

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ Criminal Petition No.898 of 2015

%06.04.2015

Between:

Jarpula Devender.Petitioner

AND

State of Telangana,

Rep. by its Public Prosecutor,

High Court of Judicature at Hyd

For the State of Telangana and A.P

and another. Respondents

! Counsel for Petitioner : Sri C. Damodar Reddy

^ Counsel for Respondent No.1 : Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

1. 2014 CrI.L.J. 107
2. AIR 2003 SC 3365
3. (2009) 16 SCC 69

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.898 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioner/A2 seeks to quash the proceedings in Special S.C.No.33 of 2014 on the file of Special Judge for trial of cases under Protection of Children from

Sexual Harassment Act-cum-I Additional Sessions Judge, Warangal.

2) The prosecution case is that the victim girl, A1 and A2 are residing in same locality in Bobbulonipally village. The victim is a minor aged 17 years and studying Intermediate. A1 and A2 are also students studying Intermediate II year. They are well acquainted with the victim. A1 is a distinct relative of victim and used to visit her house on the pretext of books and notes as he and victim are studying same group. While so, on 06.03.2014 LW1—father of victim girl was admitted in the hospital at Parkal for his leg surgery and LW3—mother of victim girl was also along with him for his assistance. On 07.03.2014 at about 12:00 hours LW4—the brother of victim took meals to his parents leaving the victim girl alone at the house. At that time, it is alleged, both the accused criminally trespassed into the house of victim on the pretext of getting some notebooks and forcibly committed rape on her by gagging cloth in her mouth and threatening with dire consequences if she revealed their heinous act to any others. Due to their heinous act, the victim vexed with her life and consumed monochrotophos a pesticide poison. After that she came out and went to the house of LWs.5 and 6 and told that she consumed pesticide poison. Then, they called LW8 and took the victim to LW10—a RMP doctor for treatment. LW10 treated the victim and got her vomited pesticide poison and advised them to take her to another hospital for further treatment. Then, they took her to Lalitha Nursing Home at Parkal. While shifting to hospital, the victim told L.Ws.5, 6 and 8 about the act of accused. They in turn informed about the incident to LWs.1 and 3. LW11 treated her and advised to shift her to another hospital for better treatment. So, they took her to the house of LW12—Dr. Rajeshwar Prasad, Parkal. Upon the advice of LW12 they shifted her to Hanamkonda for better treatment. They took her to Maxwell Hospital, Hanamkonda where she was treated and cured. On the compliant of LW1, the police investigated into the matter and laid charge sheet against A1 and A2. Since A1 is a juvenile in conflict with law, a separate charge sheet was filed against him before learned Juvenile Magistrate-cum-IV Additional JFCM,

Warangal.

a) Denying the allegations, learned counsel for petitioner/A2 sought for quashment of proceedings firstly on the ground of delay in lodging the FIR. He submitted that as per prosecution, incident took place on 07.03.2014 but LW1 presented a belated report on 09.03.2014 which falsifies the prosecution case.

b) Secondly, he argued that though the prosecution alleged that victim was gang raped but the medical report and FSL report totally falsified the said allegation. In expatiation, he submitted, the victim was examined in Max Care Hospital where doctor collected two smears and sent to FSL and as per FSL report, semen and spermatozoa were not detected and blood and foreign hair were also not found in her private parts. As per the medical report there was no evidence of recent sexual intercourse and as such, prosecution case cannot be relied. In this regard, he relied upon the following decisions.

1. ***State of Gujarat v. Popatbhai bhalabhai***
2. ***Devinder Singh v. State of Himachal Pradesh***

He thus prayed to allow the petition.

3) In oppugnation, learned Additional Public Prosecutor argued that the victim was examined by doctor on 12.03.2014 i.e. 5 days after the incident and therefore, the doctor might have expressed his view that there was no recent sexual intercourse and similarly, since there was no semen the presence of spermatozoa could not be detected after 5 days of the incident and merely because the medical opinion showed there was no recent sexual intercourse, that is not a conclusive proof for absence of rape. Learned Additional Public Prosecutor argued that in a rape case the sole testimony of victim if induce confidence can be sufficient to convict the accused and medical opinion is only an expert's evidence which may or may not be believed by the Court while comparing with ocular evidence. He thus argued that medical opinion is not a conclusive proof for the factum of gang rape of a girl.

He further argued that facts would show that girl was minor and accused were known persons to her and there was no reason for her to speak falsehood against them. The factum of her consuming pesticide unable to digest heinous act committed on her, is also an aspect to be considered at the time of trial. He further submitted that, statement of the victim girl recorded by the Magistrate clearly shows heinous act committed by accused and hence veracity of her evidence and the supporting evidence of other witnesses have to be tested on the anvil of the trial and it is not apt to quash the proceedings simply basing on medical opinion. He relied upon the following decision of the Apex Court in ***Rajinder @ Raju v. State of H.P.*** on the aspect of sole evidence of prosecutrix in a rape case is sufficient to convict the accused. He thus prayed to dismiss the petition.

4) In the light of above rival arguments, the point for determination is:

“Whether there are merits in the petition to allow?”

5 a) **POINT:** It is true that alleged incident was said to be occurred on 07.03.2014 and the father of the victim girl lodged FIR on 09.03.2014. Hence, evidently there is a delay of two days. However, in a case of this nature the delay is understandable, unless strong material is placed by defence showing the delay is used to manipulate events and implicate innocents. Since no such strong ground is shown, delay can't be taken as a reason to quash the proceedings.

b) The second ground raised is that semen and spermatozoa were not detected. Similarly, blood and foreign hair were also not detected in the private parts of the victim girl and further, there was no evidence of recent sexual intercourse. Learned counsel vehemently argued that medical report totally crumbles the prosecution case and proves that a false case was foisted against accused and hence continuation of proceedings would amount to abuse of process of law. I am afraid, this contention can best serve as a point of defence at the time of trial but not in this quash petition because a perusal of the statements of the witnesses and the statement of the victim girl

recorded by the Magistrate coupled with the fact that the minor girl consuming pesticide would shed a strong *prima facie* case against the accused. In the presence of such over whelming *prima facie* material, the medical report cannot be considered at this stage. The veracity of prosecution evidence as against medical evidence has to be decided only after a full-fledged trial. Therefore, medical report at this juncture cannot be taken into consideration for quashing the proceedings. The cited decisions will not help the cause of the petitioner.

6) In the result, I find no merits in the petition and accordingly this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 06.04.2015

Note: L.R. copy to be marked Yes / No

Murthy