

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

Criminal Appeal No.783 OF 2023

Between:

Kathula Vasu

... Appellant

And

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

... Respondent

DATE OF JUDGMENT PRONOUNCED : 90.11.2023

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. 783 of 2023

% Dated 09.11.2023

Kathula Vasu

... Appellant

And

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

... Respondent

! Counsel for the Petitioner: Sri M.V.Venu

^ Counsel for the Respondent: Addl. Public Prosecutor for

>HEAD NOTE:

? Cases referred

HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 783 of 2023****JUDGMENT:**

1. This Criminal Appeal is filed aggrieved by the judgment in SC POCSO No.190 of 2022 dated 10.08.2023 passed by the Special Judge for Expeditious trial and Disposal of Rape and Protection of Children from Sexual Offences Act Cases at Mahabubabad wherein, the appellant was convicted and sentenced to undergo rigorous imprisonment for a period of 20 years for the offence under Section 3 read with Section 4 of the Protection of Children from Sexual Offences At, 2012 (for short “the Act”).

2. The case of the prosecution is that P.W.2, who is the victim girl was aged around 14 years when the incident had taken place. According to P.W.2, she went to the house of her senior paternal uncle namely Vijaya Bhaskar. On 05.09.2022, complaint was lodged by the father of the victim girl, who was examined as P.W.1, that the victim girl was kept in his brother’s house as he was undergoing treatment. P.W.1 went to his house after treatment and found that the victim girl who came back from his brother’s place was not active and sad. When questioned P.W.2/victim girl allegedly informed that while she was in her uncle’s house, her cousin namely Sandeep laid hands on her and kissed her. He

further threatened not to raise her voice. On the next day, the appellant Vasu, who is the cousin of the said Sandeep informed her that he likes her. The appellant tried to commit rape on her. He pressed her chest and waist and did not leave her though she resisted. However, he forcibly committed rape on her. The said incident was narrated to father/P.W.1, 20 days after the incident. Police complaint was lodged.

3. On the basis of the said complaint, the victim girl was sent for medical examination. P.W.8 examined the victim girl and gave final opinion that there was no medical evidence of recent sexual intercourse as there was no semen and spermatozoa.

4. Further, no blood or foreign body or hair was found. However, P.W.8 opined that intercourse may have happened as the hymen was not in-tact. Ex.P7 is the FSL report and Ex.P8 is the final opinion.

5. Learned Sessions Judge, on the basis of the solitary evidence of the victim girl found that the appellant was guilty.

6. Learned counsel appearing for the appellant would submit that the learned Sessions Judge had convicted the appellant without there being any corroborative medical evidence. Admittedly, there were no seizures and medical evidence is not supporting the prosecution case.

7. On the other hand, learned Additional Public Prosecutor would submit that the victim girl/P.W.2 has stated that the appellant had forcibly raped her. The said statement would suffice to convict the appellant. Admittedly, the incident of rape occurred 20 days prior to lodging of complaint, as such the question of finding any semen or spermatozoon on the vaginal smears of the victim does not arise. In the said circumstances, there cannot be any other corroboration except for the testimony of the victim girl.

8. The basis on which learned Sessions Judge convicted the appellant is the evidence of P.W.2. Relevant portion during chief examination of victim/P.W.2 is as follows:

“On the next day afternoon hours, accused-Vasu came. He is cousin of Sandeep. He told me that he likes me. At that time my brothers were not there. The accused tried to commit rape on me. He pressed me on my chest and waist and that he did not leave me, though I resisted him. Later he forcibly committed rape on me.”

9. The girl was aged around 14 years when the incident had taken place. When there is no corroborating medical evidence or any other oral corroborative evidence, the Court has to place reliance on the testimony of the victim. If the testimony inspires confidence of the Court, the sole testimony can be made basis to convict the accused. However, in the

cases where a statement is made that the accused had committed 'rape', the Court has to be cautious before concluding that the offence of rape has been committed.

10. The statute describes what amounts to penetrative sexual assault under Section 3 of the Act of 2012, which reads as follows:

“3. Penetrative Sexual Assault:

A person is said to commit "penetrative sexual assault" if—

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Section 375 of Indian Penal Code reads as follows:

“375. Rape.-- A man is said to commit "rape" if he--

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person”

11. As seen from the provisions, specific details are given as to what amounts to penetrative sexual assault and what constitute 'rape'. The Court has to draw conclusions on the basis of evidence narrated by the victim as to how the ingredients of the provisions are attracted. The use of word 'rape' by the victim girl in the present circumstances cannot be made sole basis for the Court to assume or draw inference that penetrative sexual assault had taken place.

12. It is understandable in cases of married women or the victim having knowledge about what constitutes 'rape', to accept the statement that the victim was subjected to rape. There is nothing on record in the evidence of P.W.2 that she had knowledge about sexual act or what constitutes 'rape'. Nothing specific is narrated by the victim girl except stating that the accused committed rape on her.

13. In the event of any corroborating medical evidence or any other direct evidence if the victim states that she was subjected to 'rape', the Court can draw conclusion regarding the statement of the victim that she was subjected to rape taking into consideration the other corroborating circumstances.

14. However, when the victim is a child and in one word, she states that 'rape' was committed, it would become imperative in such cases when there is no other corroborating evidence, to know from the victim

girl as to what is meant by her narration of 'rape'. The victim girl need not be humiliated in the Court, however, the Judge has to record his satisfaction that the victim child or girl has an understanding of what is meant by 'rape' or what the victim meant by stating that 'rape' was committed. The said understanding of the victim as to what is meant by word 'rape' by the Court concerned is for the reason of the specific requirements given under Section 3 of the Act of 2012 as to what constitutes penetrative sexual assault and what constitutes 'rape' under Section 375 IPC.

15. As already stated, in the event of finding any injuries on the body or semen or spermatozoa or any foreign hair, blood etc., from the specimens collected in any manner to connect that an act of 'rape' has occurred, such details by the victim may not be required since there would be sufficient corroborating evidence.

16. The offence punishable under Section 6 of the Act of 2012 is punishable for life and minimum punishment upto 20 years. Under Section 376, 376-A, 376-B, 376-C, 376-D and 376-E of IPC, the offences are punishable for life. The offences are heinous and grievous in nature. It is the bounden duty of the Courts not to be carried away by the incident and there cannot be any moral conviction. The finding of the Court would result in sending a person to life imprisonment in such

cases, the Court has to be more cautious and duty is cast upon the Courts to infer from the admissible evidence on record regarding the allegation of rape.

17. Normally the witnesses are briefed by the public prosecutor and/or the close relatives of the victim. It is necessary that under the circumstances such as in the present appeal when there is no other corroborating evidence, the verbatim statement in the language spoken to by the victim should be recorded and then translated by the presiding officer or any competent person having knowledge of the language. If the victim only states that she was subjected to rape, the Court may clarify from the victim by putting questions as contemplated under Section 165 of Indian Evidence Act. The said procedure would rule out any doubts regarding the evidence, as such ambiguous statement would result in benefit to the accused and also would not be enough for the Court to draw conclusions. This Court is aware of the fact that there cannot be any leading questions during chief examination. However, in the cases of child witnesses who would already be under trauma, the happening can be clarified so as to make the statement of the victim basis for conclusion of guilt or otherwise of an accused. Seeking such clarification would not amount to putting leading questions to the witness during chief examination.

18. In view of above discussion, the prosecution has not proved the ingredients of Section 5 of POCSO Act or Section 375 of IPC, consequently, it cannot be held that the victim girl was raped. However, the victim had narrated that the accused pressed her chest and waist and caught hold of her. It clearly falls within the definition of Section 7 of the Act, which reads as follows:

“7. Sexual assault:

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

19. Accordingly, the conviction under Section 6 of the Act of 2012 is hereby set aside. The appellant is convicted for the offence under Section 8 of the Act of 2012 and sentenced to undergo rigorous imprisonment for a period of three years.

20. Accordingly, the Criminal Appeal is partly allowed. Since the appellant is in jail, he shall be released after completion of the imprisonment of three years.

K.SURENDER, J

Date: 09 .11.2023.

Note: LR copy to be marked.

B/o.kvs

HONOURABLE SRI JUSTICE K.SURENDER

Criminal Appeal No.783 of 2023

Date: 09.11.2023

kvs