

(2010) 11 GUJ CK 0033
In the Gujarat High Court
Case No : Criminal Appeal No. 14 of 2007

Bharat Mansukhbhai Makwana	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

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

Citation : (2010) 11 GUJ CK 0033

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Sikander Saiyed, for Mumtaz Saiyed, for the Appellant; H.L. Jani, Ld. Addl. Public Prosecutor for Opponent 1, for the Respondent

Judgement

Z.K. Saiyed, J.—The Appellant has preferred the present appeal against the judgment and order of conviction and sentence dated 30th November 2006 passed by the learned Additional Sessions Judge, Fast Track Court, Porbandar, in Sessions Case No. 34 of 2005, whereby the learned Judge has convicted the Appellant-accused under Sections 376 of the Indian Penal Code.

2. It is the case of the prosecution that on 15th May 2005 at about 08:00 hours in the morning, someone came from behind, snatched her chunni and put a cloth in her mouth. It is also the case of the complainant that she could not see anything while rape was committed. Because of this, the prosecutrix cried and therefore, her father came there. The Appellant was beaten by the family members of the prosecutrix. In the evening hours, the prosecutrix narrated the incident to her mother and thereafter, complaint was lodged. Panchnama of seen of offence was drawn in presence of two panchas and statements of witnesses were recorded.

3. After filing closing pursis by the prosecution, statement u/s 313 of the Code of Criminal Procedure, 1973 of the Appellant was recorded. The Appellant pleaded not guilty and claimed to be tried.

4. Thereafter as the case is exclusively Sessions triable, case was commit to the Sessions Court, Porbandar. Thereafter, the matter was transferred to the Court of learned Presiding Officer (Fast Track), Porbandar.

5. Thereafter, trial was conducted before the learned Additional Sessions Judge. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence.

6. After hearing both the sides, the learned Additional Sessions Judge, Fast Track Court, Porbandar, by his judgment and order of conviction dated 30th November 2006 passed in Sessions Case No. 34 of 2005, convicted the Appellant for the offence punishable u/s 376 of the Indian Penal Code and ordered to undergo rigorous imprisonment for a period of seven years and fine of Rs. 02,000/-, and in default of payment of fine, ordered to undergo simple imprisonment for a further period of three months. However, it was clarified that the period, which the Appellant has spent in the judicial custody, shall be given as a set of.

7. Being aggrieved by and dissatisfied with the said judgment and order of conviction dated 30th November 2006 passed by the learned Additional Sessions Judge, Fast Track Court, Porbandar, the Appellant hereinabove has preferred the present Criminal Appeal before this Hon"ble Court.

8. I have heard Mr. Sikander Saiyed, learned Counsel for the Appellant and Mr. H.L. Jani, learned Additional Public Prosecutor, appearing on behalf of the Respondent-State.

9. Mr. Saiyed has contended that he is not arguing the matter on merits, but paying to release the Appellant considering the undergone period as sentence. He is also contended that the present Appellant is a poor man and looking to the position of his family, Appellant is required to be released considering the undergone period as sentence. He has also contended that the Appellant is behind the bars for more than five years. He has also contended that looking to the overall facts and circumstances of the case, lenient view is required to be taken in the matter and therefore, the Appellant is required to be set at liberty by considering the period already undergone by the Appellant.

10. Heard Mr. H.L. Jani, learned Additional Public Prosecutor for the Respondent-State. He has supported the judgment and order of conviction passed by the learned Judge. He has contended that looking to the charge framed against the Appellant, order passed by the learned Judge is absolutely just and proper. He has also read the documentary evidence produced on record and contended that learned Judge has not committed any error in convicting the Appellant-accused. He, therefore, contended that the present appeal is required to be dismissed.

11. I have gone through papers produced before me and the judgment and order passed by the learned trial Court. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned Counsel for the parties.

12. Looking to the facts and circumstances of the case and looking to the evidence on record, I am of the opinion that conviction imposed upon the Appellant is very harsh. I have also gone through the jail report produced by Mr. H.L. Jani. Jail report shows that the Appellant is behind the bars for more than five years. I am of the opinion that when the Appellant is behind the bars for more than five years, if the sentence already undergone by the Appellant-convict may be treated as sentence, same would meet with the ends of justice. Even looking to the submissions advanced by the learned Counsel for the Appellant and circumstances of the case, sentence imposed upon the Appellant is required to be reduced and modified on the ground of sympathy also.

13. Hence, in view of the foregoing reasons, present appeal is partly allowed. The judgment and order of conviction dated 30th November 2006 passed by the learned Additional Sessions Judge, Fast Track Court, Porbandar, in Sessions Case No. 34 of 2005, is hereby confirmed. However, the judgment and order of conviction dated 30th November 2006 passed by the learned Additional Sessions Judge, Fast Track Court, Porbandar, in Sessions Case No. 34 of 2005 is hereby reduced and modified to the extent of sentence which the Appellant has already undergone. The Appellant shall be set at liberty forthwith, if he is not required to be detained in any other case. The rest of the judgment and order of conviction dated 30th November 2006 shall remain unaltered. Bail bond, if any, shall stand discharged. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.