

**(2021) 10 TEL CK 0060**  
**In the Telangana High Court**  
**Case No : Criminal Appeal No.482 Of 2012**

State Of AP Rep By Its PP Hyd.

APPELLANT

Vs

Gopa Ganga Reddy, 19 Others

RESPONDENT

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**Date of Decision :** 29-10-2021

**Acts Referred:**

Indian Penal Code, 1860 — Section 148, 149, 436, 452

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(x), 3(1)(xv)

**Citation :** (2021) 10 TEL CK 0060

**Hon'ble Judges :** Dr. Chillakur Sumalatha, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

1. Challenging the validity and the legality of the judgment that is rendered by the Court of the Special Judge for trial of cases under SCs/STs (POA) Act, Adilabad, in Spl.S.C.No.11 of 2010, dated 23.5.2011, the appellant is before this Court by way of appeal.

2. In the grounds of appeal, it is urged that the judgment of the trial Court is contrary to law, weight of evidence and probabilities of the case; that the learned judge of the trial Court ought to have seen that the ingredients to constitute the offences punishable under Sections 452, 436 read with Section 149 and 148 IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, were made out by the prosecution; that the learned judge ought to have seen that P.W-1 who is an eye-witness to the incident clearly stated how his house was damaged by the respondents-accused; that the learned judge has not considered the evidence of the prosecution witnesses in correct perspective and thus, the acquittal of the respondents-accused is unsustainable and as such, the appeal has to be allowed.

3. Heard the submissions of the learned Additional Public Prosecutor. The respondents-accused failed to submit their contentions.

4. Now the points that arise for determination are:

(1) Whether the prosecution established beyond all reasonable doubt before the trial Court that having made preparation for causing hurt or for assault or for wrongly restraining any person or for putting any person in fear of hurt or assault or wrongful restraint, the respondents-accused committed house trespass which is punishable under Section 452 IPC.

(2) Whether the prosecution established beyond all reasonable doubt before the trial Court that the respondent-accused committed the act of mischief by fire punishable under Section 436 read with Section 149 IPC.

(3) Whether the prosecution established beyond all reasonable doubt before the trial Court that the respondents-accused committed the offence of rioting being armed with deadly weapons or anything of that sort punishable under Section 148 I.P.C.

(4) Whether the prosecution established beyond all reasonable doubt before the trial Court that the respondents-accused not being members of scheduled caste or scheduled tribe intentionally insulted or intimidated with an intention to humiliate P.Ws.1 and 2 and thereby, committed the offence as laid down under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

(5) Whether the prosecution established beyond all reasonable doubt before the trial Court that the respondents-accused not being members of scheduled caste or scheduled tribe forced or caused P.Ws.1 and 2 to leave their residential place and thereby, committed the offence as laid down under Section 3(1)(xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(6) Whether there exists any infirmity in the judgment of the trial Court either in appreciating the facts of the case or in applying the established principles of law to the said facts, as contended by the appellant, which in turn requires the interference of this Court exercising the appellate jurisdiction.

5. Point Nos.1 to 5:-

Point Nos.1 to 5 are interrelated and needs common course of discussion and hence, they are taken up together for discussion.

The crux of the case, which culminated from the charge sheet, is that on 01.01.2010, the villagers of P.W-1 beat him and abused him and further, his mother and his nephew were also abused in filthy language and his spiritual books were set on fire and on that, he lodged a complaint to Police and Police registered a case and sent P.W-1 to hospital and that, on 03.01.2010, at about 8 am., when he reached his village, he found his household articles damaged by setting fire and further, he found that the roof top of his house up-roofed and it is the respondents-accused and one Bhumanna (minor) who have committed the said offences.

6. Record discloses that the learned judge of the trial Court framed charges against the respondents-accused for the offences punishable under Section 452, 436 read with 149 and 148 I.P.C. and Sections 3(1)(x) and 3(1)(xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and as the respondents-accused pleaded not guilty, the trial Court proceeded with the trial of the case.

7. As rightly urged in the grounds of appeal, when the evidence produced by the appellant before the trial Court is looked into, this Court finds that P.Ws.1 and 2 supported the case of the prosecution in toto. However, the learned judge of the trial Court came to a conclusion that the evidence is not inspiring and convincing.

8. The evidence of P.W-1 is that he is working as Panchayat Secretary of Balapur and P.W-2 is his elder sister and her house is located at the backside of his house and P.Ws.3 to 5 are his neighbours, P.Ws.6 and 7 are the husbands of his other sisters and the respondents-accused belong to his village. P.W-1 deposed that on 1.01.2010, all the accused and one Bhumanna abused him and beat him and they also abused and beat his mother-Gangamma and his nephew-Ravi and they burnt his religious books, for which he gave a report to Police and Police sent him to hospital and all of them stayed at Adilabad on 02.01.2010, and only on 03.01.2010, when they returned to their house, they found their house burnt to ashes, the cooking utensils including the gas cylinder were found thrown into the well, found the bamboo mats, rafters and wooden furniture, T.V. , plastic chairs and table fan burnt and he also found the office registers and cheque books burnt and on his enquiry, his sister i.e., P.W-2 informed him that all the respondents-accused who abused and beat P.W-1 on 01.01.2010 did those acts and she also informed him that the articles were burnt at 9 pm on 02.01.2010 and in spite of her request and touching their feet, the accused did so and further, she was abused as "Madiga munda Ninnu kuda champesthamu" and was threatened and on that, he went to Adilabad Police Station and gave report to Police on 03.01.2010 and the same is Ex.P-1.

9. Coming to the evidence of P.W-2, she stated that she belongs to Madiga caste and the respondents-accused belong to backward class community, Scheduled Caste community and Scheduled Tribe community and she was not present in the village on the day on which her brother, her mother and her son- Ravi were abused and beat and she returned to the village on the next day of the incident at about 6. 30 pm and at 7 pm., she noticed all the respondents-accused and one Bhumanna at her brother's house damaging the house and other articles and on that, she rushed to the house of P.W-1 and the respondents-accused informed her that as P.W-1 is practicing sorcery, they beat him, his mother and her son on the previous day and sent them out of the village and her brother gave complaint to Police and they all abused her in filthy language in the name of caste and due to fear, she left the place and hid herself in some other's house and the destruction was done in her presence and that P.Ws.6 and 7 witnessed the incident.

10. P.W-2 during the course of cross-examination deposed that there was no power supply in the village in that night and as it was dark, she cannot give overt acts against the respondents-accused. She admitted that Harijanawada people also gathered at the house of P.W-1 and she was unable to see who was doing what. She further stated that P.Ws.6 and 7 were amidst the gathering, but she did not see them at the time of the incident, but on the next day, she came to know that they came to their village and witnessed the incident.

11. P.W-2 also stated that P.Ws.6 and 7 reached the village prior to her reaching the village. P.W-2 during the course of chief-examination stated that she reached the village at about 6.30 pm. Now, let us see what P.Ws.6 and 7 stated on this.

12. It is the evidence of P.W-6 that at about one year back, on one day, he came to know that P.W-1, his mother and the son of P.W-2 were beaten and on that, himself and P.W-7 went to Landasangvi village, but they could not find P.W-1, his mother and the son of P.W-2 there and on that, they met P.W-2 at her house and in that night, the villagers of Landasangvi burnt and damaged the house of P.Ws.1 and 2 on the ground that P.W-1 was practicing sorcery, but he cannot identify those persons as it was dark and as there was no power supply. He further stated that they abused P.W-2 in filthy language as "munda-randa". Same is the evidence of P.W-7.

13. Surprisingly, it is not the version of P.W-2 herself that her house was damaged by the villagers. Further, her statement is that on the next day of the incident, she came to know that P.Ws.6 and 7 came to Landasangvi village and witnessed the incident. But, P.W-6 deposed to the effect that himself and P.W-7 went to the house of P.W-2 and met her and in that night, the incident occurred. As this is not a case where the civil liability has to be decided, this Court cannot say which of the said versions is true. The prosecution has to establish its own version through the witnesses it has examined beyond all reasonable doubt.

14. As rightly observed by the trial Court, by the evidence of P.W-11, who was appointed as Special Officer to investigate this case, it is clear that he was present at Landasangvi village on 02.01.2010 from 7.30 pm to 10.30 pm. If such is the case, no reasonable explanation is given as to why the said incident lost sight of P.W-11. His own statement is that the house of P.W-1 was set on fire on the said date at 9.30 pm. Having been present there, when such a ghastly incident has occurred, it is for the prosecution to explain why P.W-11 failed to take action immediately.

15. None of the prosecution witnesses gave convincing evidence to pass a judgment of conviction by the trial Court.

16. P.Ws.3 to 5, who were projected as the ocular witnesses to the incident, failed to support the case of the prosecution. The prosecution even failed to establish in cogent terms the exact time at which the incident occurred on 02.01.2010. When P.W-1 says that the incident occurred at 9 pm., P.W-2, who is shown as ocular witness, states that it was at 7 pm, P.W-7 says that it was at

7.30 pm and P.W-11 says that it was at 9.30 pm. By the evidence of P.Ws.2 and 6, it is clear that at the time of occurrence of the incident on 02.01.2010, it was dark and there was no power supply. In such a case, how P.W-2 identified the respondents-accused in that darkness is not explained. The evidence of P.Ws.6 and 7 cannot be believed and acted upon due to the fact that they exaggerated their version and went on to state that even the house of P.W-2 was damaged. It is not the case of the prosecution either. In these circumstances, this Court is of the view that the prosecution though attempted, failed in establishing the guilt of the respondents-accused beyond all reasonable doubt before the trial Court for the charges framed against them.

17. Point No.6: -

The judgment of the trial Court is well-reasoned. The learned judge of the trial Court appreciated the facts that were discussed in the above points and has come to a right conclusion. It is for the prosecution to establish before the trial Court by cogent and convincing evidence that the charges levelled against the respondents-accused are sustainable and that, it has to produce such an evidence that it inspires confidence for getting the respondents-accused convicted. Such an evidence is lacking in this case. Therefore, the trial Court rightly acquitted the respondents-accused for the charges laid.

This Court does not find any grounds for interference.

18. In the result, this Criminal Appeal stands dismissed confirming the judgment rendered by the Court of the Special Judge for trial of cases under SCs/STs (POA) Act, Adilabad, in Spl.S.C.No.11 of 2010, dated 23.5.2011.

19. Pending Miscellaneous Petitions, if any, shall stand closed.