

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

**FRIDAY, THE EIGHTEENTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 321 OF 2024

Criminal Appeal under Section 378 (3) & (1) of Cr.P.C. against the Judgment dated 29-09-2023 made in S.C.No.240/2020 on the file of the Court of the Special Sessions Judge for Expeditious Trial and Disposal of Rape and POCSO Act Cases, Bhongir.

Between:

The State of Telangana, Rep. by the Public Prosecutor, High Court for the State of Telangana, Hyderabad - 500066

...Appellant / Complainant

AND

Cheedarakanti Srikanth, S/o. Pentaiah, Age 22 years, Occ. Private Job, R/o. Chandupatla Village of Bhongir Mandal

...Respondent / Accused

**Counsel for the Appellant : Sri M Vivekananda Reddy
Additional Public Prosecutor**

Counsel for the Respondent : Sri Kondadi Ajay Kumar

The Court delivered the following Judgment :

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.321 OF 2024

J U D G M E N T:

1. The State is questioning the judgment of acquittal of the respondent/accused in S.C.No.240 of 2020 on the file of the learned Special Sessions Judge for Expeditious Trial and Disposal of Rape and POCSO Act Cases, Bhongir, who was tried for the offences under Sections 376(2)(n), 417, 420, 506 of Indian Penal Code and Section 5(L) r/w 6 of POCSO Act.
2. Heard learned Additional Public Prosecutor for the appellant-State and also on behalf of the victim and learned counsel for the respondent/accused. Perused the record.
3. The allegation against the respondent/accused is that he followed the victim girl/PW.1 and promised to marry her. Believing his words, she participated in sexual intercourse several times and she was carrying seventh month pregnancy. When victim asked to marry her, accused refused, as such, the complaint was filed.

X

4. PW.1 thereafter delivered a baby boy. During the course of investigation, the samples of the boy and accused and that of PW.1 were sent for DNA testing. The expert found that the accused was biological father of the boy and mother was PW.1. On the basis of facts collected during the course of investigation, charge sheet was filed.

5. During the course of trial, the prosecution examined Pws.1 to 18 and marked Exs.P1 to P24.

6. The learned Special Judge found that PW.1/victim stated that the accused never followed her and did not have sexual intercourse with her and she did not get pregnant, as such she was declared hostile. The parents of the victim girl/PWs.2 and 3 have also turned hostile. PW.8, is the person who issued bonafide certificate of the victim girl, PWs.9 to 11 were also examined as circumstantial witnesses who did not support the prosecution case. PW.12/panch witness stated that nothing was seized in his presence at the instance of accused. PWs.13 and 14 are the medical officers who examined victim girl.

7. Learned Additional Public Prosecutor would submit that though all the witnesses including victim have turned hostile to the prosecution case, the medical evidence regarding the paternity of the child was established during the course of investigation. When the said DNA report is considered, it can only be inferred that the accused had physical intimacy with victim/PW.1. Though the victim has turned hostile on the basis of the age certificate/Ex.P10 and the DNA report, the acquittal has to be reversed.

8. On the other hand, learned counsel appearing on behalf of the accused would submit that when there was total hostility in the case, the learned Special Judge had no evidence to convict the accused. The DNA report cannot be made basis to find the appellant guilty when none of the witnesses have supported the case of the prosecution that the accused had physical intercourse with PW.1.

9. In cases of acquittal, the Hon'ble Supreme Court in ***Ravi Sharma v. State (Government of NCT of Delhi) and another¹***, held that while dealing with an appeal against

¹ (2022) 8 Supreme Court Cases 536

acquittal, the appellate court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal.

10. In ***Ghurey Lal v. State of Uttar Pradesh***² the Hon'ble Supreme Court after referring to several Judgments regarding the settled principles of law and the powers of appellate Court in reversing the order of acquittal, held at para 70, as follows:

"70. In the light of the above, the High Court and other appellate Courts should follow the well-settled principles crystallized by number of Judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when:

² (2008) 10 Supreme Court Cases 450

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached -- one that leads to acquittal, the other to conviction -- the High Courts/appellate courts must rule in favour of the accused."

11. Though consent of a minor is of no consequence, however, it is for the prosecution to prove that PW.1 was a minor. Only Ex.P10/Bonafide certificate is placed on record. However, the birth certificate issued either in the hospital or municipal authorities was not produced. Firstly, none of the witnesses i.e., victim girl or parents have stated anything about the date of birth of the victim girl and that she was a minor. Secondly, the bonafide certificate issued would be

based on the declaration given by the parents or the guardian, who joins student in the school. In the absence of any positive evidence to show that the age of the victim girl was less than 16/18 years when the incident had taken place, the victim cannot be considered as a minor. The DNA result that the accused is the biological father is of no consequence in the said circumstances.

12. Accordingly, the Criminal Appeal filed by the State fails and is hereby dismissed.

Miscellaneous Petitions, pending if any, shall stand closed.

//TRUE COPY//

Sd/- M. RAMANA KRISHNA
DEPUTY REGISTRAR

Ja
SECTION OFFICER

To,

1. The Special Sessions Judge for Expeditious Trial and Disposal of Rape and POCSO Act Cases, Bhongir
2. Two CCs to the Public Prosecutor, High Court for the State of Telangana, Hyderabad [OUT]
3. One CC to Sri Kondadi Ajay Kumar, Advocate [OPUC]
4. Two CD Copies

VA/gh

Fr

HIGH COURT

DATED:18/10/2024



JUDGMENT

CRLA.No.321 of 2024

DISMISSING THE CRLA.

7 copies
Fr
19/11/24