

IN THE HIGH COURT FOR THE STATE OF TELANGANA

Criminal Appeal No. 193 of 2021

Between:

Kinnera Madhu, S/o.Venkaiah @ Venkanna, Age: 30 years, R/o.Medidapalli village, Tirumalayapalem Mandal, Khammam District.

... Petitioner

and

The State of Telangana, through Assistant Commissioner of Police, Khammam Rural, Khammam District Represented by its Public Prosecutor, High Court of Telangana at Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 10-11-2023

THE HONOURABLE 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 Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

*** THE HONOURABLE SRI JUSTICE K.SURENDER**

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Kinnera Madhu, S/o.Venkaiah @ Venkanna, Age: 30 years,
R/o.Medidapalli village, Tirumalayapalem Mandal,
Khammam District.

... Petitioner

Vs.

\$ The State of Telangana, through Assistant Commissioner
of Police, Khammam Rural, Khammam District
Represented by its Public Prosecutor, High Court of
Telangana at Hyderabad.

... Respondent

! Counsel for the Petitioner : Sri. V.Brahmaiah Chowdary

Counsel for Respondent : Public Prosecutor

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> Head Note:

? Cases referred:

¹ (2023)SC Online SC 1399

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL NO.193 of 2021****J U D G M E N T :**

This Criminal Appeal is filed by the accused-appellant to set-aside the conviction in S.C.POCSO.No.154 of 2019 on the file of learned First Fast Track Sessions for Expeditious Trial and Disposal of Cases of Rape and Protection of Children from Sexual Offences Act, 2012 at Khammam.

2. The appellant was convicted for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo Rigorous Imprisonment for a period of 10 years. He was also convicted for the offences punishable under Sections 417 and 506 of Indian Penal Code and sentenced to undergo Rigorous Imprisonment for a period of 6 months under both Counts.

3. Briefly, the case of the prosecution is that appellant was the neighbor of victim girl/P.W3 and used to follow the victim. Thereafter, they started meeting each other, since the appellant made a promise to marry her. The appellant

used to call her to the house in the night times around 12:00 or 1:00 clock and participated in sexual intercourse 3 to 4 times. Thereafter, victim girl/P.W3 came to know that the marriage of the appellant was fixed with another girl. When she questioned about marriage, the appellant refused to marry her and also he was not responding to her phone calls. Then it was informed to her parents/P.Ws.1 and 2 and placed issue in front of the village elders where the appellant refused to marry the victim girl and acted as if the victim was a stranger. Since, the appellant refused to marry, a criminal complaint was filed before Thirumalayapalem police. The Police registered a case for the offences punishable under Sections 417, 420, 376 and 506 of IPC and Sections 5 read with 6 of POCSO, Act.

4. Learned Sessions Judge having examined PWs.1 to 14 and marking Exs.P1 to P13, found that the appellant was guilty and accordingly he was convicted.

5. Learned counsel appearing for the appellant would submit that Ex.P3, which is secondary school certificate of the victim cannot be made basis to prove that the age of the

victim was less than 18 years when the incident had taken place, though Ex.P3/secondary school certificate shows the date of birth of victim as 28.10.2002. In fact, the victim had stated in the Court that she went to the house of the appellant and had participated in sexual intercourse. As such, when the relation was consensual, then the question of committing rape does not arise.

6. Learned counsel relied on the judgment of the Hon'ble Supreme Court in ***Manak Chand @ Mani Vs. The State of Haryana***¹. The Three Bench Judge of the Hon'ble Supreme Court held at Para No.9 that proof submitted by the prosecution with regard to the age of the prosecutrix in the form of school register was not sufficient to arrive at the conclusion that the prosecutrix was less than 16 years. Since, the age is a crucial factor, the prosecution should have sent the victim for bone ossification test to determine the age.

7. Hon'ble Supreme Court further held that the medical record reveals that she was well built adult female. The said

¹ 2023 SC Online SC 1399

complaint was filed after the appellant refused to marry the prosecutrix. Since there was no definite conclusion regarding the age of the prosecutrix, the appellant was acquitted.

8. On the other hand, learned Public Prosecutor would submit that Ex.P3 was secondary school certificate and it can be relied upon to form a basis that the victim was minor. Even assuming that there was consent, such consent though given by minor, the Court cannot consider the same, since consent by a minor is no consent in the eye of law.

9. P.W.1 is the father of the victim girl, who stated that his daughter studied up to 7th class in Government School in their village. He cannot say the date of birth of his daughter. After 7th class she continued her high school education (10th class) in Subbulaid village and after completion of 10th class she joined intermediate I year (11th class). P.W.2 is the mother of the victim girl. She also did not give the date of birth of the victim girl.

10. P.W.3 is the victim girl and she deposed in her chief examination that she went to the appellant's house in night

times 12:00 or 1:00 'o' clock, participated in sexual intercourse for 3 or 4 times. However, during the course of cross-examination she stated that the appellant used to visit her house several times and participated in sexual intercourse. She used to go to his house and participated in sexual intercourse, she further used to go to his house during day time and also night time and such physical relation took place several times.

11. As seen from the evidence, the relation between the victim girl/P.W.3 and the appellant was consensual. However, the crucial factor to be decided is the age of the victim girl. The date of birth in the secondary school certificate would be the declaration given by the parents of the victim at the time of her joining as a student in the school. In the present case, the date of birth particulars were not taken from the school where victim studied from 1st to 7th class. However, certificate was taken from the subsequent school where she completed her 10th class. The birth details in the earlier school where she studied from 1st class were not collected. It is not known as to what formed

basis for the certificate issued under Ex.P3 regarding the date of birth of the victim as 28.10.2002.

12. The doctor did not give any opinion that the victim girl was under aged or less than 18 years. In fact, the prosecution has not taken steps to conduct bone ossification test to determine the age. As observed by the Hon'ble Supreme Court in ***Manak Chand @ Mani Vs. The State of Haryana case (Supra)***, the age of the victim girl in the present case is also a crucial factor which was not proved by the prosecution.

13. The allegation of not marrying in spite of making promise formed basis for conviction under Section 417 of IPC. The victim girl stated that the appellant promised to marry her. She did not state that such promise was made to have sexual intercourse with the appellant. In the absence of such averment, it cannot be said that the consensual physical relation in between the victim and appellant was on account of any deception played by the appellant.

14. Accordingly, the Criminal Appeal is allowed and the proceedings against accused-appellant in S.C.POCSO No.154

of 2019 for the offences punishable under Sections 417 and 506 of IPC and Section 6 of POCSO, Act are hereby quashed. The bail bonds of accused-appellant shall stand cancelled.

Miscellaneous applications pending, if any, shall stand closed.

Date: 10.11.2023
dsv

K.SURENDER, J