14 of 1993 under which the appellant has been convicted for the offence under Section 3(1)(xi) of SCs and STs (Prevention of Atrocities) Act (for short 'the Act') and sentenced to undergo rigorous imprisonment for six months and to pay a

fine of Rs.500/- in default to undergo rigorous imprisonment for four weeks.

2. The facts relevant to this appeal may be stated briefly as follows:

On 14-12-1992, the victim Dappu Bujjamma of Digwal village belonging to Scheduled Caste was sent along with her brother-in-law Rajkumar for grazing cattle to the field of Edugollu. At about 5 p.m., she went to take drinking water and while returning along Jawar field of Uppari Chandraiah, the accused, who is a muslim, not belonging to Scheduled Caste came behind her, caught hold of her hands, dragged her to jawar fields. On her hue and cry, her brother-in-law Rajkumar came towards her and then the accused left her and ran away. After returning to the village, she told her mother-in-law and her husband (PW4) after he returned to the house in the night. According to PW4, the husband of PW1, next day morning went to the Sarpanch of the village and complained against the accused. The Sarpanch sent for the accused but he was not available. The accused had reportedly gone to Hyderabad as stated by his brother and was expected in the evening. In the evening, they again went to the Sarpanch who told that the accused had not returned so far and as such he could not do anything. The next day morning, PW4 and others went to the Sarpanch's house but he was not available at his house. Sarpanch was seen on the road along with the Mandal Revenue Officer who had come to that village. PW4 and others reminded him about the complaint against the accused. The Sarpanch pleaded his inability to do anything. Then, PW4 questioned the Sarpanch firstly for not allowing them to go to the police and not settling the matter in the village also. When Sarpanch's authority was thus questioned, it is alleged that the Sarpanch beat PW4. Upa-Sarpanch intervened and tried to pacify the matter. On seeing this, Sarpanch's brother, Janardhanreddy and Ramireddy gave signals to the Muslims who came there with sticks and beat PW4 and others. Then police came from Zahirabad and took the injured to hospital.

It is in the evidence of PW6 the Sub-Inspector of Police that when police went there in connection with the incident of rioting at about 1.00 p.m., on 16-12-1992, he went and recorded the statement of PW1 under Ex.P1 and a case under Section 354 of IPC was registered and First Information Report under Ex. P3 was

issued. On 17-12-1992, PW6 went to the scene of offence along with PW5 (S. Nagendhar Rao) and drafted Panchanama (Ex.P2) and he arrested the accused at 2.15 p.m., on the same day.

3. On behalf of the prosecution, PWs.i to 6 have been examined and Exs.P1 to P3 have been marked. The accused has not chosen to examine any defence witness on his behalf.

4. Now, the point for consideration is whether the prosecution has proved the guilt of the accused beyond reasonable doubt

5. The prosecution seeks to prove the charge against the accused with the evidence of PW1 (the victim). PW2 is said to be the eye-witness to the incident. PW3 is said to be the person to whom PW2 narrated the incident naming the accused as culprit soon after the incident PW4 is the husband of PW1 who had approached the Sarpanch as stated above. PW5 is the panch witness; PW6 is the Investigating Officer.

6. According to PW1, while she was returning along Jawar field of Uppari Chandraiah after taking water, the accused came behind her and caught hold of her hands and dragged her to jawar fields and when she raised cries PW2 proceeded towards the scene of occurrence and on seeing him the accused ran away. Apparently, the accused was a stranger to PW1. PW1 in her examination in chief candidly admits that she had not seen the accused prior to the incident at all. Thus, the accused was a total stranger to her at the time of the incident. In her cross-examination, she further makes it clear that she told her-in-laws that 'somebody' from behind caught hold of her. Thus, the evidence of PW2 assumes crucial importance in establishing the identity of the accused as the culprit who misbehaved with PW1. It is in the evidence of PW2 that at the time of the incident he was sitting on the Babul tree and saw the accused dragging PW1 and PW1 raised hue and cry and then he rushed to the scene and on seeing him the accused ran away. In his cross-examination, PW2 categorically admitted that the distance between the place where he was grazing the cattle and the scene of offence was about two furlongs. PW1 has also admitted that the distance between where it may be pointed out that there is no of contemporaneous evidence on

record that PW2 immediately gave the name of the accused as the culprit (sic). PW3-Vimalamma has been examined to depose that soon after the incident PW2 went to her field at about 5.00 p.m. and told that some muslim boy dragged PW1. According to her, the distance from where she was attending to work in the field and the place where PW2 was grazing the cattle was about four furlongs. Even she does not state that PW2 gave the name of the accused as culprit. At any rate, she does not mention the name of the accused at all and use of the word 'some muslim boy' is conspicuous for the non-mention of the name of the accused. At any rate, PW3 was not examined by the police and she deposed about the incident for the first time in the Court.

7. Apart from the other infirmities in the case, the first hurdle for the prosecution is whether PW2 could have identified the accused from a distance of two furlongs. The incident is said to have occurred at about 5 p.m. The distance between the place of occurrence and the place from where PW2 witnessed the incident was two furlongs i.e., 440 yards. It is doubtful whether PW2 could have identified the culprit from a distance of 440 yards at that time of the day. Even if it was a broad day light and assuming that PW2 had normal eye vision and assuming that there were no obstructions in between, it is highly doubtful if a person could observe the features and identify another person from a distance of 440 yards.

8. In Gros's Criminal Investigation, Fifth Edition, as quoted in the case of Arjun Sahu v. State of Orissa, 1988 Cri.LJ. 1086, the following observations as to identification of persons are made:

'It is appropriate here to call attention to what has been said about the distance at which we can recognize persons. Presuming the eye sight to be normal and the light good, one is able in broad day light to recognize:

(a) Persons whom one knows very well, at a distance of from fifty to ninety yards: when there are particular and very characteristic signs, 110 yards; in exceptional cases upto 165 yards.

(b) Persons one does not know very well and has not often seen, from twenty-eight to thirty-three yards.

(c) people one has only seen once, sixteen yards,' Even assuming that these are approximate indications, considering the long distance of 440 yards from which PW2 claims to have identified the accused, his evidence in that regard cannot be accepted on the ground that his claim being scientifically impossible. Thus, the evidence of PW2 as to the identification of culprit is dubious. The contention that on hearing cries PW2 ran and went near PW1 and saw the accused appears highly improbable because according to PW1 after being caught she was immediately dragged into standing jawar crop.

9. Another relevant circumstance is that no complaint was given about this incident till the police came to the village on the next day. There is no attempt to explain this delay. PW4, the husband of PW1, however, states that the delay occurred due to the fact that the Sarpanch of the village promised to settle the matter in the village and it was the Sarpanch who did not settle the matter for the reason of absence of the accused in the village or for some other reason. If this was so, it is most natural to mention this reason in the complaint Ex.P1 but this reason is not mentioned. On behalf of the learned Public Prosecutor it was contended the fact that it was in connection with this incident that rioting took place in the village and police came to the village would show that there is some substratum of truth in the allegations made against the accused. As stated by PW6, the police arrived in the village on the report of some rioting. This indicates that some incident might have occurred. But, there is no contemporaneous material to show that the said incident related to the accused or that the accused was named in that incident. The Sarpanch himself has not been examined. In alternative, no independent witness was examined to support the case of the prosecution that the incident in respect of which rioting took place involved the accused. For all these matters, it is only the evidence of PW4, the husband of the victim, which is relied on by the prosecution. It is pertinent to mention here by the time the complaint in Ex.P1 was given, another criminal case was already registered under Section 107 of Cr.P.C. against 45 persons and the accused was shown as a party to the proceedings on one side and PW1 was shown on the other. Thus, by the time Ex.P1 complaint was given, the accused and PW4 were arrayed on the opposite sides in a criminal case. Thus, the naming of the accused in Ex.P1 subsequent to these proceedings does not lend assurance to the evidence of PW4 or the version given by PWs. 1 and 2.

The accused under the circumstances was entitled to benefit of doubt.

10. In the result, the accused is found not guilty for the offence under Section 3(1)(xi) of SCs and STs (Prevention of Atrocities) Act, 1989 and is acquitted of the said charge setting aside the conviction and sentence imposed on him. The bail bonds of the accused shall stand discharged.

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