

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

Criminal Revision Case No.268 OF 2008

Between:

P.Vasantha

... Petitioner

And

The State of Telangana
rep. by Public Prosecutor and
another

...Respondents

DATE OF JUDGMENT PRONOUNCED :23.02.2024

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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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 their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.R.C. No.268 of 2008

% Dated 23.02.2024

P.Vasantha

... Petitioner

And

\$ The State of Telangana
rep. by Public Prosecutor and
another

..Respondents

! Counsel for the Petitioner: Sri D.Madhava Rao

^ Counsel for the Respondent: Public Prosecutor for R1

>HEAD NOTE:

? Cases referred

¹ (2013) 10 SCC 31

² (2015) 11 SCC 229

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL REVISION CASE No.268 of 2008****ORDER:**

1. This Criminal Revision Case is filed by the mother of the victim girl, questioning the judgment in Criminal Appeal No.44 of 2005 passed by the Principal Sessions Judge extending the benefit under Section 4 of Probation of Offenders Act, 1958 (For short 'the Act') suspending the sentence of three years granted by the trial Court in S.C.No.680 of 2004, dated 03.11.2005 for the offence of rape committed on the girl aged five years.

2. The 2nd respondent/accused was tried for the offence under Section 376(f) of IPC. Petitioner (PW1) herein is mother of victim girl (PW2) and *defacto* complainant. It is the case of the prosecution that P.W.2 victim girl was aged 5 years when the incident had taken place. On the day of incident, PW1 was looking for the victim girl and it was informed by the sister of the victim that victim girl went to

the opposite house of the 2nd respondent/accused. P.W.1 went to the house of accused had taken back P.W.2. She noticed some semen marks on the underwear of the victim girl. Victim girl was cleaned up, bath given and thereafter taken to the police station. Having received complaint from PW1, the police arrested the accused. Having concluded investigation, police filed charge sheet.

3. The learned Assistant Sessions Judge, who conducted trial, examined P.Ws.1 to 13 and marked Exs.P1 to P9. In support of defence, D.W.1 was examined and Ex.D1 document was marked.

4. The trial Judge found that the accused was guilty of the offence and accordingly convicted for a period of three years and to pay fine of Rs.1,000/-.

5. In Appeal, learned Sessions Judge agreed with the findings of the trial Court and held that the prosecution has successfully established the guilt of the accused

under Section 376(f) of IPC beyond reasonable doubt. However, on the plea of accused, learned Sessions Judge deemed it appropriate to call for a report of the Probation Officer of the District. In the said report, the Probation Officer stated that the accused appeared for SSC Board examination but has not passed the examination. He was associated with all bad elements, however, there is no previous criminal record. The parents were working as daily wage labourers and he had no proper guidance from his parents. He is in the habit of watching movies and also enraged by nude scenes in movies and Television, has committed the offence.

6. On the basis of the said report by the Probation Officer, learned Sessions Judge deemed it appropriate to extend the benefit of Section 4 of the Act and directed that the accused should be released after due admonition and was called upon to enter into a bond with two sureties for an amount of Rs.15,000/- for a period of two years. It was

also directed that the accused can be called upon to appear and undergo sentence, if any conditions are violated. The accused was also asked to appear before the District Probation Officer for a period of two years.

7. None appeared for the 2nd respondent, for which reason, this Court, by order dated 09.03.2023 directed the Secretary, Telangana High Court Legal Services Committee, Hyderabad for appointing an Advocate from the panel to assist the Court.

8. As seen from the proceeding sheet, several occasions none appeared for the 2nd respondent, for which reason, the revision was finally heard in the presence of counsel for the revision petitioner and Public Prosecutor. Earlier, this Court directed to refer the matter to Lok Adalat for settlement. However, there was no settlement before the Lok Adalat.

9. Learned counsel appearing for the revision petitioner confined his argument to extending the provisions of Probation of Offenders in such a heinous crime. Victim was aged around 5 years when the incident had taken place. Learned Sessions Judge, having specifically found that the case was made out, committed an error in suspending the sentence and asking the accused to furnish bond of good behaviour for a period of two years.

10. Learned counsel for the petitioner relied on the judgment of Hon'ble Supreme Court in the case of **Ajhar Ali v. State of West Bengal**¹ and also the case of **State of Rajasthan v. Sri Chand**².

11. In both the cases, the Hon'ble Supreme Court found fault with extending the benefit of Probation of Offenders Act and let off the accused, who were involved in cases of outraging the modesty of women and attempting rape.

¹ (2013) 10 SCC 31

² (2015) 11 SCC 229

12. In *Ajahaar Ali v. State of West Bengal's case (supra)*, the Hon'ble Supreme Court held as follows:

“19. In *State of U.P. v. Shri Kishan* [(2005) 10 SCC 420 : 2005 SCC (Cri) 1568] this Court has emphasised that just and proper sentence should be imposed. The Court held : (SCC p. 423, paras 8 & 9)

“8. ... Any liberal attitude by imposing meagre sentences or *taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive* in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

9. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'.”

13. In *State of Rajasthan v. Sri Chand's case (supra)*, the Hon'ble Supreme Court held as follows:

“11. In *State of H.P. v. Dharam Pal* [*State of H.P. v. Dharam Pal*, (2004) 9 SCC 681 : 2004 SCC (Cri) 1477] this Court was dealing with probation of offenders in case of offence of attempt to commit rape. The finding of this Court in the said judgment is relevant for all the offences against women, which is as follows: (SCC p. 682, para 6)

“6. According to us, the offence of an attempt to commit rape is a serious offence, as ultimately if translated into the act leads to an assault on the most valuable possession of a woman i.e. character, reputation, dignity and honour. In a traditional and conservative country like India, any attempt to misbehave or sexually assault a woman is one of the most depraved acts. The Act [Probation of Offenders Act, 1958] is intended to reform the persons who can be

reformed and would cease to be a nuisance in the society. But the discretion to exercise the jurisdiction under Section 4 [of the Probation of Offenders Act, 1958] is hedged with a condition about the nature of the offence and the character of the offender.”

In the above case although this Court did not interfere with the benefit of probation granted by the High Court due to peculiar facts of the case however it did not approve the reasoning given by the High Court.”

14. The Hon’ble Supreme Court had come down heavily for extending benefit of Probation of Offenders Act in cases of outraging modesty of women in the cases cited above. In the present case, the offence under Section 376(f) of IPC for committing rape of five years minor girl was found to have proved by both the Courts below.

15. The accused was a major aged around 19 years. It cannot be said that he did not have knowledge of implications and seriousness of the offence that he has committed that too on a child of five years. Though the report of the Probation Officer reveals that he was not guided properly by the parents and also influenced by nude scenes in movies and TV, the same cannot form

basis to extend the benefit of suspending the sentence by invoking Section 4 of the Act.

16. The offence had taken place in the year 2004 nearly 20 years had passed. However, keeping in view the observations of the Hon'ble Supreme Court and also the gravity of the offence, this Court is inclined to set aside the order of the learned Sessions Judge in Criminal Appeal No.44 of 2005, dated 31.07.2006 extending the benefit of Probation of Offenders Act to the accused.

17. The case is remanded to the Appellate Sessions Judge to cause appearance of the accused and in peculiar facts of the present case, give him an opportunity of being heard regarding the sentence and thereafter pass appropriate sentence for the offence committed.

18. Criminal Revision Case is allowed.

K.SURENDER, J

Date : 23.02.2024

Note: LR copy to be marked

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