

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

Criminal Appeal No. 1148 OF 2012

Between:

Samasthapuram Balappa

... Appellant

And

The State of A.P. rep. by Public Prosecutor

... Respondent

DATE OF JUDGMENT PRONOUNCED: 14.08.2024

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

K.SURENDER, J

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

+ CRL.A. No. 1148 OF 2012

% Dated 14.08.2024

Samasthapuram Balappa

... Appellant

And

\$ The State of A.P. rep. by Public Prosecutor

... Respondent

! Counsel for the Appellant: Sri N.Naveen Kumar

^ Counsel for the Respondents: Assistant Public Prosecutor

>HEAD NOTE:

? Cases referred

1. (2024 (1) ALT (CrI.) 117 (A.P)
2. (2006) 8 SCC 560)
3. (LLR (2013) M.P.2966)
4. (2023-2-LW(CrI) 596)

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.1148 OF 2012

JUDGMENT

1. The appellant was convicted for the offence under Section 376(f) and Section 506 of IPC for committing rape on the victim girl/P.W.2 vide judgment in S.C.No.771 of 2011 dated 26.09.2012 by the II Additional District and Sessions Judge, at Mahabubnagar. Aggrieved by the same, present appeal is filed.

2. Briefly, the case of the victim girl/P.W.2 is that she was aged ten years. Around 7.00 or 8.00 a.m in the morning, the mother/P.W.1 and her grandmother went outside. When she was alone in the house, the appellant went into the house and asked about the mother and grandmother. P.W.2 stated that they were not in the house. Then the appellant forcibly took her into the room where he laid her on a gunny bag on the floor. He lifted her skirt and kept male organ in her private part and committed rape. P.W.2 shouted for help, but he did not leave her and closed her mouth with his hands. Thereafter, while leaving, the appellant threatened P.W.2 that if she discloses the incident, he would kill her. On the next day, P.W.2 had swelling of her private parts and when

questioned by the mother/P.W.1, she stated about the incident. On the next day, it was informed to the father/P.W.3, who lodged complaint. Having received the complaint, police registered the case and filed charge sheet.

3. Learned Sessions Judge, having examined the witnesses including P.W.2/victim girl and P.W.2/Doctor found favour with the version of P.W.2 that she was subjected to rape and convicted the appellant.

4. Learned counsel appearing for the appellant would submit that the entire version given by PW.2 and P.W.1 is highly improbable. The grandmother who was staying in the house was not examined by the prosecution. No reason is given as to why all the members in the household including P.Ws.1, 3 and grandmother and brother of the victim were not present in the house when the incident has taken place. There is a delay of nearly two days in lodging the complaint. The FSL report does not reflect that there was any semen or spermatozoa that was found on the vaginal smears of the victim girl collected during examination. In fact, false complaint has been foisted against the appellant as the

appellant lent money to the parents of the victim girl and to avoid the loan amount, case was filed.

5. Learned counsel relied on the following judgments i) **Kathula Vasu v. The State of Telangana** (2024 (1) ALT (Cr1.) 117 (A.P)); ii) **Tarkeshwar Sahu v. State of Bihar (Now Jharkhand)** (2006) 8 SCC 560; iii) **Karu Suryawanshi v. State of M.P** (LLR (2013) M.P.2966); iv) **Mariappan v. The Inspector of Police, Rajapalayam** (2023-2-LW(Cr1) 596) and argued that there has to be penetration, which is missing and same can be inferred from not finding any semen or spermatozoa on the smears collected. The testimony of victim girl is not of sterling quality and unless there is corroborating evidence, her testimony cannot be taken into consideration for convicting the appellant. In fact, DNA testing was not done nor is there any explanation for the delay in lodging complaint.

6. On the other hand, learned Assistant Public Prosecutor argued that if the evidence of the victim girl is convincing that itself would suffice to record conviction. There is no reason why P.W.2, who was aged around 10 years would falsely implicate the appellant when

the incident did not happen. The evidence of victim girl is convincing and the trial Court was right in finding the appellant guilty.

7. The P.W.2/victim's statement regarding the incident is extracted below:

“My grandmother went outside to have tea, and I was alone in my house, accused came to the house enquired about P.W.1 and L.W.3 and my grandmother, then I told him they are not available in the house they went to market and outside. When accused taken me forcibly to the 2nd room by lifting me in his hands. Where he fed a gunny bag laid me on that and he also laid on me lifted my shift and kept his male organ in my private parts and committed rape, as I suffered pain raised cries, even then he did not left me. The accused closed my mouth with his hands as I raised cries. After off commission of offence ccused threatened me that he will kill me if I would disclose the incident to my parents and grandmother. I informed the said incident on the 2nd day of incident i.e., on Sunday P.W.1 noticed swelling on my private parts while she was taken me to bath then she questioned why I suffered injury, then I disclosed entire fact which was done by accused against my will to P.W.1. Then P.W.1 informed the matter to L.W.3 on his return to house in the evening.”

8. The victim girl had specifically narrated the manner in which the incident of rape had taken place. The said narration of sexual assault is corroborated by the evidence of the Doctor/P.W.9, who deposed as follows:

“The patient did not suffered any external injuries. On examination of internal parts I found abrasion over the upper part of lebia mynora. Lebia minora and majora are red and swollen. I found blood stained discharge with foul smell over the clittores and skin over the part swollen and congested and crusted material present over the perineum and detected. I have taken two vaginal swabs and collected crust material. On y above observations and basing on F.S.L report I am of the opinion as per the clinical observation F.S.L. report that there was signs of sexual assault against the patient.”

9. The Doctor/P.W.9 found internal injuries on the private parts of the victim girl/P.W.2. As seen from the offence of rape, secretion or ejaculation of semen would amount to rape. However, in the absence of semen or spermatozoa being found, it would also constitute rape as seen from Section 375 IPC, which is extracted below:

“375. Rape.—

A man is said to commit "rape" if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—(First.)— Against her will.

(Secondly.) — Without her consent.

(Thirdly.) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,

(Fourthly.) — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly.) — With or without her consent, when she is under eighteen years of age.

(Seventhly.) — When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— A medical procedure or intervention shall not constitute rape.

Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

10. The version given by P.W.2 is corroborated by medical evidence. The Doctor opined that she cannot say whether there was definitely intercourse but there are signs of sexual assault. The swelling of private parts of the victim girl and blood stained discharge was not attributed to any other reason apart from the sexual assault, by the Doctor/P.W.9.

11. The argument of the learned counsel for the appellant is that the version narrated by P.W.2 is highly suspicious and non examination of the grandmother would further raise any amount of doubt regarding victim girl's version. The said argument is unacceptable. There is no reason why the victim girl would speak false against the appellant. Further, mere suggestion that there was an outstanding loan which had to be paid, for which reason, a false complaint was filed, is also not acceptable. There are no details of such loan transaction, or the quantum of loan transaction or that there was any altercation regarding loan transaction which is brought on record. No father would venture into making false complaint against a person alleging rape on his ten year old girl. As already discussed, the narration given by victim/P.W.2 is convincing and corroborated by medical evidence. There are no grounds to interfere with the finding of the trial Court.

12. Accordingly, Criminal Appeal is dismissed. Since the appellant is on bail, the trial Court is directed to cause appearance of the appellant and send him to prison to serve

out the remaining period of sentence. The remand period, if any, shall be given set off under Section 428 Cr.P.C.

Date: 14.08.2024

kvs

Note: LR copy to be marked.

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K.SURENDER, J