

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 702 OF 2010

Appeal under Section 372(2) of Cr.P.C, aggrieved by the Judgment in S.C.No.186 of 2009, dated 28.05.2010 on the file of the VII Additional Metropolitan Sessions Judge, Hyderabad.

Between:

Mohd. Azmatullah, S/o: late Rahmatullah,
R/o H.No.18-12-418/O/59, Omer Colony,
Hafeezbaba Nagar, Hyderabad. ...Appellant/Accused

AND

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

For the Appellant : Sri P. Krishna Prakash, Advocate

For the Respondent: The Public Prosecutor

The Court made the following: JUDGMENT

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.702 OF 2010****JUDGMENT:**

This Criminal Appeal is filed questioning the judgment in S.C. No.186 of 2009 dated 28.05.2010 passed by the learned VII Additional Metropolitan Sessions Judge, Hyderabad.

2. The appellant was convicted for the offences under Sections 376, 201 and 506 of the Indian Penal Code, (*for short the 'IPC'*) and sentenced to undergo rigorous imprisonment for a period of ten years under Section 376 of the I.P.C. Aggrieved by the conviction, the present appeal is filed.

3. Briefly, the case of the prosecution is that P.W.1/complainant is the victim. The complainant lodged a complaint on 14.08.2006 stating that she studied in the Madarsa Darul Hasnaf School at Hafeez Baba Nagar, Hyderabad since 2003 when she was aged around 15 years. However, she was resident of Warangal

District. The appellant committed rape on her several times and threatened not to disclose to anyone. In the year 2006, she was carrying pregnancy of three months. Appellant herein arranged marriage for complainant with P.W.3-Mohd. Fasiuddin. The victim-P.W.1 suffered with ill health, for which reason, she was taken to the hospital. There it was found that the victim-P.W.1 was carrying pregnancy of 17 to 18 weeks. P.W.1 revealed that the appellant was reason for pregnancy. Thereafter, appellant forcibly took her to the hospital and got aborted the pregnancy.

4. On the basis of said complaint, police investigated the case and filed charge sheet for the offences punishable under sections 376, 201, 506 and 313 of the I.P.C.

5. Learned Sessions Judge after trial, acquitted the appellant for Section 313 of the I.P.C.

6. Learned counsel appearing for the appellant submitted that a false case has been filed against the

appellant at the instance of P.W.4. However, even according to P.W.1, she was divorced. The allegation of rape for a period of three years is unbelievable. There was no any such rape complaint filed against the appellant. A false complaint is filed which is apparent from the record, as such, accused has to be acquitted.

7. The learned Public Prosecutor argued that as seen from Ex.P.2-Ultrasound scan report for obstetric, the complainant was carrying 17 to 18 weeks pregnancy on 16.03.2006 itself. The date of marriage is 23.02.2006. She was pregnant at the time of her marriage. It is the appellant who had arranged the marriage of the victim with P.W.3. since she was carrying pregnancy at the time of marriage. It is admitted fact that she studied in Madarsa Darul Hasnaf School and the allegations made by P.W.1-victim has to be believed and the appeal has to be dismissed.

8. The marriage of P.W.3 was performed on 23.02.2006. P.W.1 was taken to the hospital and it was

found that she was pregnant on 16.03.2006. However, she stated that on 18.03.2006 the appellant had taken her to the doctor and got aborted her pregnancy.

9. The allegation of P.W.1 being subjected to rape over a period of three years is stated for the first time on 14.08.2006 when the complaint was lodged. While she was studying in Madarsa Darul Hasnaf School, it was not informed either to the police or anyone else regarding such rape being committed by this appellant.

10. The attendance register of P.W.1 was collected by the Investigating Officer. Ex.P.29 is the translation copy of attendance register. As seen from Ex.P.29, name of the victim is shown as Tahseen Begum and she is studying VII Class in the year 1996. The evidence is brought on record to substantiate that she infact studied during the years 2003-2006. Further, the Investigating Officer also did not collect any evidence to show that this appellant was infact teacher in the said Madarsa Darul Hasnaf School either during the period of 1996-2003 or

2003-2006. On such discrepant evidence, it is not believable that the appellant was a teacher in the said school. Ex.P.29 shows that P.W.1 studied during the year 1996. There is no other evidence that is collected from Madarsa Darul Hasnaf School to substantiate that P.W.1 was studying during the year 2003-2006. Furthermore, there is a delay of 5 months in lodging the complaint and such delay is not also explained. P.W.1 accompanied P.W.4 to the hospital and it was known that she was carrying pregnancy of 17 to 18 weeks as on 16.03.2006. However, no evidence is collected as to when the pregnancy was aborted and where and by whom. There are such inconsistencies in the case which remains unexplained creating any amount of doubt regarding prosecution case being correct. For the said reason, benefit of doubt is extended in favour of the appellant.

11. Accordingly, the Criminal Appeal is allowed setting aside the conviction against the appellant under Sections 376, 201 and 506 of the I.P.C. in S.C. No.186 of 2009

dated 28.05.2010 passed by the learned VII Additional Metropolitan Sessions Judge, Hyderabad. The bail bonds if any, shall stand discharged.

Miscellaneous applications pending, if any, shall stand closed.

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**SD/- B.S. CHIRANJEEVI
JOINT REGISTRAR
GD
SECTION OFFICER**

To,

1. The VII Additional Metropolitan Sessions Judge, Hyderabad(With Records).
2. One CC to Sri P. Krishna Prakash, Advocate [OPUC]
3. One CC to The Public Prosecutor, High Court for the state of Telangana at Hyderabad [OPUC]
4. The Station House Officer, Kanchanbagh, Police Station, Hyderabad.
5. The Superintendent, Central Prision, Chaerlapally, Medchal- Malkajgiri District.
6. Two CD Copies

KNK
TJ

HIGH COURT

DATED:30/06/2023



JUDGMENT

CRLA.No.702 of 2010

APPEAL IS ALLOWED

8/11/23
4/9/23