

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

Criminal Appeal No.443 OF 2009

Between:

Volluri Chandramohan

... Appellant

And

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

...

DATE OF JUDGMENT PRONOUNCED: 26.07.2022

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

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.443 of 2009

% Dated 26.07.2022

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High Court for the State of A.P,
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..Respondent.

! **Counsel for the Appellant:** Ch.Srinivas Reddy

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

>HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.443 OF 2009****JUDGMENT:**

1. This Criminal Appeal is filed by the appellant/Accused aggrieved by the conviction recorded by the Special Sessions Judge, Nalgonda, in S.C.No.33 of 2007, dated 27.04.2009, convicting the appellant for the offence punishable under Section 376 of Indian Penal Code and sentenced to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs.1,000/-.

2. The case of the prosecution is that PW1 is the father of victim girl PW2. PW1 filed complaint on 24.12.2003 stating that his daughter namely Sujatha, aged 13 years was suffering from illness and she was taken to Pandenapalli village. Upon enquiry with her daughter, he came to know that while his daughter was feeding sugarcane leaves to the cattle over a period of time, the appellant herein on the promise of marrying his daughter had sexual intercourse and impregnated her. However, when questioned regarding the pregnancy of his daughter, the appellant refused to marry stating that he belongs to BC caste and PW1 belongs

to SC caste and sent them out. On the basis of the said complaint, the police conducted investigation and filed charge sheet against the appellant herein for the offences punishable under Section 419, 376 of IPC and Section 3(1)(xii) of the SC/ST (POS) Act, 1989.

3. The Special Judge, framed charges for the said offences, however, after conclusion of trial found the appellant not guilty for the offence under Section 419 of IPC and Section 3(1)(xii) of the SC/STs (POA) Act, 1989, but convicted the appellant under Section 376 of IPC.

4. PW1 reiterated his case before the Court and further stated that his daughter was aged only 13 years when the incident took place. When PW2 was ill she was taken to a doctor and the doctor advised against abortion. As such, PW1 along with the village sarpanch and his cousin, went to the accused house. However, the family members of the accused refused to marry PW2 for which reason the present complaint was lodged.

5. PW2 who was also examined stated that she was aged around 13 years at the time of the incident, however, cannot

say her date of birth. She narrates that she was forcibly taken by the appellant into the vacant fields and the appellant threw her in fields removed her inner apparel and committed rape and the said act of rape was repeated over a period of time. He also threatened that PW2 shall not inform the said incident or relationship to any one and also promised to marry her. However, observing that she got pregnant, she informed the same to her parents. After the complaint was lodged she delivered a male child, but the said child died after three months of his birth. The police collected samples from her, the child and also from the accused and sent the samples to DNA test. Pursuant to the DNA test, it was found that the appellant was the biological father of the child.

6. Learned Counsel for the appellant submits that a false case is made up against the appellant and the prosecution has failed to prove that the victim girl-PW2 was a minor at the time of incident and no age proof is filed by the prosecution. Even according to PW1 and 2 they did not give the date of birth, as such, it cannot be said that PW2 was

below the age of 18 years when the incident took place. For the said reasons the conviction recorded has to be set aside.

7. Learned Public Prosecutor argued that solitary testimony of PW2 is sufficient to record the conviction under Section 376 of IPC and it was correctly done by the Sessions Judge and no corroboration is required for evidence of victim girl in case of rape, when the evidence is reliable. For the said reasons the well reasoned Judgment of the Special Court cannot be interfered with.

8. In the present case it is on record that when a complaint was lodged with the police, they refused to register the case and only at the intervention of the MLA Sri Nomula Narsaiah, police registered a case. The crucial fact to be determined in the case is the age of PW2. As seen from the evidence of PW2 and the initial complaint Ex.P1 that was lodged, the main grievance of PW1 and 2 was refusal of the appellant to marry PW2. However, the complaint which was initially made does not reflect any kind of force that was used by the appellant to have physical intimacy with PW2.

9. The prosecution examined PW5-the Tahasildar of Devarakonda who produced Ex.P2-caste certificate of the victim girl-PW2. However, the age particulars and the date of birth of PW2 were not stated in Ex.P2. PW5 admits that she has not filled up the Date of Birth column of the victim as no material was available about the date of birth at the time of issuing Ex.P2, but the particulars would be available in the office computer system. In Ex.P2 there is a column about the date of birth and PW5 admitted that the details were available in the office computer. The prosecution ought to have produced the details of the date of birth available with the Tahasildar's office. An adverse inference has to drawn under section 114(g) of Evidence Act. The other option for the prosecution was to send PW2 to Ossification test in the absence of any birth details being available. The ossification test would have approximately fixed the age of the victim-PW2 to enable the Court to ascertain whether PW2 was below 18 years and to conclude regarding the commission of rape by the appellant. In the event of a girl being less than 18 years, though a consenting party to physical relation, such consent is of no consequence as the

law does not recognize consent of a girl aged less than 18 years.

10. In the present facts and circumstances, when the complaint was made in the late stages of pregnancy of PW2 and only for the reason of refusal of marriage, it cannot be said that PW2 was not a consenting party to the physical relation with the accused. PW2 revealed regarding the appellant only after she was tested positive for carrying pregnancy. Further, there is any amount of delay in lodging the complaint Ex.P1. As already discussed, the said complaint was registered after a month after refusal to marry and the complaint does not specify that the appellant had forcibly committed rape on PW2. However, PW1 states that on the promise of marriage PW2 was won over resulting in her pregnancy. The Sessions Court acquitted the appellant for the offence under section 419 of IPC and Section 3(1)(xii) of the SC/STs (POA) Act, 1989, against which no appeal is filed by the State.

11. For the said reasons, the prosecution has failed to prove that there was any force by the appellant to attract the offence of rape. Further, in view of the finding that the

prosecution failed to prove the age of the victim-PW2 that she was less than 18 years, this Court holds that the prosecution has failed to prove the offence of rape against the appellant.

12. For the above mentioned reasons, this Court finds that the finding of the Sessions Court suffers from infirmities while drawing conclusions for which reason, the finding and Judgment of conviction recorded by the Special Sessions Judge, Nalgonda, for the offence punishable under Section 376 of Indian Penal Code, is set aside and accordingly the appellant is acquitted.

Criminal appeal is allowed. As a sequel thereto, miscellaneous applications if any, shall stand closed.

K.SURENDER, J

Date:26.7.2022

Note: LR copy to be marked.

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HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.443 of 2009

Date:26.07.2022

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