

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.219 of 2021

JUDGMENT:

1. The appellant/accused convicted for the offence under Section 366-A and sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months, and also sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of six months for the offence under Section 376(2)(n) of IPC and also to pay fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month for the offence under Section 342 of IPC by judgment dated 20.04.2021 in S.C.No.578 of 2017 passed by the Special Judge for Trial of cases under POCSO Act-cum-IX Additional District & Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar. Aggrieved by the same, present appeal is filed.

2. The case of the prosecution is that P.W.1, who is the father of the victim/P.W.2 filed a complaint on 20.02.2017

stating that his daughter was missing from 12.02.2017 morning hours after she left for school, she did not return and suspected the appellant herein. Accordingly, the appellant was shown as accused in the FIR registered under Section 366 of IPC. On 24.02.2017, the police informed P.W.1 that the victim girl/P.W.2 came to the police station. When questioned, P.W.2/victim girl stated that the accused had taken her by force stating that he would marry her. They went to Udemgadda and stayed in a room and she was continuously raped during the said period. On the basis of the said statement by P.W.2, section of law was altered and Sections 342, 376 (2)(f)(i)(n) of IPC and Section 3(a) r/w Section 4 of POCSO Act were added. Accordingly, the appellant was charged and tried for the said offences.

3. Learned counsel for the appellant was continuously absent, for which reason, the learned Assistant Public Prosecutor was heard and reserved for the judgment.

4. P.W.2 stated in her chief examination that her date of birth is 17.12.2000 and she is acquainted with the appellant. The appellant used to follow her on the way to school and stated that he was interested in her and would

marry her. On 12.07.2017 at 8.30 a.m, while she was going to school, the appellant told her that he has taken a room at Udemgadda and wanted her to accompany him. However, P.W.2 refused, as such, the appellant threatened her. Thereafter, both of them went to Udemgadda by bus. On 24.02.2017, the appellant left the room and forgot to bolt outside, for which reason, P.W.2 escaped from the said place and one woman constable saw P.W.2 and took her to the police station. Thereafter, the father P.W.1 called.

5. The Police, during investigation also recorded the statement of P.W.2 under Section 164 of Cr.P.C, and a portion was marked as Ex.D1.

6. The medical examination of P.W.2 was done by P.W.5 and found that hymen of P.W.2 was ruptured. P.W.5 collected two slides of smear, pubic hair and nail clippings and sent them to FSL for examination. However, no semen was detected. On the said basis, P.W.5 issued Ex.P5 final opinion stating that possibility of sexual intercourse could not be ruled out.

7. The date of birth of P .W.2, according to the prosecution case is 17.12.2000. Ex.P8 dated 15.10.2014 is the bonafide certificate that is filed certifying that P.W.2 was studying 8th class during the year 2014-15. However, no one was examined from the school. P.W.11, the Investigating Officer marked Ex.P8, which is the bonafide certificate of P.W.2.

8. P.W.2 has not explained the delay of 9 days in filing the complaint Ex.P1 though according to Ex.P1, he suspected the appellant herein. No reasons are given as to why there is a delay of nearly 9 days in lodging Ex.P1 complaint.

9. P.W.2 during the course of cross-examination stated that they stayed in a room for 12 days. Sometimes P.W.2 cooked food and sometimes appellant cooked food. However, they were not married. She further stated that there is no attached toilet or bathroom in the room and there is a compound wall. A toilet was situated outside the room inside the compound wall, where there were many houses and for the 12 days. She used the bath room by going out of the room for taking bath and washing clothes. Further it

was elicited during cross-examination under Ex.D1 that she stated before the Magistrate that on 13.02.2017, she approached the appellant herein and requested to marry her. But the appellant denied stating that P.W.2 did not attain majority. However, P.W.2 pleaded with him and finally having been convinced, they have taken decision to live separately and accordingly, they have taken room at Udemgadda on rent basis.

10. As seen from the admissions of P.W.2, there was never any force by the appellant in any manner either to accompany him or staying at room in Udemgadda. The admission by P.W.2 that they stayed together and she was cooking sometimes and appellant was cooking when she was not cooking and she was using the bathroom outside the house where there were several houses would speak volumes of her stay on her own volition without any force. In the said circumstances, it cannot be said that P.W.2 was not voluntarily staying with the appellant.

11. The main reason for convicting the appellant is age of P.W.2 and the date of birth of P.W.2 is stated as 17.12.2000 on the date of incident she was about 17 years and less

than 18 years. Though P.W.1 did not mention the date of birth of his daughter, however, he stated that she was studying 10th class in Government School at Shamshabad.

12. The prosecution did not file any proof from the said school where P.W.2 was studying that is Government High School, Shamshabad, but the certificate under Ex.P8 was collected by P.W.11, which is from Zillaparishad High School. No person issuing the said certificate was examined. The prosecution failed to explain as to why certificate was not collected from the school where she was studying at the time of incident. Further, the certificate Ex.P8 is not proved through the person issuing it or any one from the said school to identify the correctness or genuineness of the certificate Ex.P8. For the said reason of the father not ascertaining the date of birth of P.W.2 and also in the absence of any certificate issued by the hospital or municipal authorities, certifying the date of birth at the time of birth of P.W.2, no reliance can be placed upon Ex.P8 to infer that the age mentioned therein is correct. Merely marking Ex.P8 will not dispense with the proof and the

contents, date of birth mentioned therein cannot be taken into consideration.

13. It is not out of place to mention that the date of birth of children is normally informed by the parents depending upon the class they are joining their children. Unless there is evidence authentic enough to substantiate the date of birth of P.W.2 as 17.12.2000, it cannot be said that the date of birth as claimed by the prosecution is correct. It is further doubtful for the reason of P.W.2 stating that she was 17 years age whereas she was studying 10th class. However, in the normal circumstances, student of 10th class are aged around 15 years. For the said reason when the age of P.W.2/victim whose age as projected by the prosecution is suspicious and not proved, under the said circumstances, when the conviction is based upon the fact that she was below 18 years, the conviction cannot be sustained and benefit of doubt has to be extended to the accused herein.

14. For the aforesaid mentioned reasons, the Criminal Appeal is allowed by setting aside the impugned judgment

dated 20.04.2021 in SC No.578 of 2017. His Bail bonds stand cancelled. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

Date: 30.6.2022
kvs

K.SURENDER, J

HONOURABLE SRI JUSTICE K.SURENDER

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Date:30.06.2022

kvs

