

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

Criminal Appeal No.125 OF 2021

Between:

Shivasani Sai Manideep

... Appellant

And

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

... Respondent

DATE OF JUDGMENT PRONOUNCED:

04.07.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- | | | |
|---|----------------------------------------------------------------------------|--------|
| 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**

+ CRLA. No. 125 of 2021

% Dated 04.07.2023

Shivasani Sai Manideep

... Appellant

And

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

... Respondent

! Counsel for the Petitioner: Sri S.Madan Mohan Rao

^ Counsel for the Respondent: Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ 2022(2) ALD (CrI.) 462 (TS)

² (1982) 2 SCC 538

³ (2010) 9 Supreme Court Cases 209

⁴ 1988 (Supp) Supreme Court Cases 604

⁵ (2012) 5 Supreme Court Cases 201

⁶ (2007) (1) ALD (CrI.) 665 (AP)

⁷ 2003 Cri.L.J 2777

⁸ (2018) 9 Supreme Court Cases 248

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.125 OF 2021****JUDGMENT:**

1. The appellant was convicted for the offences under Sections 366, 376(2)(f), 376(2)(n), 496 of IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 9 of Prohibition of Child Marriage Act, 2006 vide judgment in Special Sessions Case No.57 of 2017, dated 16.02.2021 passed by the Special Judge for trial of cases under Protection of Children from Sexual Offences Act-cum-I Additional Sessions Judge, Warangal. Aggrieved by the same, present appeal is filed.

2. Briefly stated, the prosecution case is that victim/P.W.1 was student in Froebels Model School, Ghanpur. Appellant was physics teacher. According to the evidence of P.W.1, she was moving closely with him. On 29.04.2016, P.W.1 went to meet the appellant. The appellant took P.W.1 to the house of A2 and A3 where they stayed in the night and the appellant proposed to P.W.1. They stayed for another three days. On 03.05.2016, the appellant took A2 and P.W.1 on the bike to Ashravelli to the house of maternal aunt of A2,

where they stayed for six days. On 09.05.2016, the appellant took P.W.1, A2 and A3 to the house of A2 at Medipalli village. From there, appellant, A2 and A3 and P.W.1 went to Narsampet in an auto. At Narsampet, they purchased clothes for marriage and went to temple at Kothagudem. When the priest refused to perform marriage at Kothagudem, all of them went to Kattamaisamma temple where A4 was the priest. A4 performed the marriage of the appellant and P.W.1. After marriage, they went to Swapna Lodge at Ellandu of Khammam District. The appellant and P.W.1 stayed in one room while the A2 and A3 stayed in other room. On the night, it is alleged that the appellant had sex forcibly. They continued to stay in the room for seven or eight days and during that period also, the appellant had sex with PW1. After eight days, the appellant informed that he did not have money to continue to stay in the lodge and went out to sell his laptop. Meanwhile, the police came and took P.W.1 and A2 to the police station.

3. PW.1 went missing on 29.04.2016, for which reason, her father-P.W.2 filed complaint Ex.P1 on 30.04.2016, stating that his daughter P.W.1 might have eloped with the appellant and requested

to take necessary action. FIR was registered for the offence 363 of IPC. PW.1 was traced on 17.05.2016. On the basis of the statement given by P.W.1, penal sections were added as stated supra.

4. Learned Sessions Judge framed charges against A1 to A4. Having examined witnesses P.Ws.1 to 23 and marking Exs.P1 to P19 on behalf of the prosecution, learned Sessions Judge having believed the version of P.W.1 convicted the appellant-A1. However, A2 to A4 were extended benefit of doubt since there was nothing on record to suggest that A2 and A3 have abetted A1 to marry P.W.1. Likewise, A4 was not informed that P.W.1 was a minor.

5. Learned counsel appearing for the appellant would submit that there is no evidence regarding the age of P.W.1. Ex.P11 is the date of birth certificate given by the Froebel Model High School. The said certificate cannot be made basis to conclusively say that the date in the said certificate is the correct date. Further, the counsel argued that as seen from the narration of events, P.W.1 was a consenting party to whatever that transpired in between P.W.1 and the appellant. He relied on the judgment of this Court in the case

of **Mekala Shiva v. State of Telangana**¹ 2022(2) ALD (CrI.) 462 (TS). In the said judgment, on the basis of the judgment of Hon'ble Supreme Court in the case of **Jaya Mala v. Home Secretary, Government of Jammu & Kashmir**², it was held that judicial notice and margin of error in age ascertained by radiological examination was two years on either side. Further, the bonafide certificate cannot be conclusive proof regarding the age unless hospital or municipal certificate is produced.

6. Counsel relied on the judgment of **Madan Mohan Singh and others v. Rajni Kant and another**³. He also relied on the judgment in the case of **Birad Mal Singhvi v. Anand Purohit**⁴ and **Om Prakash v. State of Rajasthan**⁵. In the said cases, the Courts entertained a doubt regarding the age being correct as projected by prosecution in the absence of reliable evidence. Learned counsel further relied on the judgment of this Court in the case of **A.Venkatachary v. State**

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² (1982) 2 SCC 538

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of A.P⁶, in similar circumstances of girl eloping, this Court found that there was no evidence to convict the accused for the offence under Sections 366 and 376 of IPC.

7. In **Makhan v. State of M.P**⁷, when the age of the victim by virtue of ossification test was found to be more than 18 years, the accused was acquitted. In the case of **Rajak Mohammad v. State of Himachal Pradesh**⁸, three Judges Bench of Hon'ble Supreme Court on facts found that when the victim had moved freely along with the appellant and never complained of any criminal act and further, the prosecution failing to prove that the victim was a minor on the date of alleged occurrence, it was held that the victim was a consenting party and consequently, acquitted the accused.

8. In the present case, Ex.P11 is the date of birth certificate, in which the date of birth is mentioned as 20.01.2002. During the course of trial, P.W.1 stated that her date of birth as 23.01.2001. P.W.2, father and P.W.3-mother are silent about the date of birth of

⁶ (2007) (1) ALD (CrI.) 665 (AP)

⁷ 2003 Cri.L.J 2777

⁸ (2018) 9 Supreme Court Cases 248

P.W.1. Ossification test was conducted under Ex.P17 dated 17.01.2017 in which it was opined that the victim was aged about 17 years.

9. Learned Public Prosecutor argued that Ex.P17 is dated 17.01.2017 which is nearly 7 months after the incident. For the said reason, the age has to be determined as 16 years when the incident has taken place.

10. The prosecution has failed to prove that the victim girl was a minor. Contradictory evidence is produced by the prosecution regarding the age. Admittedly, neither the municipal certificate nor the hospital certificate where P.W.1 was born is produced. It is well settled law that judicial notice can be taken and margin of error arrived by the ossification test is two years on either side. Even taking into consideration Ex.P17, the age of P.W.1 would have been 19 years. Even if the ossification test was conducted seven months after the incident, still the age is about 18 years when margin of error is considered.

11. P.W.1 has narrated that from 29.04.2016, she stayed along with the appellant, went to the houses of A2 and A3, stayed there,

got married and after getting marriage, they stayed together in the lodge. Except stating that on the first date of marriage the appellant had sex with her thrice forcibly, there is no such allegation of force was narrated when she stayed for nearly 18 days with the appellant. There was never any kind of forcible sexual intercourse that was committed by the appellant. Admittedly, after marriage the appellant had sexual intercourse with P.W.1. The facts in the Judgment of Apex Court in **Rajak Mohammad's** case and the facts in the present case are similar.

12. The prosecution has failed to prove that PW.1 herein was a minor as on the date of marriage. She moved around freely for 18 days to several places accompanying the appellant and never complained about any force to anyone. According to the evidence of P.W.1, they had resided in three different places prior to the marriage and in the lodge for eight days. In the said circumstances, there cannot be any doubt regarding P.W.1 consenting to stay and move along with the appellant.

13. Viewed from any angle, the prosecution has failed to prove that P.W.1 was a minor as the date of the incident. The other

circumstances clearly indicate that P.W.1 was a consenting party. As such, benefit of doubt is extended to the appellant.

14. In the result, the judgment of trial Court in Special Sessions Case No.57 of 2017, dated 16.02.2021 is hereby set aside. Since the appellant is on bail, his bail bonds shall stand cancelled.

15. Accordingly, the Criminal Appeal is allowed. Consequently, miscellaneous petitions, if, pending, shall stand closed.

K.SURENDER, J

Date: 04.07.2023

Note: LR copy to be marked

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HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.125 of 2021

Date: 04.07.2023.

kvs

