

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

Criminal Appeal No.400 OF 2021

Between:

Bellamkonda Suman

... Appellant

And

The State of Telangana,
Through Sub-Inspector of Police,
Chatrinaka, rep. by Public Prosecutor

..Respondent

DATE OF JUDGMENT PRONOUNCED :23.11.2023

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 their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No.400 of 2021

% Dated 23.11.2023

Bellamkonda Suman

... Appellant

And

\$ The State of Telangana,
Through Sub-Inspector of Police,
Chatrinaka, rep. by Public Prosecutor

... Respondents

! Counsel for the Appellant: Sri B.Shankar

^ Counsel for the Respondents: Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ 2023 (1) ALT (CRI.)(SC) 249 (D.B)

² (2019) 9 SSC 608

³ 2020 (10) SCC 108

⁴ (2015) 7 SCC 423

⁵ (2017) 14 SCC 359

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.400 OF 2021****JUDGMENT:**

1. This Criminal Appeal is filed by the appellant/accused, aggrieved by the judgment in S.C.No.304 of 2017 dated 11.10.20201 passed by the Special Sessions Judge for Fast Tracking the Cases Relating to Atrocities Against Women-cum-XI Additional Metropolitan Sessions Judge, Hyderabad wherein the appellant was convicted for the offence under Section 376(2)(n) of IPC and sentenced to undergo rigorous imprisonment for a period of ten years and also fine of Rs.1,000/-, further sentenced to undergo imprisonment for a period of seven years under Section 420 of IPC and fine of Rs.1,000/- and also sentenced to undergo simple imprisonment for a period of two years under Section 506 of IPC and also to pay fine of Rs.2,000/-.

2. P.W.1 is the victim girl. She lodged a complaint on 08.08.2016 stating that she was acquainted with the appellant herein since six years. The appellant followed her saying that he was in love and want to marry her. Believing the version of

the appellant, she also loved the appellant. The appellant pressurized for sexual intercourse and since the appellant promised to marry, they had sexual intercourse several times. However, the appellant was postponing the marriage on one pretext or the other. After dodging the issue for some time, the appellant refused to marry her. Since appellant refused to marry, complaint was filed with the police.

3. On the basis of the complaint, the police registered the case for the offence under Section 376(2)(n), 420 and 506 of IPC. After investigation, charge sheet was filed.

4. Learned Sessions Judge examined P.Ws.1 to 22. Exs.P1 to P29 were brought on record by the prosecution during the course of trial.

5. Learned Sessions Judge having considered the evidence, convicted the accused.

6. Learned counsel appearing for the appellant would submit that in the entire evidence of P.W.1, there is no mention that she had given consent for physical relation under

the misconception of fact that the appellant would marry her. There are several contradictions in the evidence of P.W.1 which are elicited during cross-examination. The said contradictions in the evidence go to the root of the case to show that P.W.1 had developed the case only to implicate the appellant. Even admitting that the narration given by P.W.1 was correct, none of the ingredients of Section 376(2)(n), 420 of IPC are made out.

7. Learned counsel further submits that there is an inordinate delay of nearly five years in lodging the complaint. There are no reasons explained as to why the delay occurred.

8. Learned counsel relied on the judgment of **Naim Ahamed v. State (NCT of Delhi)**¹, wherein the Hon'ble Supreme Court held that unless consent was given under the misconception of promise of marriage, it does not amount to rape.

¹ 2023 (1) ALT (CRI.)(SC) 249 (D.B)

9. In **Pramod Suryabhan Pawar v. The State of Maharashtra and others**², the Hon'ble Supreme Court held that in the case of consensual physical relation, there cannot be any criminality. Similar view was taken by the Hon'ble Supreme Court in the case of **Maheshwar Tigga v. State of Jharkhand**³. In **Manik Taneja and another v. State of Karnataka and another**⁴, the Hon'ble Supreme Court held that mere allegation of abuse without any specific narration will not amount to an offence under Section 506 of IPC. Reliance was also placed in the case of **Anjan Kumar Sarma v. State of Assam**⁵ to support his argument that suspicion cannot take place of legal proof.

10. On the other hand, learned Additional Public Prosecutor would submit that the victim/P.W.1 has narrated in detail that the appellant was following her and promised to marry her, pursuant to which, they had physical relationship over a

² (2019) 9 SSC 608

³ 2020 (10) SCC 108

⁴ (2015) 7 SCC 423

⁵ (2017) 14 SCC 359

period of time. In fact, P.W.1/victim had suffered miscarriage on account some tablets being given by the appellant. Promising to marry and having physical relationship over a period of time would amount to making false promise of marriage and having physical relationship would attract an offence of rape and cheating. Accordingly, the appeal deserves to be dismissed.

11. Having perused the statement of P.W.1 during the course of trial, all the events narrated in the evidence before the Court are complete omissions in the statement recorded under Section 161 of Cr.P.C. The omissions were proved through the investigating officer. PW1 narrated in detail several events regarding meeting at different places, specific details of such places, several persons having knowledge about their relation and meetings, the appellant allegedly having sexual intercourse, P.W.1 carrying pregnancy and accused giving medicines to abort pregnancy, running into three pages.

12. In the written complaint dated 08.08.2016, which is Ex.P1, it is stated that the appellant followed her stating that

he would marry her and was loving her. She believed him and over a period of six years, she had physical relationship. They were in love. Several times P.W.1 asked the appellant to marry her. However, the appellant refused to marry her. For the said reason of having physical relation over a period of six years and not agreeing to marry, P.W.1 requested to take action against the appellant.

13. No explanation is given as to why narration that was made before the Court was not earlier stated to the police. If the specific details as narrated in the chief examination were provided, the police would have investigated. The complaint was given after being in physical relation with the appellant for six years. It is unlikely that so many details and events would not have been mentioned in the complaint. It is not the case that the complaint was given when she was not in proper frame of mind or that she was under any kind of influence. The details and incidents were also not stated during examination by the police under Section 161 Cr.P.C. The said development during the examination before the Court clearly

suggests that evidence was given to falsely implicate the appellant. It cannot be said that the entire chief examination when several events are narrated, all the events regarding meeting at different places, the appellant allegedly having sexual intercourse, P.W.1 carrying pregnancy, accused keeping medicines to abort pregnancy etc., cannot be missed. There arises any amount of suspicion regarding the version stated before the Court being correct.

14. There may be several reasons as to why marriage could not take place. Only for the reason of the appellant not marrying P.W.1, it cannot be said that offence of rape and cheating is made out when there are no allegations made at the stage of filing the complaint or at the time of recording Section 161 Cr.P.C statement. As already discussed above, several instances were narrated nearly after three years of the complaint during trial. The said version given in the Court cannot be relied upon when no reasons are given as to why such specific details were not narrated either in the complaint or in the subsequent examination by the police under Section

161 of Cr.P.C. In the present case, the evidence of PW1 marred with improvements and embellishments does not fall into the category of evidence of 'sterling' quality but suspicious and vengeful.

15. In view of above discussion, the appellant succeeds and conviction recoded by the Sessions Judge under Sections 376(2)(n), 420 and 506 of IPC in S.C.No.304 of 2017 on 11.10.2021 is hereby set aside.

16. Accordingly, the Criminal Appeal is allowed. Since the appellant is on bail, his bail bonds shall stand cancelled. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 23.11.2023

Note: LR copy to be marked.

B/o. Kvs