

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.31 OF 2021

JUDGMENT:

1. The appellant was convicted for the offence under Section 11 (1) r/w Section 12 of Protection of Children from Sexual Offences Act, 2012 (for short 'the Act') and sentenced to undergo Rigorous Imprisonment for a period of two years and also to fine of Rs.10,000/- vide judgment in S.C.No.105 of 2017 passed by the Special Fast Track Court for Disposal of Rape and POCSO Act Cases, Suryapet. Aggrieved by the same, present appeal is filed.

2. The case of the victim/P.W.1 is that she completed Intermediate and after completion of Intermediate examination, she went to her village. Two months prior to 27.04.2017 there was Jathara (religious congregation of people). On the same day, in the mid-night, the appellant allegedly went to the house and tried to wake her up. When P.W.1 questioned, he fled. On the same day, P.Ws.2 and 3, who are parents of P.W.1 reprimanded the appellant. There was no change in the attitude of the appellant. On 27.04.2017 at about 7.00 a.m, when P.W.1 went to attend natural calls, the appellant caught hold of her hand and dragged her into

nearby bushes. Immediately, P.W.1 fled and thereafter, complaint was filed with the police.

3. Learned counsel appearing for the appellant would submit that no offence under Section 11(1) r/w 12 of the Act is made out against the appellant. No proof is filed by the prosecution to suggest that P.W.1 was a minor. Ex.P10 bonafide certificate was filed. However, the said bonafide certificate was marked through the Investigating Officer. It cannot be said that the date of birth in the said certificate is authentic since there is no other proof that P.W.1 was a minor when the incident has taken place and conviction has to be set aside.

4. On the other hand, learned Public Prosecutor would submit that the appellant had caught hold of P.W.1's hand and dragged her into the bushes, which in itself would indicate that with sexual intent he had done so, which is an offence punishable under Section 11(1) r/w Section 12 of the Act. Accordingly, conviction cannot be set aside.

5. As seen from the record, P.W.1 is related to the appellant as bava (first cousin). During the course of examination of witnesses,

suggestion was made that A3 had lent amount to P.W.2 and there were differences regarding non-payment of the said amount.

6. The prosecution has filed bonafide certificate Ex.P10 and marked it through the Investigating Officer. In the evidence of Investigating Officer, there is no mention that he approached the college for the certificate. Bonafide certificate is not marked through the person who has issued the said certificate. Even admitting that certificate issued by the college, the date of birth mentioned in the said certificate cannot be accepted as true and correct. The prosecution ought to have collected either the municipal certificate or the certificate by the hospital where P.W.1 was born. In the absence of any evidence regarding date of birth, it cannot be said that the victim was a minor when the incident has taken place. However, even according to her own admission, she completed intermediate education, which normally is completed at the age of 17 years. The evidence produced by the prosecution regarding the age cannot be taken into account as correct.

7. However, the appellant had caught hold of the victim and dragged her into the bushes. It amounts to intruding upon the privacy of woman which is punishable under Section 509 of IPC.

8. In the result, the conviction of the appellant under Section 11(1) r/w 12 of the Act is set aside and the appellant is convicted for the offence under Section 509 of IPC. The sentence of imprisonment is reduced to the period already undergone by the appellant. The fine component remains unaltered.

9. Accordingly, the Criminal Appeal is partly allowed. Consequently, miscellaneous applications, if any, shall stand closed.

Date: 24.08.2023
kvs

K.SURENDER, J

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