

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

Criminal Appeal No.1 OF 2022

Between:

Badak Pandey

... Appellant

And

The State of Telangana,
rep. by Public Prosecutor,
High Court of Telangana.
..Respondent

DATE OF JUDGMENT PRONOUNCED :29.11.2023

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

K.SURENDER, J

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

+ CRL.A. No.1 of 2022

% Dated 29.11.2023

Badak Pandey

... Appellant

And

\$ The State of Telangana,
rep. by Public Prosecutor,
High Court of Telangana

... Respondent

! Counsel for the Appellant: Smt.Kathyaeni Ramshetty

^ Counsel for the Respondents: Public Prosecutor

>HEAD NOTE:

? Cases referred

HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 1 of 2022****JUDGMENT:**

1. This Criminal Appeal is filed aggrieved by the judgment in SC No.249 of 2016 dated 16.10.2021 passed by the Metropolitan Sessions Judge, Cyberabad at L.B.Nagar whereby, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of three years for the offence under Section 7 read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short "the Act").

2. The case against the appellant, according to the victim girl is that she was studying 6th class in St. Mary School. P.W.1 is her mother. L.W.3 is her father. She knows the appellant. He used to reside in the second floor of the building. They used to stay in the first floor of the building. On 13.09.2015 after victim and her sister came back from school, they left the bag at home and went out opposite to their house for attending nature call in open place. After that, the accused, who was residing in the second floor, lifted her and took under the tree and removed her dress and slept on her.

Then, she shouted and called her mother (P.W.1), who came, lifted the accused and slapped him. Thereafter, P.W.1 called the father of the victim girl and also brother and both of them beat the appellant and handed over to the police and lodged complaint. The victim girl was examined by the police. Thereafter, she was taken to the Magistrate Court wherein the learned Magistrate recorded her statement.

3. On the basis of the complaint filed by P.W.1, the mother of the victim girl/P.W.2 narrating the said facts, crime was registered. After investigation, the police filed charge sheet.

4. Learned Sessions Judge examined P.Ws.1 to 8 and marked Exs.P1 to P5 on behalf of the prosecution. The appellant examined two witnesses in defence.

5. Learned Sessions Judge found the appellant guilty and convicted as stated supra.

6. Learned counsel appearing for the appellant would submit that the trial Court committed an error in convicting the appellant when there are clear inconsistencies and improvements made during the course of trial by the witnesses. There also discrepancies

in records regarding the way in which investigation had taken place. In fact, at the earliest point of time, the evidence was that one person (narrated as oka vyakthi, when translated into English, is one person) committed the alleged offence. However, the mother states that she knew the appellant six months. If that is the case, it is highly improbable that at the initial stages, it was referred that 'a person' had committed the offence and did not specify the name of the appellant who was residing in the very same building. P.W.2/victim girl statement cannot be believed since the date of the alleged incident which is 13.09.2015 was a Sunday. The question of going to school and coming back would not arise. The victim was tutored to make a false statement against the appellant. During the course of cross-examination of the victim girl, there are several discrepancies, which go to the root of the case. The details of the wearing apparel were not given.

7. Learned counsel further submits that the evidence does not disclose that there was sexual intent on the part of the accused. The witness did not establish the presence of the accused at the scene. It was not firmly established as to where the incident occurred. Different witnesses gave different versions on the scene of

offence. None of the witnesses had clearly stated about the scene as to where the alleged incident had taken place. The alleged witness P.W.3 was not present at the scene as claimed by him. It is evident from the fact that there are discrepancies regarding apprehending or assaulting the appellant. In the absence of any convincing evidence, prosecution's failure to establish the case against the appellant, the trial Court committed error in invoking the presumption under Section 29 of the Act.

8. It was further argued that there is any amount of delay in recording Section 164 Cr.P.C statement and the victim was never sent for medical examination. The victim ought to have been examined by a woman police officer, which was not done. The roommates of the appellant were not examined and the Investigating Officer did not know that the appellant was living along with D.Ws.1 and 2.

9. Further D.Ws.1 and 2 entered into the witness box and spoke about the father of the victim being an alcoholic and was constantly fighting with the appellant. In fact on 13.09.2015, there was a quarrel between the father of the victim girl namely Venkatesh

(LW3) regarding drinking water connection. In fact, he harassed the appellant and lodged a false complaint. Though the father was examined during the course of investigation and statement was recorded, however, he was given up during the course of trial. There are no criminal antecedents of the appellant and on account of such clear discrepancies in investigation and also the statements of witnesses, conviction has to be set aside.

10. The victim was aged around seven years when the alleged incident had taken place. The incident occurred on 13.09.2015 and complaint was also lodged on the same day. In the complaint, it was stated that when the victim girl went to answer nature calls, the appellant had misbehaved with her by lying on her. The appellant was beaten with the help of neighbours and he was taken to the police station.

11. The said version is consistent both in the statement made during the course of investigation and also before the Court. Though the witnesses were cross-examined extensively, the basic version of the victim going to answer nature call and the appellant lying on her is consistent. Though several contradictions were

brought on record regarding the statements made and also the scene of offence, such minor discrepancies will not in any manner affect the version of the victim girl. No parent would go to the extent of falsely implicating a person stating that the 7 year old child was abused. A seven year old girl would not speak with such clarity and withstand cross examination, if the incident had not taken place. In view of above facts and circumstances, there are no grounds to interfere with the judgment of the trial Court.

12. The concerned Court shall cause appearance of the accused and send him to prison to serve out the remaining part of the sentence.

13. Criminal Appeal is dismissed. Consequently, miscellaneous applications, if any, shall stand dismissed.

K.SURENDER, J

Date: 29.11.2023.

Note: LR copy to be marked.

B/o.kvs

HONOURABLE SRI JUSTICE K.SURENDER

Criminal Appeal No.1 of 2022

Date:29.11.2023

kvs