

# Tsunduru's agony

[K. VENKATESHWARLU](#)



Relatives of the victims wait for the verdict of the Special Court in Tsunduru in July 2007. Photo: T. Vijaya Kumar

TWENTY-THREE summers have passed by, but justice and a sense of closure still elude the families of the Dalit victims of one of the worst caste-related massacres in India, with a court recently acquitting all the 56 accused.

There was a familiar ring of justification to the acquittal when the Division Bench of the Andhra Pradesh High Court, comprising Justice L. Narasimha Reddy and Justice M.S.K. Jaiswal, cited the failure of the prosecution to provide the exact time of death, the place of occurrence and the identity of the persons who attacked the victims at Tsunduru village in Guntur district, Andhra Pradesh.

The Bench observed that the versions of the massacre given by the witnesses were shaky and that parts of this evidence were the basis for the sentence given by the Special Court. It further said that the veracity of the evidence of several witnesses was found wanting and that the Special Court itself had suggested that there were serious procedural lapses in the prosecution.

Shocked Dalit activists see a pattern in higher courts routinely overturning the convictions of trial courts and even Special Courts constituted under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989, whether it is the Tsunduru or the Karamchedu massacres in Andhra Pradesh, the Khairlanji massacre in Maharashtra or the Laxmanpur-Bathe killings in Bihar. The reasons cited for letting the accused go free are almost similar, ranging from the failure of the prosecution to lack of evidence. Dalit leaders wonder why this happens only in cases involving the most socially oppressed and vulnerable group, the Dalits, and not in others.

It also puts a question mark over the relevance of preventive and punitive laws such as the S.C./S.T. Act and the special courts (constituted under the Act specifically for speedy trial). These courts, even when they do remarkable work, often face threats and challenges when they hold the hearings at the places of offence and in hostile social environments such as the one in Tsunduru.

The Special Court had, in 2007, sentenced 21 persons to life imprisonment and 35 persons to a year's imprisonment for the gruesome killing of eight Dalits in broad daylight on August 6, 1991. The chain of events that led to the massacre began with an "upper" caste person objecting to a Dalit youth stretching his legs on the front seat in a cinema hall in Tsunduru village.

The conviction in 2007 was hailed as a milestone in punishing offenders of caste violence as India was celebrating its 60th year of Independence then.

The judicial officer who headed the Tsunduru Special Court, the first one to be constituted in the country under the S.C./S.T. Act, and who handed out the conviction, is now a judge of the High Court.

A disturbing feature of the High Court judgment was the observations made by the Bench while rejecting the verdict of the Special Court. The Bench wanted the victims to forget the gory past and bury the hatchet. "Every endeavour must be made by persons as well as the organisations to inculcate the human values and mutual respect towards each other.... The trial in a criminal case is not something like a mathematical exercise where the common minimum factor from various numericals can be taken to be put outside the bracket."

Dalit and human rights groups leaders wondered whether this meant allowing the perpetrators of the heinous crime of killing Dalits to go scot-free. Human Rights Forum leaders S. Jeevan Kumar and V.S. Krishna said they were shocked and anguished by the High Court verdict in what was a landmark case by all accounts. The court almost made it appear that the poor Dalits had killed themselves and that they were not massacred by a 400-strong armed "upper" caste mob, they said. The sordid episode in Dalit history was treated like a minor law-and-order problem and not as one triggered by the deep-rooted caste animosity and jealousy caused by the Dalit youth of Tsunduru making rapid strides in life by studying hard and getting employment in government service and in the Railways.

It is a typical case of intolerance on the part of the dominant sections of our society towards the legitimate democratic aspirations of Dalits, said the late K. Balagopal, the committed human rights activist, after a fact-finding visit to Tsunduru after the carnage in 1991. He went on to record how post-Tsunduru, the "upper" castes had come together to form the "Struggle Committee for the Advancement of All People" in Guntur district as part of the anti-Dalit mobilisation.

## **Delayed & denied**

The families who lost their dear ones had to face the pain and agony of enduring the taunts and provocations of the “casteist” killers daily for several years until the Special Court started functioning in 2005. It was after a long struggle and many legal battles that the Special Court started its hearing in Tsunduru. From getting the Special Court set up in the village, to the appointment of a special public prosecutor with a human rights background to a Dalit judge heading the court, every step was challenged by the accused in the High Court, leading to a delay of 14 long years for the commencement of the trial. And, after crossing several legal hurdles, the Special Court gave the verdict in 2007.

The Dalits of Tsunduru determinedly fought the case, putting behind them the loss of their family members, with support from a strong movement across the State and the country. “This is the result we get after 23 years of legal battle. I am totally disappointed,” said A. Prasad, brother of Rajamohan, who was among the eight Dalits who were killed. “It is a black day in our historic struggle. We did not expect this type of verdict from the High Court at a time when our appeal to extend the punishment to the remaining accused is pending with the court,” said Jaladi Wilson, convener of the Tsunduru Dalit Victims’ Association.

Taking into account the intensity of the reactions to the verdict, Director General of Police B. Prasada Rao announced that the government would file an appeal in the Supreme Court against the High Court verdict. “The process of filing the Special Leave Petition is already under way and the final adjudication will be by the Supreme Court,” he said.

Bojja Tharakam, the human rights lawyer and special public prosecutor who argued the case before the High Court, said: “The acquittal is against all principles of criminal jurisprudence. There was an abundance of unimpeachable evidence, and the number of eyewitnesses, including the injured, would have satisfied any court. Yet the court set aside the conviction of the accused. It is atrocious and contrary to law.”

Picking holes in the judgment, Tharakam felt the High Court had made too much of the delays in filing reports and appeals in the trial court, ignoring the fact that the families of the victims were in a state of shock and there was a fear psychosis all over Tsunduru for several days after the fateful day of massacre. "The High Court did not take a realistic view, whereas the Supreme Court has, in several cases, held that delays in such circumstances of fear psychosis cannot be treated as fatal," he said.

Much was read into the contradictions between the versions given by the witnesses though the apex court had, in several instances, held that such contradictions were bound to happen in criminal cases, Tharakam said. The Dalits were trying to run and save themselves from a huge, armed mob of "upper" castes. Expecting them to remember and recall every little detail to the satisfaction of the High Court was unrealistic, especially when the gap between the incident and the hearing of the case was over a decade. "It is the court's duty to see whether contradictions are material, immaterial or insignificant but it was not done in this case. Nor did the court give any strong reason for not believing the findings of the trial court," said Tharakam.

## **Widespread criticism**

The judgment has come in for widespread criticism and could have snowballed into a huge controversy but for the preoccupation of the political parties with the Assembly and Parliament elections being held simultaneously in Andhra Pradesh. Many feel that the High Court has merely gone by the technicalities and records placed before it and failed to see the brutal killing of the Dalits in the larger context of the blatant caste-based atrocities and discrimination they face in daily life in a hierarchical society and render justice to a wronged community. In such cases, victims are pushed to seek aggressive alternatives to fight the denial of justice, lead a life with dignity and seek a legitimate space in society. The hope of the marginalised sections of Indian society that they would get justice from

the judiciary has been shattered. They still consider this arm of the state as one standing tall among institutions that seem to promote casteism and fail them often.

Notwithstanding the setback caused by the High Court verdict and its findings, many feel that Dalit organisations should start looking inwards to understand why prosecutions were failing quite frequently even though dedicated human rights lawyers have argued these cases. They must pay more attention to pursuing cases vigilantly by filing proper first information reports (FIRs) and gathering unimpeachable evidence and witnesses' accounts, which are crucial to ensuring justice.