The Chunduru Caste Atrocity – Discussing a Retrograde Judgment: Anonymous

05/08/2014 Lawrence Liang

*Guest post by **An Anonymous Advocate from the AP High Court***

On 22nd April, 2014, two Judges of the Andhra Pradesh High Court held that there was no evidence in the Chunduru atrocity case. The court acquitted all the accused. Not just that. They blamed the Dalits for not being responsible enough in alerting the police immediately, and obliquely cast a doubt on their integrity.

The Chunduru atrocity has gained national importance as much for the atrocity itself as for its place in the Dalit movement. On 6th August 1991, eight dalits were hacked to death by the upper caste men of Chunduru village, located in Guntur district of Andhra Pradesh. The political mobilization that was generated around this atrocity became the corner stone for the Dalit movement in Andhra Pradesh, and an inspiration for Dalit movements elsewhere in the country. On the legal side, it has been one of those long-drawn trials, resiliently overcoming one hurdle after another, be it the controversy around who the victims are (Dalits or Christians), or regarding the choice of the Special Public Prosecutor for the trial, or the venue of the trial. The case went back and forth between the High Court and the trial court, having been contested viciously by the Reddy accused, their lawyers and their ideologues.

All this finally culminated in the massive trial in the Special Court instituted at Chunduru, the very place where the atrocity took place. Twenty one men belonging to upper castes were convicted for life and thirty five with one year jail sentence. The entire country commemorated

the persistence of the AP Dalit movement , the tenacity of the victims and witnesses to participate in the trial. The case law quietly reaped a rich haul for atrocity jurisprudence.

Today, however, the AP High Court, has acquitted all the accused on the ground of lack of evidence. One cannot help but ask this question. Why did the High Court think that there was no evidence? It must be noted that in the trial, 219 men from the Reddy and Telaga castes, the upper castes of the village, were arraigned as accused. During the pendency of the trial 33 of them died. The Special Court at Chunduru undertook the painstaking task of correlating the evidence of 71 witnesses to arrive at the guilt of each of the accused.

Several of us thought that it would not be easy to overturn such a detailed judgment. Yet the AP High Court did overturn it. Here is how the High Court sumamrised its disbelief of the evidence at hand. One, the Dalit victims did not report the crime in time. The victims ran away to the neighbouring Tenali and spent two to three days with their relatives and yet did not report to the local police. Two, they did not exactly report the time of the murders. In other words, they were unable to say if their kith and kin were hacked to death at 12pm or 3pm. Three, they all did not speak in unison, or rather render the same version. While one witness stated that five people hacked his uncle to death, another witness said that six people hacked his brother to death. There are other grounds cited by the learned judges, but these will suffice for the present.

Time, memory and precision. The Dalit witnesses, according to the Court, lacked all these sensibilities that would count as evidence for a criminal trial. The criminal law assumes that a person who witnesses a crime has to immediately report to the police station and set the criminal law / legal machinery in motion. This assumption is based on the suspicion that delay may cause embellishment of evidence and that innocent people will be implicated.

Why did the Chunduru Dalits not report to the police?

It is not as if this question has no answers. There is direct evidence in the case record about how the police were complicit with the accused, about how they helped the accused to chase the dalits into the killing fields, and finally about how they maintained a deathly silence about the murders. The police were right in the middle of the deathly chase. They had knowledge of the chase. As part of the judgment, ironically, the learned Judges comment about the dubious role of the police; about how there were police pickets and prohibitory orders. However, it turns out that it was only a half hearted acknowledgement. An acknowledgment which did not accrue any points for the victims of the carnage. On the other hand, cruel as it may seem, it turned out to be an advantage for the accused.

What could have been the outcome, if the Court had taken serious note of the police inaction? Would it have led the court to consider the role of a hostile policeman and his bias in recording statements of witnesses, in conducting the inquest and the scene of offence panchanama? Had the Court paused at this stage, it could have certainly understood why the Chunduru Dalits hesitated to immediately lodge the police complaint. The Special Court at Chunduru evaluated the evidence taking into account the doubtful role of the police. Whereas the High Court evaluated the evidence independent of the complicity of the police with the accused.

The Court was well aware that delay was not an insurmountable circumstance for convicting the guilty. Even as criminal law upholds a prompt reporting of a crime, it has also provided for exceptions. In cases of sexual assault, the apex court has held that one cannot expect a victim of sexual assault to immediately report the crime of rape. That the victim inevitably will take time to speak to her family and friends before she reports the crime. Similarly, in mass crimes, delay if explained, has been condoned by the courts. The Supreme Court has often held that delay by

itself cannot be used as a ritualistic formula to disbelieve the case of the prosecution.

All in all, the court saw and yet did not see. It refused to see the fear and trauma the Chunduru Dalits experienced soon after the massacre; and made light of their memory which reiterated the camaraderie of the police and the killers. It allowed no margin for the fear that paralysed the witnesses and their sense of time and memory, of the exact number of killers who chased each of them. And, the High Court, mechanically insisted that the victims should have immediately reported to the police.

A Lost Opportunity

Often the courts resort to procedural evidence when it wishes to disregard the substantial part. In such cases delay, corroboration of evidence and other legal instruments of evaluating evidence gains an upper hand in rendering a judgement. Here, the Court made no effort to understand the power of changing caste relations in a village like Chunduru. About how conversion to Christianity, reservations and the access to modern education and employment in government service has empowered the Dalit community. This lack of understanding is betrayed in the opening paragraph of the judgment:

For some reason or the other, the relation between 'Dalits' and the landholders, such as Reddies and Telagas are said to be not so congenial, even from 1940's. However, except for the expression of differences and protests, no major incident appears to have taken place, obviously because elders from the respective communities ensured that the manifestation of differences does not cross a point. In recent past, however, the youth were not able to put up with the same state of affairs, and they did not miss any opportunity to assert themselves. The police were also acting promptly, and steps, such as, imposition of prohibitory orders, binding over the

persons under Section 107 Cr.P.C., were being resorted to. It was the view of the police, the youth have fallen into the hands of radical elements, they were brain washed, and were waiting for an opportunity to pollute the otherwise peaceful atmosphere in and around said villages.

The casual way in which the Court refers to the "differences" between the Dalits and the upper castes is a clear indicator of the Court's state of mind or rather its impatience in understanding the context of the case. Clearly, the Chunduru carnage was not just a murder of eight Dalits. The carnage was an open threat to the Dalit community who were challenging the practices of casteism in their village. The Dalits, like in the other parts of the country, were refusing to adhere to the old order of caste oppression and discrimination. The Reddy and Telaga men of the village, by way of lethal mob violence, tried to undo the empowerment gained by the Dalits. Violence is an indicator of the power of transformation in a society.

Alas! The Chunduru case was an opportunity for the High Court to consolidate a different law and order in society. A law and order that could advance the empowerment of Dalits and pave the way out of the entrenched practices of caste. But the Court did not seize its own potential. It chose to stand with the earlier and much-contested order of things. Instead of rendering a judgment in keeping with the aspirations of a caste that is challenging the very knowledge and structure of Hindu society, the High Court resorted to a technical exercise of evaluating evidence.

Clearly, the High court's inability to take cognizance, can be called casteism. A charge that has been rightfully levied against the court. A deliberate blindfold that has irreversibly damaged the aspiration of the Dalits for justice. And, more critically, a severe blow to the thousands of Dalits who are grappling with the poor implementation of the SC & ST (Prevention of Atrocities) Act, 1989.

As I am writing, I get the news that the Supreme Court has suspended the AP High Court judgement. The Chunduru case now gains a new life in the Supreme

Court!