

(2009) 07 GUJ CK 0053
In the Gujarat High Court
Case No : Criminal Appeal No. 127 of 2003

Babubhai Udesinh Parmar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 201, 302, 376

Citation : (2009) 07 GUJ CK 0053

Hon'ble Judges : J.C. Upadhyaya, J; Bhagwati Prasad, J

Bench : Division Bench

Advocate : B.S. Supehia, for the Appellant; J.K. Shah, APP, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Upadhyaya, J.—The appellant herein, who was original accused in Sessions Case No. 300/2000, came to be convicted for the offences punishable under Sections 376, 302 and 201 of the Indian Penal Code [for short "IPC"] by the Ld. Joint Sessions Judge, Fast Track Court, Anand, by judgment and order dated 15/1/2003 was awarded sentence of rigorous imprisonment [RI] for life and fine of Rs. 5,000/-, in default of payment of fine, imprisonment for one year for the offence punishable u/s 376 of the IPC, RI for life and fine of Rs. 5,000/-, in default of payment of fine, imprisonment for one year for the offence punishable u/s 302 of the IPC and RI for three years and fine of Rs. 1,000/-, and in default of payment of fine, SI for one month for the offence punishable u/s 201 of the IPC, preferred this appeal in this Court.

2. The prosecution case, in nutshell, is that the accused came to be arrested in connection with Vidhyanagar Police Station C.R. No. I-48/1998 for the offences punishable under Sections 302 and 201 of the IPC and when he was on police remand on 24/8/2000, he disclosed that in the year 1996 and on or near the festival of Janmashtami, he had kidnapped one girl Sunita aged about 8 to 9 years and had taken to the outskirts of Karamsad on his bicycle in one field and

in one room, which was in the said field, he had raped Sunita and thereafter, he had strangled Sunita by throttling and had killed her and at about 12-00 O'clock in the midnight, he had removed dead-body of Sunita from said room and the dead-body was thrown in a gutter by him. The accused was thereafter taken to the Ld. Judicial Magistrate First Class, Anand, for recording his confessional statement u/s 164 of the Code of Criminal Procedure [for short "Cr. P.C"]. The Ld. Magistrate recorded the confessional statement of the accused. PSI R.G. Patel, Vidhyanagar Police Station lodged FIR before the Circle PSI, Vidhyanagar regarding the incident, which came to be registered. During the course of police investigation, the accused, in presence of panchas, had shown the place where the incident had taken place as well as the place where the dead-body was thrown. Skull and skeleton consisting of bones came to be found from the place shown by the accused. The same were forwarded to FSL for appropriate examination and opinion. After collecting required material for the purpose of lodgement of charge-sheet, charge-sheet came to be filed in the Court of Ld. Judicial Magistrate First Class, Anand. Since the offence was exclusively triable by the Court of Sessions, the Ld. Magistrate committed the case to the Court of Sessions at Anand, which came to be registered as Sessions Case No. 300/2000.

3. The Ld. Trial Judge framed charge against the accused at exh. 3 for the offences punishable under Sections 302, 376 and 201 of the IPC, to which the accused did not plead guilty and claimed to be tried. Thereafter, the prosecution adduced its oral and documentary evidence. After the conclusion of the evidence adduced by the prosecution, the Ld. Trial Judge recorded further statement of the accused u/s 313 of the Cr. P.C and the accused denied, generally all the allegations levelled against him by the prosecution and stated that he was falsely implicated in this case. However, he expressed his desire for being examined as witness in this case. Therefore, before the trial Court, the evidence of the accused himself is at exh. 62. After considering the evidence on record and the submissions made on behalf of both the sides, the Ld. Trial Judge recorded the conviction of the accused for the offences punishable under Sections 302, 376 and 201 of the IPC and awarded the sentence as hereinbefore referred to in this judgment.

4. Learned advocate Mr. Suphia for the appellant accused submitted that the prosecution case is solely based upon the so called confessional statement allegedly made by the accused before the Ld. Magistrate u/s 164 of the Cr. P.C. That the confessional statement allegedly came to be made by the accused because of the threat administered to him by the police. To prove it, the accused himself stepped into the witness box and on oath he stated that the confessional statement was not voluntarily made. Thus, he duly retracted the confession. The so called confessional statement is not corroborated by any evidence. Therefore, it is submitted that the appellant - accused deserves acquittal and the appeal may be allowed.

5. Per contra, Ld. APP Mr. Shah for the State submitted that in the impugned judgment, the trial Court discussed the evidential value of the confessional statement of the accused at length. That no illegality or irregularity came to have been caused by the concerned Magistrate while recording the confession. The confessional statement is duly supported by other circumstantial evidence adduced by the prosecution. Therefore, it is submitted that the appeal may be dismissed.

6. We have examined the record and proceedings in context with the submissions made on behalf of both sides.

7. We have re-appreciated and re-examined the entire oral and documentary evidence adduced by the prosecution in this case. We have considered the impugned judgment rendered by the trial Court. Considering the evidence on record, it transpires that the entire prosecution case is based upon the confessional statement made by the accused before the concerned Ld. Magistrate. The prosecution examined the concerned Ld. Magistrate Mr. Patel PW 1 at exh. 7 and the confessional statement is produced at exh. 8. We have carefully examined the evidence of Ld. Magistrate Mr. Patel. It clearly transpires that before the confessional statement, which came to be recorded on 5/9/2000, adjournments were granted to the accused to consider whether he should make the the confessional statement or not. The accused came to be produced before him on 24/8/2000. Immediately the confessional statement was not recorded, but proper opportunity was given to the accused to peacefully and patiently consider whether he should give such confessional statement or not. He was apprised of the fact that if at all he makes the confessional statement, the same would be used against him. Thereafter, on 5/9/2000, in the open Court, the confessional statement exh. 8 came to be recorded and at that time proper care was taken that no police officer or any police personnel remains present in the Court. After putting preliminary questions to the accused, the confessional statement came to be recorded. It was pointedly asked to the accused as to whether he has any complaint of ill-treatment against police or that he was making the confession on account of any threat or promise given by the police, to which he clearly replied that he had no complaint against the police and that he was not making the confessional statement under any duress, coercion, threat or promise and that he was repenting for the act he committed and, therefore, he wanted to make the confession.

7.1. Considering the evidence of Ld. Magistrate Mr. Patel exh. 7 and the confessional statement exh. 8, the accused in clear terms narrated the incident as to how he kidnapped the girl, who was passing near his house for the purpose of going to her school and how he kidnapped her on his bicycle, stating that he would see her off at her school and thereafter, how he took the girl on his bicycle to the outskirts of Karamsad city and kept in one deteriorated room in the field. He stated that the girl was threatened by him and thereafter, he raped her and then he suffocated her by throttling with the help of a rope and that the girl had

died. He kept the dead-body of the girl in that room till 12-00 O'clock in the mid-night and thereafter, he carried the dead-body of the girl and threw the dead-body in a gutter by opening lid of gutter.

8. In the impugned judgment, the Ld. Trial Judge, at length, discussed the evidence adduced by the Ld. Magistrate Mr. Patel and the confessional statement exh. 8 and rightly came to the conclusion that the evidence is legal and reliable. It is true that the accused himself stepped into the witness box and adduced his oral evidence at exh. 62. In his oral evidence, he stated that as he was beaten by the police and he was threatened by police, he gave his confessional statement to the Ld. Magistrate. However, in his cross-examination, he admitted that he was asked by the Ld. Magistrate as to whether he has any complaint of ill-treatment by the police or not and he stated that he has no such complaint. He stated that after his confessional statement was recorded, he did not send any application through jail retracting his confession. In the impugned judgment, the Ld. Trial Judge elaborately discussed the oral evidence adduced by the accused himself and rightly did not rely upon the evidence. The Ld. Trial Judge examined the oral evidence of the accused exh. 62 and the further statement of the accused exh. 56 and observed that even the challenge made by the accused to the confessional statement in his further statement exh. 56 and his evidence exh. 62 is not consistent. We are of the considered opinion that the Ld. Trial Judge did not err in appreciating the evidence in form of the confessional statement of the accused in this case. The Ld. Trial Judge, therefore, rightly accepted the evidence regarding the confessional statement.

9. The evidence regarding the confessional statement is corroborated by the fact that the accused in presence of panchas and Investigating Officer, had shown the place where the offence of rape and the murder was committed. He led the police and panchas to the place where, according to him, the dead-body of the deceased girl was thrown in the gutter and the skull and skeleton in form of bones came to be discovered from the place shown by the accused. The skull and skeleton were forwarded to the FSL Officer Mr. Acharya, whose evidence is recorded as PW 4 exh. 13 and according to his evidence, he had examined the bones and had collected the photographs of deceased Sunita and had forwarded the same to the expert for appropriate opinion. Considering the evidence of Dr. Satish Patel, PW 13 exh. 27, he had examined the skull and the bones after performing necessary test and he opined that the skull and skeleton was of human being aged about 7 to 10 years. The prosecution examined the relative witnesses of deceased Sunita, who deposed that from the day of the incident, Sunita was found missing. Father of Sunita, named Ramkishan Ramavtar, on 8/9/1996 had lodged an FIR in Vidhyanagar Police Station regarding missing of his daughter Sunita from 17/8/1996. A copy of the FIR is produced at exh. 50. It is true that the expert opinion regarding DNA could not be obtained. However, the circumstantial evidence as adduced by the prosecution duly supports the confessional statement of the accused. In the impugned judgment, the Ld. Trial Judge, by assigning cogent and convincing reasons at length, discussed the

above aspect of the matter and rightly came to the conclusion that the prosecution successfully proved its case beyond any reasonable doubt against the appellant - accused. We see no reason to interfere with the impugned judgment and order rendered by the trial Court. The appeal, therefore, is devoid of any merit and deserves dismissal.

10. For the foregoing reasons, the appeal stands dismissed. The conviction and sentence recorded by the trial Court are affirmed.