THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

CRL.A.No.1386 OF 2018

JUDGMENT:

This criminal appeal under Section 374(2) Cr.P.C., is directed against the judgment dated 12.10.2017 in S.C.No.16 of 2014, on the file of the Special Sessions Judge for trial of cases under the Protection of Children from Sexual Offences Act-cum-I-Additional Sessions Judge, Adilabad, whereby and whereunder the sole appellant-accused was convicted and sentenced to undergo rigorous imprisonment for the period of six months for the offence punishable under Section 417 IPC. The accused was further convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of two months for the offence punishable under Section 420 IPC and further sentenced to under rigorous imprisonment for a period of ten years and to pay a fine of Rs.20,000/-, in default to suffer simple imprisonment for a period of six months for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'). Out of the total fine amount of

Rs.21,000/-, the amount of Rs.16,000/- shall be paid to the victim girl (P.W.1) as compensation. All the sentences shall run concurrently.

2. The prosecution case, in brief, is as follows:

The appellant (hereinafter referred to as 'the accused') and the *de facto* complainant (P.W.1) are from the same village i.e., Buruguda Village, H/o Gudem Village and are reside in the same locality. P.W.1 studied up to 6th class at Government School, Gudem and used to go to the house of the accused to watch TV and taking that opportunity, the accused followed her and fell in love with her and hatched as plan to take her into his clutches to fulfill his sexual desires. The accused befriended with her and utilized her to fulfill his sexual desires on the pretext of marrying her from the last one and half years. P.W.1 believed his promise in good faith and surrendered herself before him. The accused and the victim girl used go to the agricultural land of her parents for committing sexual intercourse and as a result of which she became pregnant and informed the same to the accused, but he advised not to disclose his name, otherwise he will not marry her in future.

P.W.1 kept silence and did not disclose the same to anyone, including her parents. Resultantly, P.W.1 was blessed with a male child. She approached the accused again and insisted him to marry her, but he refused to do so saying that he is neither responsible for the birth of a male child nor he would like to perform marriage with her. Later, the parents of P.W.1 approached the elders and they advised the accused to marry her, but he refused to marry. Subsequently, P.W.1 approached the police along with her parents and lodged a complaint in Ex.P-1.

3. The Sub-Inspector of Police, P.S.Bejjur (P.W.14) registered a case in Cr.No.63 of 2013 for the offences punishable under Sections 417, 420, 376 IPC on 22.09.2013 at 05:00 p.m., and submitted the FIRs to all the officers concerned. Ex.P-14 is the FIR. P.W.14 examined the victim girl-P.W.1 and her parents P.Ws.2 and 3 and recorded their statements. The Inspector of police P.W.15 took up investigation on the same day and visited the scene offence at Burgudu Village along with P.W.1 and secured the presences of P.W.6 and another, conducted scene of offence panchanama, prepared sketch Ex.P-5 and re-examined P.Ws.1 to 3.

Thereafter, he examined P.W.11, Headmaster and collected Ex.P-11 *bona fide* certificate of P.W.1. During the course of investigation, they also examined P.Ws.4 and 5 and recorded their statements. They also referred the victim girl to Government Hospital for medical examination. P.W.9 is the doctor who examined P.W.1 and issued report in Ex.P-6. As the victim girl is mother of child, he also collected the date of birth certificate of the new born child Deshmukh Shivaji in Ex.P-13 from P.W.13, Panchayat Secretary, on 31.07.2017. During the course of further investigation, he apprehended the accused and recorded his confessional statement in the presence of P.Ws.7 and 8 and referred him to Government Hospital for medical examination. P.W.12 is the doctor who examined the accused and issued potency certificate in Ex.P-12. Further, the victim girl and her male child were referred to DNA test at Hyderabad along with the accused as per the orders of the Judicial Magistrate of First Class, Sirpur (T). P.W.10, the doctor, who conducted DNA test and issued DNA report in Ex.P-7, opined that the male child is the son of the accused. Thereafter, P.W.16 took up investigation and verified the same and after collecting all the relevant documents and after

completing the investigation, filed charge sheet against the accused for the offences punishable under Sections 417, 420, 376(2)(i) IPC and Sections 6 and 8 of the POCSO Act.

4. The accused appeared before the trial court and pleaded not guilty to the charges framed under Sections 417, 420, 376(2)(i) IPC and Sections 6 and 8 of the POCSO Act and claimed to be tried.

5. To bring home the guilt of the accused, the prosecution examined P.Ws.1 to 16 and marked Exs.P-1 to P-16. On behalf of defence, no evidence was let in.

6. On appreciation of the oral and documentary evidence, the trial court convicted and sentenced the accused, as noted hereinabove. Challenging the same, the present appeal is preferred by the appellant-accused.

7. Learned senior counsel for the appellant submits that there is abnormal delay in giving the information to the police and registration of the FIR and the same is fatal to the case of the prosecution. The independent witnesses P.Ws.4 and 5 have not supported the prosecution case and except the sole testimony of

the victim girl and her parents, there is no evidence to corroborate the testimony of P.W.1. Learned senior counsel for the appellant also disputed the genuineness of the *bona fide* certificate Ex.P-11 issued by P.W.11, in the absence of original admission register. Learned senior counsel also submits that the DNA test is not a conclusive proof of evidence against the accused and it has no evidentiary value. Learned senior counsel further submits that the prosecution failed to prove the alleged offences with cogent and reliable evidence and prayed to set aside the judgment of the trial court. In support of his submissions, the learned senior counsel relied on the following decisions:

i. **PARAMESHA v. STATE OF KARNATAKA**[1]

ii. **ARVINDER KAUR AND ANOTHER v. STATE OF PUNJAB**[2]

iii. **SURENDRAM M @ KALYANI SURENDRAN AND OTHERS v. STATE AND OTHERS**[3]

8. *Per contra*, learned Assistant Public Prosecutor appearing for the respondent-State supported the impugned judgment

[1] 2021(2) KantLJ 483
[2] 2008(1) Crimes 728
[3] 2021(2) ILR Kerala 574

and submits that from the evidence of the victim girl-P.W.1, coupled evidence of P.W.11, who issued *bona fide* certificate Ex.P-11 it can be said that the age of the victim girl is below 16 years as on the date of incident and, therefore, she is child within the meaning of the POCSO Act. The trial court has rightly believed the evidence of P.W.1, her mother (P.W.2) and the headmaster (P.W.11), corroborated by the evidence of P.Ws.9, 10 and 12 and held that the prosecution has proved the alleged offences against the accused beyond reasonable doubt. The trial court has rightly recorded the conviction against the accused by the impugned judgment. Thus, the appeal is liable to be dismissed.

9. I have carefully considered the submissions of learned senior counsel for the appellant-accused and learned Assistant Public Prosecutor for the respondent-State and with their assistance, I have perused the evidence on record. I have also gone through the impugned judgment.

10. The first aspect to be considered in the present case concerns the age of the victim. This is because unless it is established that the victim was a child and defined under Section 2(d) of the

POCSO Act, the prosecution under POCSO Act would not have been competent.

11. It is the case of the prosecution that the victim girl was aged in between 15 to 16 years as on the date of incident. To prove the same, the prosecution has mainly relied on the evidence of P.Ws.1 to 11.

12. P.W.1 is the complainant-victim girl. She deposed that herslef and the accused belong to Buruguda Village of Bejjur Mandal. Her parents used to go to other places for work and she used to live with her elder brother at her home at Buruguda. She discontinued her education in 7th class due to financial problems. She was 15 years at the time of incident.

13. In order to prove the age of the victim girl, the prosecution examined the Headmaster of the school as P.W.11. On 23.09.2013, on the request of police, Bejjur, he issued *bona fide* certificate Ex.P.11 of the victim girl. He further deposed that the victim girl studied 6th class in their school in 2009 and as per the record, her date of birth is 12.08.1998. P.W.1 lodged a report Ex.P-1 on 22.09.2013 i.e., after delivery of a male child on

31.07.2013. As on the date of complaint Ex.P-1, P.W.1 was aged 15 years at the time of incident. P.Ws.2 and 3 are the parents of P.W.1. They have not specifically stated about the date of birth of the victim girl.

14. The evidence of the victim girl P.W.1 is that she was a school drop out and studied only up to 6th class and discontinued her education from 7th class due to financial problems and from her evidence, it shows that she was 15 years. The said evidence of the victim girl has gone unchallenged in cross-examination. Even a suggestion was not put by learned senior counsel for the appellant-accused that she was not a minor. Apart from this, the Headmaster of the school P.W.11, who worked during the relevant period when she studied, stated that he issued *bona fide* certificate in Ex.P-11 and as per school records, her date of birth is 12.08.1998. P.W.1 had also specifically stated that the victim girl studied up to 6th class in the year 2009.

15. Learned senior counsel for the appellant submits that P.W.11 did not produce the admission register etc., and the trial court had erroneously marked the *bona fide* certificate as Ex.P-11

without verification of the original school records and therefore, the said document cannot be relied upon. Learned senior counsel has relied on the decision of the Punjab and Haryana High Court in **ARVINDER KAUR**'s (2 supra). But, the facts and circumstances of the said case are different from the facts of the instant case. However, in the instant case, though P.Ws.2 and 3 are the parents, they have not specifically stated about the age of the victim girl in their evidence and also there is no suggestion from the defence counsel in the cross-examination of P.Ws.1 to 3 that the victim girl was not a minor. Therefore, the above decisions relied on by learned senior counsel for the accused are not applicable to the facts of the present case.

16. Coming to the evidence of P.W.11, he deposed that he issued *bona fide* certificate Ex.P-11 of the victim girl that she studied 6th class in their school in the year 2009 and as per the school records, her date of birth is 12.08.1998. In cross-examination, nothing material was elicited, except a suggestion that the victim girl was aged more than the age mentioned in Ex.P-11. Though P.W.11 has specifically stated the date of birth of P.W.1, but his evidence

is that she studied up to 7th class and discontinued due to financial problems and P.W.1's oral evidence was corroborated by the evidence of P.W.1 Headmaster and the *bona fide* certificate Ex.P-11, wherein the date of birth as per the school records is 12.08.1998 and as on the date of complaint i.e., 22.09.2013 her age was 15 years and about one month i.e., below 16 years. P.W.9, Dr.A.Jyothi, examined the victim girl on 24.09.2013 and issued medical report in Ex.P-6, wherein she stated that the victim girl is aged 15 years and is a lactating mother who completed puerperal period (delivered approximately before six weeks). So, the evidence of P.W.9 corroborated the evidence of P.W.1 and the DNA report further strengthens the case of the prosecution that the victim girl was aged 15 years as on the date of the alleged incident. Therefore, I hold that the prosecution has proved that the age of the victim was below 16 years as on the date of complaint.

17. As regards the other main ingredients of the offence, the prosecution had established that the accused has promised to marry her on the pretext of love and marriage and had sexual intercourse with the victim girl and the same resulted in P.W.1

becoming pregnant and giving birth to a male child and the accused had also refused to marry and thereby cheated her.

18. Learned senior counsel for the appellant-accused mainly contended that there was abnormal delay in giving report to the police and issuance of F.I.R. It is true that P.W.1 lodged a complaint Ex.P-1 on 22.09.2013 and her evidence also clearly shows that for more one year, the accused had sexual intercourse with her under false promise of marriage and due to which she became pregnant and delivered a male child i.e., 45 days back i.e., 31.07.2013 and when she requested to marry her, the accused refused and that made her to lodge a complaint.

19. Undisputedly, the alleged offences took place from the date when the accused had sexual intercourse with the victim girl on a false promise of love and marriage. It is not in dispute that there is long delay in raising the complaint about the alleged incident.

20. In **DEEPAK v. STATE OF HARYANA**[4], the Hon'ble Supreme Court has explained that threats against rape victims constitute sufficient explanation for the delay in lodging the FIR.

[4] (2015) 4 SCC 762

Besides, the Hon'ble Supreme Court has held that in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerns the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by victim or by any member of her family. Coming to the facts of the present case, it is immediately after birth of male child and when the accused refused to take her back and all efforts of the victim girl went in vain, she approached the police and lodged the complaint. Therefore, based on such delay in lodging the FIR, there is no case made out to suspect the prosecution version this matter.

21. In the case on hand, the evidence of the victim girl is crucial in this case. P.Ws.2 and 3, who are parents of the victim girl, have also come to know about the reason for her pregnancy at the

instance of the accused and the accused on the pretext of love and marriage had sexual intercourse and as a result P.W.1 became pregnant and later gave birth to a male child. The prosecution has cited P.Ws.4 and 5 as independent witnesses, who are acquainted with the intimacy between the accused and P.W.1, have not supported the case of the prosecution and they were declared hostile. P.W.15, the investigating officer, in his evidence stated that he submitted a requisition before the Judicial Magistrate of the First Class, Sirpur to forward the accused, victim girl and the new born male child for DNA test at Hyderabad. P.W.10, Dr.Devender Kumar of CDFD, deposed that the victim girl, accused and the male child were produced on 20.12.2013 along with the requisition from the Judicial Magistrate of First Class, Sirpur to conduct paternity test of the child. The officials collected blood samples of the above said three persons on FTA cards and conducted DNA test and issued report-Ex.P-7. As per the report, the accused is the biological father of the male child. Exs.P-8 to P-10 are the identification forms of above said three persons. In cross-examination, P.W.10 deposed about the procedure followed in analyzing the blood samples for DNA analysis and nothing

material was elicited other than that to disbelieve the scientifically proved test.

22. Learned senior counsel for the appellant-accused submits that DNA test is not a conclusive proof of evidence and the blood samples were not collected as per the procedure and P.W.10 is not the competent officer for conducing DNA test and the DNA report has no evidentiary value. In support of his submission, learned senior counsel relied on the decision of the Karnataka High Court in **PARAMESHA's** case (1 supra). In the said case, the doctor has deposed that has collected the blood sample of the accused at the instance of the investigating officer and forwarded to the investigating officer and while drawing the blood sample of the accused, he has followed the required formalities by obtaining the signature of the accused in the DNA information form and also took the signature of the investigating officer and issued a certificate. In cross-examination, he admitted that the handwriting contents of the DNA form were written by the police. He also stated that while drawing the blood samples of the accused, the witnesses were not present. However, in the instant case, the

investigating officer P.W.15 filed a requisition before the learned Magistrate and forwarded the accused, victim girl and the new born male child for DNA test to CDFD, Hyderabad. P.W.10 deposed that he received requisition from the learned Magistrate for conducting paternity test of the disputed child. The CDFD officials collected the blood sample of above referred three persons and by following procedure for conducting DNA analysis and issued report Ex.P-7. Exs.P-7 to P-10 further discloses that after following proper procedure, DNA test was done and the said exhibits are covered under Section 293 Cr.P.C. A close reading of Section 293 Cr.P.C., indicates that where the genuineness of a document is not disputed, under such circumstances, no formal proof of the document is necessary. However, with the cogent evidence of P.W.10, Exs.P-7 to P-10 are successfully proved by the prosecution.

23. In **MUKESH AND OTHERS V. STATE (NCT OF DELHI) AND OTHERS**[5], the Hon'ble Apex Court held as under:

> "DNA technology accurately identifies criminals. DNA profiling in now a statutory scheme under Section

[5] **(2007) 6 SCC 1**

> 53-A CrPC. and such profiling is a must in case of examination of rape victims. DNA report deserves to be accepted unless it is absolutely dented. if the sampling is proper and if there is no evidence of tampering of samples, DNA Test report is to be accepted. DNA analysis is hundred percent accurate and at present a predominant forensic technique for identifying criminals."

24. This court is conscious of the fact that the DNA test is an impact of the modern scientific and technological revolution. No doubt, this new technology can be used as an effective tool in crime detection. However, I am of the considered opinion that it is highly unsafe to rely upon the sole DNA test to convict a person on the basis of the said test. In the instant case, the evidence of P.W.1 is trustworthy and supported by the DNA test and the evidence of P.W.10 coupled with the evidence of the parents, it can be safely believed that the accused had sexual intercourse with the victim girl on the pretext of love and marriage and made her pregnant and also giving birth to a male child. Though it is relevant to state that there is no direct evidence to show that the accused and the victim girl had love affair and had sexual intercourse with her and made her pregnant, but there is consistency in the evidence of P.W.1 right from starting till end. She withstood the cross-examination

and nothing material is elicited by defence to disbelieve her testimony. There are a catena of decisions of the Hon'ble Apex Court that the statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of prosecutrix.

25. In case of **KRISHAN KUMAR MALIK v. STATE OF HARYANA**[6], it is observed and held that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

26. In **STATE OF HIMACHAL PRADESH v. RAGHUBIR SINGH**[7], this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires

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[6] (2011) 7 SCC 130
[7] (1993) 2 SCC 622

confidence and there is absence of circumstances which militate against her veracity.

27. On evaluation of the deposition of the victim girl P.W.1 independently, I find that her evidence is consistent and inspires confidence and there was no good reason to either doubt or discard such testimony. The prosecution has also proved that P.W.1 was a minor girl aged 15 years and same is also proved with the evidence of P.Ws.9 & 11 and Exs.P-6 & P-11. The accused on the pretext of love and marriage had sexual intercourse course with P.W.1 as a result, she became pregnant and her consent is immaterial as she was aged 15 years only. The accused was also sent for potency test and P.W.12 conducted potency test and issued certificate Ex.P-12 stating that the accused is potent. The evidence of P.W.10 also supported the case of the prosecution that the accused sexually enjoyed with P.W.1 on the pretext of love and marriage and she became pregnant and gave birth to a male child and the DNA test conducted also proved with oral and documentary evidence Exs.P-7 to P-10. The DNA evidence establishes that the accused and victim (P.W.1) are the biological parents of the child born to

the victim girl. Therefore, the prosecution has successfully proved all the ingredients of the alleged offences and discharged its burden and the ingredients of the offences under the POCSO Act have also been proved and the presumption under Section 29 of the POCSO Act would come into play and the appellant-accused failed to rebut the same in accordance with law. In this case, the appellant-accused has failed to rebut the presumption under Section 29 of the POCSO Act.

28. From the perusal of the impugned judgment, I am of the view that the trial court has considered the evidence on record in its correct perspective. The trial has adverted to the material evidence on record and after applying the correct legal principles convicted and sentenced the appellant-accused. Therefore, there is no case made out to interfere with the impugned judgment in this case.

29. For the foregoing reasons, I am the view that the order of conviction and sentence imposed by the trial court cannot be set aside. Therefore, I do not find any reason to interfere with the finding of the trial court.

30. As a result, the criminal appeal is dismissed.

31. Miscellaneous petitions, if any, pending shall stand closed.

A.SANTHOSH REDDY, J

27.09.2022
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