

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

CRIMINAL APPEAL No.403 OF 2024

Between:

Amgothu Vinod

... Appellant

And

The State of Telangana,
Rep. by its Public Prosecutor

... Respondent

DATE OF JUDGMENT PRONOUNCED: 08.11.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 403 of 2024

% Dated 08.11.2024

Amgothu Vinod

... Appellant

And

\$ The State of Telangana,
Rep. by its Public Prosecutor

... Respondent

! Counsel for the Petitioner: Sri Kiran Palakurthi

^ Counsel for the Respondents: Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ 2024 SCC Online SC 260

² 2023 SCC OnLine SC 846

³ 2017 (14) SCC 359

⁴ (2008) 16 SCC 417

⁵ (2019) 12 SCC 370

⁶ (2018) 17 SCC 627

⁷ (2010) 9 SCC 189

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.403 OF 2024

JUDGMENT:

The appellant/accused filed the present appeal aggrieved by the conviction recorded by the trial Court for the offence under Sections 363, 342, 376(2)(n), 376(2)(f), 376(3), 506 of the Indian Penal Code and Section 5(l) read with Section 6 of the POCSO Act by the trial Court.

2. The case of the prosecution is that the victim girl-PW.3 is the daughter of PWs.1 and 2 who are father and mother, respectively. The accused is the paternal uncle of PW.3. While PW.3 was studying in IX standard she used to stay in a hostel. The appellant used to go to the hostel and proposed to marry her. He asked her to accompany him. After completion of her IX class, during summer holidays, she went to her parents' house at Madigundla Thanda.

3. On 03.06.2022 around 12:00 noon, the appellant went to her house in a car and then took PW.3 in the car forcibly stating that they would stay in Hyderabad. The accused kept PW.3 in B.N.Reddy Colony in a room taken on rent from PW.6. He put a chain around her neck stating that they were married and that they are husband and wife. The appellant had sexual intercourse

with PW.3, several times and whenever he went outside the house, he used to lock the door by keeping PW.3 inside. She stayed in the room for eight months. On 20.02.2023, she escaped from the room and went to her parents' house. There she informed the incident to PW.2-mother. Then she was taken to the police station. PW.3 stated that her Date of Birth is 16.05.2007 and she was aged 15 years when the incident had taken place. The Police sent PW.3 to the hospital for medical examination after her statement was recorded at Bharosa Center.

4. PW.1 is the father of the victim who stated that that the victim girl was aged 17 years in the year 2022, when she was found missing. She was found missing from the house on 03.06.2022, as such, PW.1 lodged complaint Ex.P1 with the Police on 07.06.2022. On 20.02.2023, the victim returned and informed that the appellant had detained her in a room and committed rape on her for eight months. Further, hands and legs of the victim were tied and she was confined in a room. PW.2 mother of PW.3 stated similar to what PW.1-father has stated. However, the mother-PW.2 stated that PW.3 was aged 15 years when the incident had taken place in the year 2022.

5. The Police collected Bonafide Certificate-Ex.P2 showing the date of birth of PW.3 as 16.05.2007, which was provided by the

Head Master in Kasthuribaa Gandhi Balika Vidyalayam (KGBV), Devarakonda, and filed charge sheet. During the course of trial, the learned Sessions Judge having examined witnesses and placing reliance on the evidence of victim-PW.3 and other corroborating evidence including Ex.P2-Bonafide Certificate issued by PW.5, found the appellant guilty. Further, reliance was also placed on the medical evidence of the doctor-PW.9.

6. PW.2-mother stated that PW.3 was aged 15 years at the time of incident. PW.3-victim girl has also stated that she was 15 years when the incident had taken place. Reliance was placed on Ex.P2-Bonafide Certificate which was issued by PW.5 who is the Special Officer in KGBV, Devarakonda. The said certificate was issued on 23.02.2023 stating that PW.3 studied VII class in the year 2019 till IX class in the year 2021. According to the school admission register, the Date of Birth of PW.3 was 16.05.2007.

7. Learned Counsel appearing for the appellant mainly argued on the ground that the age of the victim girl was not proved by the prosecution to be 15 years. Further, the place of offence was not specifically proved by the prosecution. The prosecution states that she was detained in B.N.Reddy Colony. However, the place of detention according to the prosecution was in the house of PW.6 at Bonguluru gate and the distance between Bonguluru Gate and

B.N.Reddy Colony is 14 K.Ms. In fact, the charge was also framed that she was detained in a residence at Bonguluru gate. Though, PW.6-owner of the house was examined, she did not speak anything about forcible detention. The main drawback in the case of the prosecution is the unexplained delay of eight months in lodging the complaint. Though, it is alleged that she was missing from 3.06.2022 and found on 20.02.2023, what caused delay of eight months in lodging complaint, is not explained.

8. The learned counsel relied on the following Judgments rendered by the Honourable Supreme Court;

i) ***Nirmal Premkumar and another v. State***¹ wherein it was held at para-22 that

“22....the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such witness.”

¹ 2024 SCC Online SC 260

ii) ***P.Yuvaprakash v. State***² wherein conviction was set aside holding that school Transfer Certificate is not acceptable for age determination of victim.

iii) ***Anjan Kumar Sarma v. State of Assam***³ wherein it was held that suspicion does not take place of proof. There is a difference between may be true and must be true.

iv) ***Noor Aga v. State of Punjab and another***⁴ wherein it was held that

“47. There is a paradox at the heart of all criminal procedure in that the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become.

“The superior Courts should not do something that would lead to the impairment of basic fundamental and human rights of an accused.”

“57. It is also necessary to bear in mind that superficially a case may have an ugly look and thereby, prima facie, shaking the conscience of any court, but it is well settled that suspicion, however high it may be, can under no circumstances, be held to be a substitute for legal evidence.”

v) ***Sanjeev Kumar Gupta v. State of U.P.***⁵ wherein it was held that Section 94 of the Juvenile Justice Act contains the provisions in regard to the determination of the age.

² 2023 SCC OnLine SC 846

³ 2017 (14) SCC 359

⁴ (2008) 16 SCC 417

vi) **Mohan Lal v. State of Punjab**⁶ wherein it was held that burden of proof shall not shift to the accused under Special Act, the moment FIR is registered, unless the prosecution proves the foundational facts.

vii) **Babu v. State of Kerala**⁷ wherein it was held that every accused is presumed to be innocent until proven guilty. The Courts must be on guard to see that merely on application of statutory presumption, the same may not lead to injustice or mistaken conviction.

9. On the other hand, learned Additional Public Prosecutor argued that there is no reason as to why the girl would speak false against the appellant. The appellant was closely related to the victim girl and he has taken undue advantage of his relationship, detained her and also subjected her to sexual assault for a period of eight months. As such, detention and committing rape on a minor girl is punishable and the learned Sessions Judge has rightly concluded regarding the complicity of the appellant.

10. The version of PW.3-victim girl is that she was taken to the house and detained for a period of eight months. During the detention, her legs and hands were tied and she was subjected to

⁵ (2019) 12 SCC 370

⁶ (2018) 17 SCC 627

⁷ (2010) 9 SCC 189

rape all through. However, when the victim girl came back to their parents' house and was sent for medical examination, the Doctor did not find any signs or marks of either tying her hands and legs with rope or that the condition of the victim girl was bad due to any such prolonged detention. If the girl was detained for eight months and her hands and legs are tied, the body would show signs of detention and also her health would naturally deteriorate. Since there are no such signs of forcible detention, the version of the victim girl being forcibly kept in the house of PW.6, raises any amount of suspicion. Even, PW.6 who is the owner of the house did not state anything about the forcible detention of the girl in the house. She never heard PW.3 cry for help or stated that there was anything suspicious when the appellant was staying in the house for eight months along with PW.3. PW.3 specifically stated in the statement under Section 164 of Cr.P.C. and admitted by PW.3 that she was detained in B.N.Reddy Colony, however the scene of offence panchanama and according to evidence of PW.6, the scene of offence is at Bonguloor, which is at a distance of nearly 14 K.Ms. from B.N.Reddy Colony.

11. The other aspect which raises any amount of doubt and suspicion is the fact that nothing was done by the parents or the Police in the said eight months period when she was missing. Both

PWs.1, 2 and the Investigation Officers are silent about their efforts or what was done to trace the victim girl for a period of eight months. It is apparent that the actual version as to what transpired during the said period is suppressed by the prosecution. The absolute lull in between 03.06.2022 to 20.02.2023 would only indicate that the prosecution witnesses are coming up with a tainted version. Being in detention for eight months with her legs and hands tied, how PW.3 escaped is not narrated. Nothing was found during the scene of offence panchanama to suggest that PW.3 was detained with chains/rope tied to her hands and legs.

12. The circumstances of the case point towards consensual stay by the victim girl with the accused. However, the consent will be of no consequence if she was less than 18 years. The father-PW.1 stated that PW.3 was aged 17 years in the year 2022. However, the victim girl-PW.3 and her mother-PW.2 claimed that she was aged 15 years. Reliance was mainly placed on the bonafide certificate issued by PW.5 which is Ex.P2. According to PW.5, PW.3 was joined in VII class. At the time of joining, the date of birth of PW.3 would have been given by the parents or any guardian who had joined her in school. Such declaration given while joining PW.3 in the VII class cannot form basis to say that it is the actual date of birth. No reasons are given as to why the certificate from the

Municipal Authorities or the hospital where she was born or the record of the office of births and deaths were not produced. The Police had not taken any steps to send the victim to PW.3 for the purpose of ossification test. It is necessary for the prosecution to prove the date of birth of the victim girl as minor and leave no scope for any reasonable doubt to be entertained by the Court to reject any kind of consent which would be apparent from the facts of a case. In the present case, the version that the hands and legs of PW.3 were tied over a period of eight months cannot be believed. The father-PW.1 states that PW.3 was aged 17 years in the year 2022, however, the victim and her mother states otherwise.

13. Following the observation of the Honourable Supreme Court in the Judgment of ***P.Yuvaprakash's case (supra 2)***, it cannot be said that the prosecution has proved the age of the victim girl as a minor.

14. The Police had collected call data records to show that there was communication from the area at Bongulooru gate which is of no use to the prosecution to prove the case of forcible rape.

15. PW.9-doctor was asked to examine PW.3-victim. She stated that there were no external injuries and hymen was not intact. According to her there was no evidence of recent sexual intercourse

but probability of sexual assault could not be ruled-out. She did not find any signs of forcible intercourse or that the victim girl was forcibly being raped by tying her legs and hands.

For the aforesaid reasons discussed, the finding of the Court below cannot sustain and hereby set aside.

Accordingly, Criminal Appeal is allowed. Since the appellant is in jail, he shall be set at liberty forthwith, if not required in any other case.

Date: 08.11.2024
tk

K.SURENDER, J