

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

Criminal Appeal No. 398 OF 2019

Between:

T.Narsimha Chary

... Petitioners

And

The State of Telangana, through S.H.O.,
Falaknuma Police Station, Hyderabad District,
Rep.by Public Prosecutor, High Court,
Hyderabad.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 14.06.2023

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. 398 OF 2019

% Dated 14.06.2023

T.Narsimha Chary

... Petitioners

And

\$ The State of Telangana, through S.H.O.,
Falaknuma Police Station, Hyderabad District,
Rep.by Public Prosecutor, High Court,
Hyderabad.

... Respondents

! Counsel for the Petitioner: Sri Badeti Venkata Rathnam

^ Counsel for the Respondents: Sri Sridhar Chikyala

SC SPL Public Prosecutor for ACB

>HEAD NOTE:

? Cases referred

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.398 OF 2019

JUDGMENT:

1. The appellant is convicted for the offence under Section 5(m) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 376(2)(i) of IPC and sentenced to undergo rigorous imprisonment for a period of ten years and also to pay fine of Rs.2,000/-, in default, to suffer simple imprisonment for a period of three months vide judgment in S.C.No.128 of 2016 dated 26.09.2018 passed by the I Additional Metropolitan Sessions Judge-cum-Special Judge for trial of Cases under POCSO Act, 2012, Hyderabad. Aggrieved by the same, present appeal is filed.

2. Briefly, the case of the prosecution is that the appellant dragged P.W.2, who was aged about 6 years on 21.02.2014 into his house and closed the door. Appellant removed victim's clothes and laid on her on the bed and committed penetration, for which reason her hymen was torn and she suffered pain and cried. The appellant left the spot and thereafter victim informed her mother PW1, who filed a complaint. On the basis

of the complaint, appellant was charge sheeted for the offences under Section 5(m) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 and Sections 376(2)(i) of IPC, however, not found guilty for the offence under Section 3(2)(v) of SC and ST (Prevention of Atrocities) Act, 1989.

3. The victim girl/P.W.2 entered into the witness box and the learned Sessions Judge after questioning her, found that she was able to understand the questions and rational answers were being given. P.W.2 narrated that on 21.02.2014, it was a holiday and while she was playing with her brother around 3.00 p.m, the appellant asked her brother to go away and the appellant took the victim girl into the house and bolted the door. He removed his pant, shirt and underwear and put his part which is for urinating in her part used for urinating. Feeling pain, she cried. The appellant left her threatening her to kill, if she disclosed this matter to anyone. P.W.2 went to the house and informed her mother/P.W.1, who lodged complaint to police.

4. Learned counsel appearing for the appellant would submit that false complaint was filed on account of loan taken from P.W.1/mother of the victim girl, which was not returned. Further, the medical evidence does not corroborate with the finding that the victim/P.Ws.2 was raped. Even FSL report Ex.P11 does not reflect that there was semen, spermatozoa and blood were detected on any of the items sent for analysis and report, to the FSL. In the said circumstances, when the complaint is result of non payment of loan taken from P.W.1 by the appellant, the appeal has to be allowed.

5. Learned Additional Public Prosecutor submitted that victim had stated that the appellant was the person who had committed rape on her. For the said reason, conviction has to be maintained.

6. As seen from the cross-examination, the defence of the appellant is that he was acquainted with the mother/P.W.1 and taken loan from her and since money was not returned, false case was foisted.

7. The defence of the appellant cannot be believed. No mother would go to the extent of stating that her child, who is aged six years was raped by a person to whom the loan was given. If a person to whom the loan was given is sent to jail, in fact, P.W.1 would not have got the money back. The question of false implication in the present case is ruled out.

8. Though Ex.P11 FSL report does not reflect that semen and spermatozoa was not found would not make any difference to the case of the prosecution. In fact, human blood was detected on the swabs collected from the victim girl sent for examination. P.W.8 found that hymen was not intact and on the basis of FSL report, P.W.8 issued opinion that evidence of possibility of recent sexual intercourse cannot be ruled out.

9. Any penetration even in part would amount to an offence of rape. There need not be secretion of semen to make out a case of rape. In the absence of semen on the private parts of the victim or wearing apparel of either victim or accused, it cannot be said that rape was not committed.

10. The evidence of the victim girl/P.W.2 is convincing and no evidence is put forth as to why the girl aged around ten years at the time of examination would speak falsehood about the appellant. The appellant has miserably failed to make out a case for acquittal.

11. In the result, the Criminal Appeal is dismissed confirming the conviction inflicted on the appellant. Consequently, miscellaneous petitions, if any, pending, shall stands closed.

K.SURENDER, J

Date: 14.06.2023

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.398 of 2019

Date: 14.06.2022.

kvs

