IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 200 OF 2024

Appeal under Section 374 (2) of Cr.P.C. against the Judgment dated 29-09-2023 made in Sessions Case PCS No. 94 of 2020 on the file of the Court of the Special Judge for Trial of Cases Under Protection of Children from Sexual Offences Act, 2012-cum-XII Additional Metropolitan Sessions Judge at Hyderabad.

Between:

Mr. Chinthala Manikya Rao, S/o. C. Narasimhulu, Aged about 44 years, Occ. Pvt Job, R/o. 12-08-267/2, Alugaddabavi, Chilkalguda, Secunderabad

...Appellant / Accused

AND

State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad for the State of Telangana, Hyd

...Respondent / Complainant

IA NO: 3 OF 2024

Petition under Section 389 (1) of Cr.P.C. praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the Judgment dated 29/9/2023 passed in Sessions Case PCS No. 94 of 2020 on the file of Hon'ble Special Judge for Trial of Cases Under Protection of Children from Sexual Offences Act, 2012-Cum-XII Addl Metropolitan Sessions Judge at Hyderabad and released the petitioners on bail, pending disposal of the Criminal Appeal.

Counsel for the Appellant : **Sri Ch Jagannatha Chary**

Counsel for the Respondent : **Sri M Vivekananda Reddy**
Assistant Public Prosecutor

The Court delivered the following Judgment :

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 200 OF 2024

JUDGMENT:

The appellant/Accused filed the appeal questioning the conviction and sentence recorded by the XII Additional Metropolitan Sessions Judge, Hyderabad, in S.C.PCS No.94 of 2020, dated 29.09.2023, for the offences under Sections 376(2)(n), 376(3) and 366-A of the Indian Penal Code and Section 5(1) r/w.6 of Protection of Children from Sexual Offences Act, 2012 (POCSO, Act).

2. Heard Sri CH.Jagannath Chary, learned Counsel for the appellant and learned Assistant Public Prosecutor for the respondent State.

3. PW.2 is the victim girl and PW.1 is the maternal grand-mother of PW.2. The appellant is the neighbor to the house of victim girl's father-Benny (PW.3). The mother of the victim girl namely Manju Francis went to Dubai. The brother of PW.2-victim was living with the paternal grand-mother and victim was

living with her maternal grand-mother-PW.1. According to PW.2 while she was studying II class, her friend namely Neeraja introduced her to the appellant who is her uncle. The appellant was married but his wife deserted him. The appellant used to stay with his mother. The appellant used to visit their house frequently since the appellant knew her father-PW.3. One day according to PW.2, the appellant hugged and kissed her and removed her clothes and also his clothes and committed forcible sexual intercourse. The appellant threatened that he has taken nude photographs and videographs and that he would circulate them in the locality, if PW.2 did not concede to his demand of participating in the sexual intercourse. On account of fear, she did not inform anyone and the said sexual harassment continued. In the year 2018, the victim suffered ill-health and she experienced stomach pain, dizziness and irregular periods. The paternal grand-mother took PW.2 to PW.1 and informed about the pain of PW.2. On enquiry, PW.2 informed about the acts of the appellant and on the next day i.e. on 28.06.2018 at 7.30 p.m., the complaint-Ex.P1 was lodged.

4. In Ex.P1-complaint, PW.1 narrated that since the victim was 11 years old, he took photographs and videographs of the victim girl and threatened that he would circulate them in the locality. Further according to complaint, the appellant started having sexual intercourse with her on the ground that he would post nude photographs and videographs on Youtube and also threatened to kill mother of PW.1. On account of the alleged rape committed by the appellant, the victim got irregular periods and suffered stomach pain.

5. On the basis of the complaint filed PW.10-Investigating Officer conducted scene of offence panchanama, rough sketch of the location was also prepared. The victim-PW.2 was sent for medical examination by the doctor-PW.7. Vaginal swabs were collected and sent for FSL examination.

6. PW.10, then sent Police to apprehend the accused and on the basis of the information, the appellant was arrested on 30.06.2018 at 9.30 a.m. The cell phone of the appellant was seized in which the appellant had taken photographs and videos

and also some abusive videos were shown to PW.2. PW.7 after receipt of FSL report opined that the victim was sexually assaulted. Having concluded the investigation, the appellant was charge sheeted for the offences under Sections 376(2)(n), 376(3) and 366-A of the Indian Penal Code and Section 5(1) r/w.6 of Protection of Children from Sexual Offences Act, 2012 (POCSO, Act).

7. On the basis of statements of witnesses and medical evidence, the learned Sessions Judge convicted the appellant, accordingly.

8. Learned counsel appearing for the appellant would submit that bald allegation of committing rape is made. Further, there is any amount of delay in lodging the complaint, which is almost four years. The version that alleged sexual assault has taken place over a period of four years, cannot be believed.

9. On the other hand, learned Assistant Public Prosecutor would submit that the victim girl was aged around 11 years when the first incident has taken place and thereafter, she was

abused over a period of four years. In the said circumstances, the conviction of the appellant is proper.

10. P.W.2 stated that one day, the appellant hugged her and kissed her and removed the clothes of both and committed forcible sexual intercourse with her. Thereafter, threatened that he took nude photographs and video graph and same would be circulated in the locality.

11. Admittedly, the police did not recover any photos or videos from the mobile phone of the appellant, which was seized and marked in evidence as MO1. No steps were taken by the Investigating Officer to send it to an expert to retrieve data from his cell phone when there was specific allegation regarding photographs and videos being taken, of the victim girl. For the said reason, the allegation of taking photograph and videos cannot be believed.

12. The penetrative sexual assault, according to Section 3 of Protection of Children from Sexual Offences Act, 2012 (for brevity 'POCSO Act') is as follows:

*"3. **Penetrative sexual assault**:- A person is said to commit "penetrative sexual assault" if-*

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

13. Section 7 of the POCSO Act reads as follows:

***"7.Sexual assault**: Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."*

14. Section 375 of IPC reads as follows:

"375. Rape.—

A man is said to commit "rape" if he—

(a)penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b)inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c)manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d)applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—"

15. Section 376 (3) of IPC reads as follows:

> "(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:
>
> **Provided** that such fine shall be just and reasonable to meet the medical expenses and rehablitation of the victim:
>
> **Provided further** that any fine imposed under this sub-section shall be paid to the victim.

16. As discussed above, it was specifically stated by P.W.1/victim that the appellant hugged her, kissed her and thereafter clothes were removed. However, there is no narration

by the victim girl which falls within Section 3 of the POCSO Act. The narration is required in the back ground of there being no medical evidence supporting the version of penetrated sexual assault. The defence of the appellant is one of denial and false implication. Learned Public Prosecutor or the Court ought to have taken steps to ask the victim to briefly narrate as to what transpired. In the absence of such brief narration and there being no supporting medical evidence, the benefit of doubt would go to the appellant. However, the act of the appellant falls within Section 7 of the POCSO Act.

17. An offence under Section 366-A IPC would be attracted in the event of instigating a minor girl with an intention to force her or seduce her to intercourse with another person. The Hon'ble Supreme Court in the case of **Iqbal v. State of Kerala**[1] held that an offence under Section 366-A IPC would not be attracted if she was not forced to have sexual intercourse with any other person other than the person with whom she had

[1] AIR 2008 SC 288

gone. Furthermore, there is no allegation that the appellant had forcibly taken victim to any place against her consent.

18. In view of the above discussion, the appellant is acquitted under Section 376(2)(n) of IPC, Section 6 of the POCSO Act, 376(3) of the IPC. However, the appellant is convicted under Section 8 of the POCSO Act and sentenced to undergo five years rigorous imprisonment.

19. Accordingly, Criminal Appeal is partly allowed. Consequently, miscellaneous applications pending, if any, are closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Special Judge for Trial of Cases Under Protection of Children from Sexual Offences Act, 2012-cum-XII Additional Metropolitan Sessions Judge at Hyderabad (with records, if any)
2. The Station House Officer, Chilkaguda PS, Hyderabad District
3. The Superintendent, Central Prison, Chanchalguda, Hyderabad
   (By Special Messenger)
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana, Hyderabad [OUT]
5. One CC to Sri Ch Jagannatha Chary, Advocate [OPUC]
6. Two CD Copies

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HIGH COURT

DATED:20/12/2024



JUDGMENT

CRLA.No.200 of 2024

PARTLY ALLOWING THE CRLA

21/12/24