

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

Criminal Appeal No.291 OF 2021

Between:

Barmavath Subhash

... Petitioner

And

The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 13.06.2023
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. 291 of 2021

% Dated 13.06.2023

Barmavath Subhash

... Petitioner

And

\$ The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana.

... Respondent

! **Counsel for the Petitioner:** Sri Y.Ratna Prabha

^ **Counsel for the Respondents:** Public Prosecutor

>HEAD NOTE:

? Cases referred

HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 291 of 2021****JUDGMENT:**

1. The appellant is convicted for the offence under Section 376 (2)(f)(i) of IPC and Section 5(m) r/w 6 of POCSO Act, 2012 vide judgment in POCSO S.C.No.37 of 2017 passed by the II Additional District & Sessions Judge, Medak at Sangareddy. Aggrieved by the said order of conviction, present Criminal Appeal is filed.

2. Briefly, the case of the prosecution is that the victim girl/ P.W.2 was aged around 7 years at the time of incident. She was taken to P.W.4(Doctor) by mother/P.W.1 on 21.09.2016 since P.W.2/victim girl had complained about fever and pain. P.W.4 having examined the victim girl found that sexual assault might have taken place and as suggested by PW4, victim girl was taken to the Nilofer Hospital. The condition of the victim girl was informed to the police and on the very same day i.e., on 21.09.2016, victim girl was examined by P.W.11, who is a Doctor. P.W.11 found Vulva

Edema and stain of blood was present on the private part of the victim girl and that might be on account of rubbing with hand or fingers. On investigation by the police, it was found that this appellant had inserted his fingers into the vagina of the victim girl. Having examined the witnesses, police filed charge sheet against the appellant for the aforesaid offences.

3. Learned Special Judge having examined P.Ws.1 to 14 and marking Exs.P1 to P9 found that the appellant was guilty and accordingly, convicted the appellant.

4. Learned counsel appearing for the appellant would submit that false case has been filed against the appellant and even according to P.W.11, the reason for the condition of the private part was on account of rubbing with hand and fingers and same cannot be attributed to the appellant herein.

5. P.W.2 victim girl was examined by the Special Court. Since the girl was aged around ten years when she was examined in the Court, the learned Sessions Judge posed preliminary questions and after being satisfied that the victim girl was capable of understanding questions and was giving

rational answers proceeded to record the evidence. P.W.2/victim girl stated that on 19.09.2016, the appellant who was her father sent her to bring toddy and after consuming toddy, the appellant undressed himself and removed the clothes of victim girl and penetrated his fingers into the vagina. P.W.2 shouted with pain, however, the appellant closed her moth and asked her not to shout. P.W.1, mother was informed about the incident and when the mother/P.W.1 questioned the appellant, the appellant did not answer stating that he was ignorant of any condition of the girl/P.W.2.

6. P.W.1, who is the mother corroborated with the evidence of P.W.2/victim girl and also stated that the appellant had in fact gone to the school and brought her back to the house. P.W.5, who is the Head Mistress of the school identified the appellant as the father of the victim girl/P.W.2 and on 19.06.2016 around 2.00 p.m, the appellant took her from school to the house.

7. Learned counsel appearing for the appellant would submit that there is no documentary evidence to suggest that

the appellant had taken the victim girl along with him to the house. Specifically, P.W.5, the school Head Mistress deposed that the appellant had taken the victim girl along with him around 2.00 p.m after taking permission. The said evidence coupled with the narration of the victim girl/P.w.2 is sufficient to infer that the appellant had taken the victim girl from the school and thereafter committed acts in the house as narrated by the victim girl/P.W.2 attracting penal consequences under Sections 376 (2)(f)(i) of IPC and Section 5(m) r/w 6 of POCSO Act, 2012.

8. In the said circumstances, I do not find any grounds to interfere with the finding of guilt of the appellant. The sentence inflicted is the minimum sentence and calls for no interference.

9. Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous applications, if any, shall stands closed.

K.SURENDER, J

Date: 13.06.2023
Note: LR copy to be marked.
B/o.kvs

HONOURABLE SRI JUSTICE K.SURENDER

Criminal Appeal No.291 OF 2021

Date:13.06.2023

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