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| 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 |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.453 of 2007

% Dated 22.07.2022

Bheem Reddy Satyanarayana Reddy
Appellant

...

And

\$ The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad
..Respondent.

! **Counsel for the Appellant:** A. Prabhakar Rao

^ **Counsel for the Respondent:** Public Prosecutor

> **HEAD NOTE:**

? **Cases referred**

¹ AIR 1965 SC 282

² (2015) 1 SCC 365

³ (2003) 4 SCC 46

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.453 OF 2007****JUDGMENT:**

1. This Criminal Appeal is filed by the appellant/accused aggrieved by the conviction recorded by the I Additional Assistant Sessions Judge, Warangal, in S.C.No.75 of 2006, dated 16.04.2007, convicting the appellant/accused for the offence punishable under section 376 of Indian Penal Code and sentenced to undergo Rigorous Imprisonment for a period of ten years.

2. The case of the prosecution is that the appellant was following PW1 and promised to marry her and on account of the said promise made by the appellant, PW1 permitted the appellant to have sexual intercourse with her. As a consequence of the physical relation, PW1 became pregnant and was carrying 6th month of her pregnancy. When she confronted the appellant/accused to marry her, the appellant/accused asked PW1 to get aborted and refused to marry PW1. Dejected by the said refusal, PW1 lodged complaint Ex.P1.

3. However, there was a 'Panchayat' held and the appellant/accused was asked to pay an amount of Rs.70,000/-, but, PW1 and her family members refused to take the amount. Since the compromise was not agreeable, PW1 preferred to prosecute the appellant/accused and filed a complaint as stated above.

4. The police after investigation filed charge sheet against the appellant for the offences of Section 417 and 376 of Indian Penal Code, for the reason of cohabiting with PW1 on the premise of getting married, and later cheating her when she was carrying pregnancy. The Sessions Judge also framed charges under the said provisions.

5. The prosecution examined PWs.1 to 9 and marked Exs.P1 to P5. The appellant/accused examined one witness i.e. K.Veeraiah who was the Tahasildar of Dharmasagar. During the course of his examination Exs.D1-Births and Deaths register and Ex.D2-entry in the register showing that a child was born to PW1 in February, 1985 were marked.

6. Learned Counsel for the appellant would submit that the learned Sessions Judge having found that there was no element of cheating by the appellant erred in convicting the appellant under Section 376 of Indian Penal Code. He also submits that the learned Sessions Judge found that PW1 was less than 18 years, however, as seen from the Register-Ex.D1 and the entry about the birth of PW1, PW1 was major and aged around 20 years by the date of complaint dt.26.05.2005. Even according to her admission during trial she had consensual sexual intercourse with the appellant/accused.

7. Further, DNA test was done on the child born to PW1 and it was found that the appellant was not the biological father, however, the Sessions Judge found the appellant guilty of the offence of rape. The said finding of the Sessions Judge in the background of the FSL report and the age of the PW1, it cannot be said that any offence is made out against PW1.

8. Learned Public Prosecutor on the other hand submits that the prosecution has collected the Date of Birth certificate of PW1 which is Ex.P2 and it shows that PW1 was born on 02.02.1989, as such, PW1 was below 18 years as on the date of filing complaint. The learned Sessions Judge has come to the correct conclusion that the appellant/accused was guilty of the offence of rape on a minor.

9. The evidence of PW1 is that the appellant was roaming around PW1 and promised to marry her. Due to the said promise, PW1 states that she permitted the appellant to have sexual intercourse with her. Nowhere in her evidence, she stated that there was any kind of force that was used by the appellant/accused to have physical intimacy with PW1.

10. The entire case rests upon Ex.P2-Date of Birth Certificate provided by the school which shows that PW1 was born on 02.02.1989. However, the Tahasildar of the village had produced Ex.D1-Register maintained in the

office in which it was shown that PW2 was blessed with a child in the month of February, 1985. According to DW1, the said register is the record of Registration of Births and Deaths that would be maintained in the Tahasildar's office. The Public Prosecutor cross examined Tahasildar and during the course of cross-examination, DW1 stated that the record was maintained in the village level by the 'patwari' and thereafter by the Village Administrative Officer. The suggestion given to DW1 was that Ex.D1 does not belong to the Tahasildar's office.

11. DW1 being a responsible public servant has produced the register Ex.D1 which reflects the births and deaths that occur in the village. It is not the case of the prosecution that the said register was fabricated and produced by the Tahasildar.

12. When Ex.P2 produced by the prosecution is looked into, it is a certificate issued by the school and the Date of Birth of PW1 in the said certificate is based on the declaration given by the parents. The prosecution failed to

produce any birth certificate which was issued at the time of birth of PW1 either of the hospital authorities, or the revenue authorities or the municipal authorities. In the said circumstances, the Date of Birth mentioned in Ex.P2-certificate issued by the school authorities cannot be taken as the correct date of birth of PW1.

13. On the other hand, the register which is maintained in a public office and certified by the Tahasildar as correct has to be looked into for the purpose of ascertaining the age of PW1. It is not the case of PW1 or the prosecution that there was any other child that was born to PW2 other than PW1. In the said circumstances, the only conclusion that could be drawn is that PW1 was born in the month of February, 1985 and at the time of lodging complaint, she was aged around 20 years.

14. Learned Counsel for the appellant relied upon the Judgments of Supreme Court in ***Brij Mohan Singh v. Priya Brat Narain Sinha and others***¹ wherein it was

¹ AIR 1965 Supreme Court 282

held that Court cannot determine the age of a person on the basis of any declaration about the age.

15. He also relied upon another Judgment in ***Dipanwita Roy v. Ronobroto Roy***² wherein it was held that DNA test would establish the paternity of the child and it is the most legitimate and scientifically accepted means to establish paternity.

16. In the other Judgment relied upon by the appellant in ***Uday v. State of Karnataka***³ it was held that consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. Further, the Honourable Supreme Court held that the prosecutrix was a grown up girl to understand the significance and moral quality of act she was consenting to. In the said circumstances when it is shown that the consent was voluntarily and consciously made, it cannot be said that

² (2015) 1 SCC 365

³ (2003) 4 SCC 46

such consent was a consequence of any misconception of fact.

17. In the present facts of the case, PW1 was aged around 20 years who had consented to having sexual intercourse with the appellant. As such, it cannot be said that such physical relation was only on account of misconception of fact of getting married and as seen from her evidence she had freely, voluntarily and consciously consented to have sexual relation with the appellant, for which reason it cannot be said that the appellant had indulged in acts attracting the offence under Section 376 of IPC. In view of foregoing discussion, the conviction recorded by the Sessions Judge is not sustainable.

19. It is also brought on record that the appellant was not the biological father of the child born to PW1. A photo copy of the FSL report was also filed in the trial Court to that effect. However, learned Sessions Judge without placing reliance on the said fact had concluded that the appellant was guilty of the charge framed. However the said

document is not considered as this Court has already concluded that there is no offence of rape.

20. Accordingly, the appeal is allowed and the conviction of the appellant under Section 376 of IPC is set aside. The appellant is acquitted and the bail bonds stand cancelled.

K.SURENDER, J

Date: 22.07.2022
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HON'BLE SRI JUSTICE K.SURENDER

Crl.A.No.453 of 2007

Dated:22.07.2022

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