

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CRIMINAL APPEAL No.212 of 2021

JUDGMENT :

This appeal is filed challenging the judgment dated 20.04.2021 in Spl.S.C.No.1 of 2016 on the file of IV Additional District and Sessions Judge (FTC)-cum-Special Court for POCSO Act cases, Karimnagar, whereby, the appellant was found guilty for the offences under Sections 366, 420 of IPC and Section 376 of IPC alternatively Section 4 of POCSO Act and Section 3(1)(x) of SCs. and STs. (POA) Act. Accordingly, he was convicted and sentenced to undergo imprisonments of different counts, the maximum being rigorous imprisonment for a period of Seven years and to pay a fine of Rs.2,000/-, in default of payment of fine, to suffer simple imprisonment for three months for the offence under Section 376 of IPC alternatively Section 4 of POCSO Act.

2. The facts as culled out from the prosecution case are that on 05.01.2015 at 2.40 p.m., a report was preferred by the mother of the victim girl i.e. PW-1, stating that the accused induced her younger daughter aged 17 years, with a promise that he will marry

her after attaining majority and took her from the house on 04.06.2013 to Desharajpalli, kept her in a house, used her sexually and when the victim asked him to marry her, he dodged it from time to time. It is further complained that about three months prior to lodging of complaint, when the victim asked the accused about their marriage, the accused abused her in filthy language saying, “*Kulam Thakkuva Mala Lanjevi*” and drove her out of the house, upon which, the victim returned to her parents’ house. Therefore, they waited for the accused to come for talks and later preferred the report.

3. Basing on the report of PW-1, the Sub-Inspector of Police, LMD Colony P.S. has registered a case in Crime No.1 of 2015 for the offences punishable under Sections 376, 366, 417 and 420 of IPC, Section 3 r/w. 4 of POCSO Act and Section 3(1)(x) of SCs. and STs. (POA) Act, 1989. During the course of investigation, the investigating officer went to the scene of offence, observed the scene, prepared the crime detail report, recorded the statements of witnesses. On 06.02.2015, in order to effect the arrest of the accused, served Notice under Section 41-A Cr.P.C. asking him to

appear before them on 07.02.2015. As the accused failed to do so, he apprehended the accused and on interrogation, the accused voluntarily confessed the guilt and later, the accused was produced before the Court for judicial remand. After completion of investigation, charge sheet was filed against the accused for the aforesaid offences.

4. The trial Court framed aforesaid charges against the accused, read over and explained to him. The accused pleaded not guilty and claimed to be tried. On completion of prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence against him. The accused denied the evidence and reported no evidence in defence.

5. The trial Court framed the following points for consideration:

- “1. Whether the prosecution has established that the victim was a minor as on the date of offence?
2. Whether the prosecution has established the guilt of the accused for the offence punishable under Sections 417, 420, 366, 376 of IPC, Sec. 3 r/w. 4 of Protection of Children from Sexual

Offences Act, 2012 and Sec. 3 (1) (x) of SCs./STs.(POA) Act beyond all reasonable doubt ?”

6. On behalf of prosecution, PWs.1 to 16 were examined and got marked Exs.P-1 to P-21. There was no defence evidence.

7. Heard learned counsel for the appellant and the learned Public Prosecutor appearing for respondent-State.

8. The points for consideration in this appeal are:

1. Whether the judgment of trial Court needs to be interfered ?
2. Whether the prosecution is able to prove the guilt of the accused ?

9. It is the contention of the learned counsel for the appellant that the judgment of the trial Court needs to be reversed, as the prosecution has miserably failed to bring home the guilt of accused for the offences charged. It is specifically contended by the learned counsel for appellant that the age of the victim was not established by proper document, though it is the contention that the age of the victim was 17 years as on the date of the offence. Except the victim and her mother, the rest of the prosecution

witnesses have turned hostile and none of them have supported the case of the prosecution. The date of the alleged offence was 05.01.2015 and the victim was examined by the Police on 09.01.2015 after a lapse of four days, and therefore, it is contended by the learned counsel that the Police have managed and collected evidence against the accused. Accordingly, he prayed to set aside the judgment of the Sessions Court and to acquit the accused.

10. On the other hand, the learned Public Prosecutor contended that the prosecution has successfully established the guilt of the accused for the offences charged, and therefore, there is no error or irregularity in the judgment of the Sessions Court and prayed to dismiss the appeal.

11. On perusal of the record, it is evident that PW-1/complainant is the mother of the victim, PW-2 is the victim, PWs.3 and 4 are the brother and father of the victim, PWs.5 to 8 and 13 are the witnesses to speak about the stay of accused along with the victim at Desharajpalli, PW-9 is the panch witness for the first scene of offence i.e. the house of one Mallesham in Renikunta village,

where, the alleged victim and the accused lived together, PW-10 is the panch witness for the second scene of offence i.e. the house of PW-5 at Desharajpalli, who is supposed to speak about the stay of accused and victim in the said house.

12. PWs.3 to 8 and 13 i.e. including the brother and father of the victim, have turned hostile and did not support the case of the prosecution. Their statements recorded under Section 161 Cr.P.C. are marked as Exs.P-2 to P-7 and P-14 respectively. The first crime detail form is Ex.P-8 and the second crime detail form is Ex.P-9. Though PWs.9 and 10 are examined, nothing could be established by the prosecution, as to the stay of the victim and the accused in the said houses. Hence, it can be construed that none of the witnesses supported the case of the prosecution about the stay of victim and accused in the said houses.

13. PW-11 is the Doctor, who examined the victim girl and deposed that the hymen of the victim girl is not intact and vagina is admitting two fingers without pain. PW-11 sent the vaginal smears and swabs of the victim to RFSL through Police. Later, basing on

the report of the RFSL dated 27.02.2015, she has given her final opinion that sexual assault might have occurred. Ex.P-10 is the examination report of the victim girl, Ex.P-11 is the RFSL report and Ex.P-12 is the final opinion given by PW-11.

It is pertinent to mention that PW-11 in her cross-examination, has specifically deposed that the victim girl did not disclose about the sexual assault.

14. PW-12 is the Tahsildar who furnished the caste proceedings of PW-1 and the accused. As per Ex.P-13 i.e. the proceedings of caste certificate, it is evident that PW-1 belongs to Scheduled Caste (Mala) community, whereas, the accused belongs to 'BC' (Padmashali) Community.

15. PW-14 is the Deputy Superintendent of Police, who testified that on receiving Ex.P-1/report from PW-1, the S.I. of Police, LMD Colony P.S. registered the crime. Later, he took up investigation. During the course of investigation, he recorded the statements of the prosecution witnesses, visited the crime scenes at Renikunta and Desharajpalli villages, secured the presence of witnesses and

prepared Ex.P-9/Crime Detail form and drawn rough sketch of scene of offence, referred the victim girl to Government hospital, Karimnagar for medical examination, obtained proceedings of caste of the complainant and the accused and served notice under Section 41-A of Cr.P.C. on the accused. As the accused confessed the guilt of committing the offence, he referred him to Government hospital for procuring potency certificate and later produced him before the Court for judicial remand. Ex.P-17 is the potency certificate. His evidence further disclose that he forwarded the vaginal smears and swabs of the victim, preserved by the Medical Officer, to RFSL, Karimnagar. Ex.P-18 is the forwarding letter. Ex.P-19 is the letter of advice. He collected the date of birth certificate of the victim/PW-2 from Zilla Parishad High School, Renikunta village, which shows that the date of birth of victim is 10.04.1997. Ex.P-20 is the date of birth certificate of PW-2 and Ex.P-21 is the requisition of PW-14 to the Court requesting to send the accused for potency test.

16. PW-15 is the Headmaster of Zilla Parishad High School, Renikunta. His evidence disclose that he issued Ex.P-20/the date

of birth certificate of PW-2, who studied from 6th to 10th Class in the said school. As per Ex.P-20, the date of birth of PW-2 is 10.04.1997. In the cross-examination, it is specifically deposed by PW-15 that basing on the Transfer Certificate of the Primary School, they have entered the date of birth in the admission register and he cannot say basing on which document, the date of birth was mentioned in the primary school records.

17. PW-16 is the Doctor, who examined the accused and issued potency certificate/Ex.P-17, opining that there is nothing to suggest that the accused cannot perform sexual act.

18. Out of the above evidence, the evidence of PWs.1 and 2 is only crucial to see whether the ingredients of the offences charged against the accused are attracted or not. The evidence of PW-1 can be treated as a hearsay evidence. The basis for her lodging the complaint as well as her deposition was entirely based on the information alleged to have been given to her by PW-2/victim girl, who is her daughter. PW-1, in her cross-examination, has specifically deposed that PW-2 passed 10th Class prior to the

incident and further deposed that her husband borrowed Rs.50,000/- from the father of the accused, prior to the incident and till date, they did not repay the said amount to the father of the accused, and on the said issue, panchayats also took place. It is also admitted by PW-1 that PW-2 possessed cell phone when she was studying 9th Class and PW-2 was not on talking terms with her during the stay of PW-2 at Desharajpalli, though she used to visit the house of PW-1.

19. It is pertinent to mention that though the victim girl left the house on 04.06.2013, neither PW-1 nor PW-4, who are the parents of the victim girl, gave any report to the Police with regard to her missing. Further, it is the victim girl/PW-2, who testified that on 04.06.2013, when her parents went to coolie work, she was forcibly kidnapped from her house, in the evening hours by the accused on the ground that he would marry her. Ex.P-1/report was dated 05.01.2015. As to why the parents of the victim nor the victim preferred the report till 05.01.2015 when the victim was kidnapped on 04.06.2013, is not at all explained by the prosecution. Furthermore, the evidence of PW-2 does not disclose

that she made hue and cry at the time of kidnap though she travelled all the way from Renikunta village to Desharajpalli village along with the accused in a public transport. The complaint was preferred after lapse of two years. It is the specific allegation of the victim girl that she stayed with the accused in a rented house at two places and the accused, made false promise of marrying her and forcibly committed sexual intercourse with her. What made the victim girl not to prefer a report for such long period, is not at all explained by the prosecution.

20. The entire contents of Ex.P-1 disclose that as the accused was not ready to marry the victim girl, filed the present complaint, and the contents of Ex.P-1 does not attract the ingredients of any of the offences charged against the accused. The evidence on record shows that the victim had voluntarily stayed with the accused. Furthermore, it is the evidence of PW-1 that prior to the incident, the victim passed 10th Class. If at all the victim has passed 10th Class, the SSC Certificate could have been produced before the Court, but as to why such certificate is not filed before the Court, is not explained by the prosecution. Moreover, Ex.P-20 is the

bonafide/study certificate issued by PW-15, and as per the said certificate, the date of birth of the victim is 10.04.1997 and it was issued basing on the entry of date of birth in the admission register. Ex.P-20 can be relied on by the prosecution, if the victim has not passed SSC Board examination. But as per the evidence of PW-1, the victim has passed SSC Board examination, and therefore, the non-production of the Board Certificate before the Court is fatal to the case of the prosecution. PWs.11, 12 and 14 to 16 are the official witnesses in this case. Their evidence only disclose the events, subsequent to the report given by PW-1. PW-11 is the Medical Officer, who initially examined the victim girl and stated that the hymen was not intact and vagina was admitting two fingers without pain, which clearly disclose that the victim had sexual intercourse. But the RFSL report clearly disclose that sperm and spermatozoa were not detected on the vaginal swabs and smears. It is relevant to mention that the victim was referred to medical examination after four days of registration of the crime. Moreover, the evidence of PW-1 disclose that they waited for the accused to come for talking terms for a period of two months. Therefore,

there is no possibility of having sperms or spermatozoa on the samples collected by the Doctor. Though the prosecution subjected the accused for potency test and filed the potency certificate, in the absence of proper evidence on record, to connect the accused with the crime, it is not at all useful. Except the evidence of PW-2, there is no evidence on record to show that the accused had kidnapped the victim from the house of PW-1, took her to Desharajpalli village, stayed there with a promise of marriage and forcibly had sexual intercourse with her. None of the witnesses supported that the accused and victim stayed together either at Renikunta or Desharajpalli. Further, as to why the parents of the victim remained silent for a period of two years when the victim was taken away from their house, is not at all explained by the prosecution. Moreover, PWs.3 and 4 who are the brother and father of the victim, also turned hostile and did not support the case of the prosecution. The evidence of PW-1 also disclose that she was not on talking terms with PW-2 when she was staying at Desharajpalli. Hence, it can be construed that the present complaint has been filed against the accused when he refused to

marry the victim girl. Furthermore, the evidence of PW-1 also disclose that PW-1 has taken an amount of Rs.50,000/- from the parents of the accused, which was not repaid till the date of trial. Though the charge was framed for the offence punishable under Section 3(1)(x) of SCs. and STs. (POA) Act, there is no corroborating evidence, except the evidence of PW-2.

21. In view of the aforesaid discussion, it can be concluded that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt and the trial Court has erred in convicting the accused for the aforesaid charges. In the absence of any corroboration as to the allegation of forcibly kidnapping the victim girl and of committing rape on her, this Court is of the considered view that the judgment of the trial Court needs to be set aside.

22. In the result, this appeal is allowed, setting aside the judgment dated 20.04.2021 in Spl.S.C.No.1 of 2016 on the file of IV Additional District and Sessions Judge (FTC)-cum-Special Court for POCSO Act cases, Karimnagar. The appellant shall be

released forthwith, if not required in any other case. The bail bonds of accused shall stand cancelled.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 12.04.2023

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