IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE TWENTIETH DAY OF NOVEMBER TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 223 OF 2022

Criminal Appeal filed under Section 374(2) of Cr.P.C., aggrieved by the Judgment dated 08.12.2021passed in S.C. PCS No. 119 of 2017 on the file of the Court of the Special Session Judge for Trial Of Cases Under Protection of Children From Sexual Offences Act, 2012, Hyderabad.

Between:

Akula Ramu, S/o. A. Krishna, Aged about 25 Years, Occ. Unemployee, R/o. H No. 30FF, read building, Singadikunta, Kavadiguda, Hyderabad

...Appellant/Accused

AND

The State of Telangana, Rep.by its Public Prosecutor, High Court at Hyderabad.

...Respondent/Respondent

IA NO: 1 OF 2023

Petition under Section 437 & 439 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 enlarge the petitioner on bail by suspending the judgment in SC PCS No. 119 of 2017 on the file of the Court of the Special Sessions Judge for Trial of Cases Under Protection of Children From Sexual offences Act 2012 Hyderabad dated 08.12.2021.

Counsel for the Appellant : Sri A Jagan

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

The Court delivered the following: Judgment

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.223 OF 2022

JUDGMENT:

This appeal is filed by the appellant aggrieved by the Judgment, dated 08.12.2021 passed in S.C.PCS.No.119 of 2017 on the file of Special Sessions Judge For Trial Of Cases Under Protection Of Children From Sexual Offences Act, 2012, Hyderabad, wherein the appellant was found guilty for the offence under Section 5(1) r/w 6 of POCSO Act, 2012 and Sections 448, 417 and 376 (2) (n) of I.P.C. and sentenced him for the aforesaid offences as follows:-

1.	U/s. 6 of the POCSO Act	To undergo 20 years rigorous imprisonment and to pay fine of Rs.10,000/-, in default to suffer simple imprisonment for a period of three months
2.	U/s. 448 IPC	To undergo one year rigorous imprisonment
3.	U/s. 417 IPC	To undergo one year rigorous imprisonment

All the sentences shall run concurrently.

2. Briefly the case of the prosecution is that PW1, who is the victim, was acquainted with the appellant one year prior to lodging of the complaint. According to her, the appellant followed her stating that he loves her and will marry her. She also accepted his

love and when the relation between PW1 and appellant was observed by their elders, she was warned by her parents and asked PW1 not to talk to the appellant. On one Sunday when there was no one in the house, appellant allegedly went to her house and committed forceful sexual intercourse. Thereafter the appellant used to go to her house on every Sunday and forcefully had sexual intercourse with her. PW1 came to know that the appellant's marriage was fixed with some other girl. PW1 confronted the appellant. However, the appellant married some other woman. One month after the marriage, she missed her periods and she was taken to the hospital. After the scanning test, it was informed that PW1 was carrying five months pregnancy. PW1 informed her mother that the appellant was responsible for the pregnancy. Thereafter, Ex.P1 was filed alleging that the appellant committed rape on PW1. During the investigation, in the month of July, 2016, she gave birth to a baby boy. After one and half month of the birth, the boy died. The body of the boy was sent for postmortem examination and DNA test. According to Ex.P7, it was concluded that the appellant was the biological father of the boy and PW1 the biological mother.

3. The learned Sessions Judge, placing reliance on the evidence of the PW1 and also the certificate issued under Ex.P.17 by PW17, reflecting the date of birth as 17.01.2000 found that as on the date of the incident, PW1 was a minor.

4. Learned counsel appearing on behalf of the appellant would submit that there was consensual sex in between PW1 and the appellant. In fact, the age that was given under Ex.P17 was incorrect and PW1 was major at the time of incident. The learned counsel relied upon the Judgment of the Hon'ble Supreme Court in ***Sunder Lal @ Pappu @ Vishal vs. State of Chhattisgarh*** (CRA.No.352 of 2024, dated 05.07.2024), wherein it is held as under:-

> ***"16. Recently, in case of P. Yuvaprakash Vs. State represented by Inspector of Police, 2023 (SCC Online) SC 846, Hon'ble Supreme Court has held in para 14 to 17 as under :***
>
> ***"14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997.***

Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors. this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in pari materia) with Section 94 of the JJ Act, and held as follows:

"20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either

(i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year."

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in Sanjeev Kumar Gupta vs. The State of Uttar Pradesh & Ors that:

"Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal

authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

17. In Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference."

5. It is not in dispute that the victim girl was not subjected to any ossification test but age determining test. During the course of investigation reliance was placed on EXP.13 and EXP.17, which is bonafide certificate. PW17, who issued certificate stated as follows:

"In the year 2016 I was Head Master of that School. Police visited our school on 10.02.2021 for obtaining bonafide certificate. Prior to that police never came to our school. In the year 2006 or 2007 I was not the head master of the school hence, I do not Know whether any supporting document was given by the parents of the girl Shashirekaha at the time of admission as proof of her date of birth. As per the register EX.P.16 the identity particulars of the victim girl were not mentioned. Except father's name and her caste no other details were mentioned. It is true in the caste column under BC Velama is written in Telugu after striking it off Yenjara is written. There was no initial under the correction. In the admission register mother's name of the victim

girl is not mentioned. But in the bonafied certificate mother's name of the victim girl is mentioned as Lakshmi".

6. As held in case of ***P.Yuvaprakash vs. State represented by Inspector of Police, 2023***[1] the Hon'ble Supreme Court found that on the basis of bonafide certificate without there being any date of birth certificate of the first school attended or birth certificate given by municipal corporation or municipal authority, the option left open to the prosecution was to send the victim girl for ossification test. No such ossification test was conducted as already discussed. Further, the prosecution also relied on Ex.P13 age certificate which is issued on the basis of dental examination by PW15. The margin of error in such cases of age determination could be + or – 2 years, according to the judgment of the Hon'ble Supreme Court. In the circumstances also if the age of PW1 is taken as 17 +2 = 19 years, even then evidence of PW15 is not available to the prosecution case to prove that girl is below 18 years. Since the age of victim girl could not be conclusively proved to be a minor, the question of attracting the provisions of POCSO Act does not arise.

7. Even according to PW1 victim, she and appellant were having affair and she had sexual intimacy over a period of time

[1] (SCC Online)SC 846

resulting in her pregnancy. Till the time her pregnancy being detected after being taken to the hospital, she did not reveal anything against the appellant that she was forcefully raped or that the appellant has trespassed into her house to commit rape.

8. The complaint appears to be made since the pregnancy was detected. In the said circumstances, it cannot be said that the offence of rape is made out nor the offence under Section 448 of IPC.

9. The fact remains that PW1 was induced on the premise of the marriage. However, appellant having physical intimacy with PW1, married another woman. The offence under Section 417 of IPC is made out.

10. The conviction under Section 417 of IPC is sustained. However, conviction under Section 6 of POCSO Act and Section 448 of IPC are hereby set aside.

11. It is informed that the appellant is in jail. Since the conviction under Section 417 of IPC is for one year, it is directed that the appellant shall be set at liberty forthwith, if not required in any other case.

12. Accordingly, Criminal Appeal is partly allowed.

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

SD/- M VIJAYA BHASKER,
JOINT REGISTRAR.

//TRUE COPY//

SECTION OFFICER

To,

1. The Special Session Judge for Trial Of Cases Under Protection of Children From Sexual Offences Act, 2012, Hyderabad
2. The Station House Officer, Gandhinagar Police Station,Hyderabad
3. The Superintendent, Central Prison, Chenchalguda(By Special Messenger)
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
5. One CC to Sri A Jagan, Advocate [OPUC]
6. Two CD Copies

ADK

HIGH COURT

DATED:20/11/2024

JUDGMENT

CRLA.No.223 of 2022



PARTLY ALLOWING THE CRLA

21/11/2024