

Tsundur Dalit Case Verdict - HC Judge is Not at Fault

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Tsundur village in Guntur district had experienced violent caste conflicts between October 1989 and July 1991. During this period nearly 16 criminal cases were registered. On August 6, 1991, Reddys and Telagas rioted and killed eight Malas in the presence of 37 policemen. Thereafter, the force went up to 461 policemen headed by a DIG. But during the burial, the Malas and 3,000-8,000 outside supporters rioted and one 68-year-old Reddy was killed. Reddy, Telega, Vysya households and many agricultural labour families also suffered attacks, abuse and arson.

Justice A Gangadhar Rao produced an official 98-page report and it was decided to set up the country's first-ever Special Court to try the case under the SC/ST (Prevention of Atrocities) Act 1989. The case got entangled over determining who were Scheduled Caste persons. Dr Ambedkar had defined them in the Constitution (Scheduled Caste) Order, 1950 as specifically Hindu and Buddhist thus leaving out the Tsundur Malas, most of whom had turned Christian. The High Court, however, concentrated on the basic issues of evidence and procedure as per the Indian Penal Code.

Here the case was complicated as the exact date of the murders was unknown as the decomposed bodies were recovered after three days in a flowing canal. Further, no one had taken the trouble to file a First Information Report (FIR). These two procedural faults undermined the prosecution at the outset.

The Special Court functioned from Tsundur itself. Finally, in August 2007, it acquitted 123 out of the 179 accused. During the trial also, the Special Prosecutor admitted that there is no case whatever against 70 accused. The court did not find any evidence of 41 accused, it extended the benefit of doubt to 62 others. The remaining 20 were let off due to omission of evidence or having only single witnesses. It, however, sentenced 21 accused to life imprisonment and 35 others to one year rigorous imprisonment. The High Court heard the appeal against conviction. The common judgment of bench of justice L Narasimha Reddy and justice MSK Jaiswal is worth reading.

However, an extraordinary event occurred. On his query referring to the Reddy angle, both the special prosecutors had at the very outset, told justice Reddy that they had no objection to his hearing the case. But half way through, the special prosecutors informed the bench they had lost faith in it. They then filed an affidavit by Moses, an unconnected person, in this regard. The bench then asked the Attorney General of India for advice. The Additional Solicitor General Wilson stated that raising such an objection, that too half way through, amounts to gross impropriety, and, of all the persons, the public prosecutors cannot resort to that. Contempt notices were ordered but before they were issued apologies were received and accepted!! The case continued.

The bench found that as time, date and place of the murders was not fixed it was impossible to determine reliability of testimony of the witnesses which was not too great as it found. It noted that no FIR had been filed

Further, more critically the bench found that the Special Court which had acquitted many accused when it found the evidence against them by witnesses was unreliable, convicted other accused by the evidence of those very same unreliable witnesses. The High Court followed the established legal precedent that if a witness is

found unreliable in one aspect of his testimony, then all the testimony offered by that witness is also unreliable. This meant that all the accused were found not guilty under the provisions of the Indian Penal Code.

The Indian criminal courts are extremely reluctant to accept: (1) confessions made to the police, (2) oral evidence, (3) testimony of witnesses in favour of their relatives, members of their own caste or religion and (4) testimony of a sole witness. The habit of lying under oath is so common that even good corroborated evidence needs to be backed up by circumstantial evidence. Failing this, courts give the benefit of doubt to the accused on the basis of the dictum that “it is better to acquit a guilty party than convict an innocent one.”

All accused are presumed innocent till proven guilty. Criminal law revolves around matters of procedure and conduct of the investigation, prosecution and trial. Any defect gives scope for benefit of doubt and acquittal.

Scheduled Caste and allied groups have now asked the state government to appeal to the Supreme Court - which is legitimate enough. What is not legitimate but extraordinarily arrogant is the ‘demand’ for sacking of a judge. No such protest was recorded when the Special Court judge acquitted 123 defendants. The target of their ire is not Justice Jaiswal but his companion on the bench.

Justice Narasimha Reddy has the reputation of being honest and fearless with knowledge of the law and its procedures. His judgment in the infamous Sri Krishna Committee Report’s Secret Chapter 8 case is a clear example. So it is not the judge who is at fault. The judgment may only be reversed, if at all, on merits by the Supreme Court.

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