

(2016) 01 GUJ CK 0061
In the Gujarat High Court

Case No : Criminal Appeal (Against Conviction) No. 841 of 2014

Devendrabhai Budhiyabhai Gamit

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 374
Penal Code, 1860 (IPC) — Section 376, Section 452

Citation : (2016) 01 GUJ CK 0061

Hon'ble Judges : Rajesh H. Shukla, J.

Bench : Single Bench

Advocate : Madansingh O. Barod, Advocate, for the Appellant; H.L. Jani, APP, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.

1. The present Appeal under Section 374 of the Code of Criminal Procedure, 1973 is directed against the impugned judgment and order rendered in Sessions Case No. 8 of 2003 by the District and Sessions Court, Tapi at Vyara dated 19.10.2013 recording the conviction of the Appellant - Accused for the offence under Sections 376 and 452 of the Indian Penal Code imposing the sentence and fine as stated in detail in the impugned judgment and order.

The facts of the case briefly summarized are as follows.

2. As it transpires from the material and evidence on record, when the complainant victim was slipping at her house on 8.8.2012 after attending her domestic work, at about 11:30 at night, the Appellant Accused (son-in-law) is said to have come and gagged her and thereafter committed the offence of rape. When the son of the victim came from outside, the Appellant Accused is said to have ran away and therefore on the next day morning the Sarpanch was called and thereafter the complaint was lodged being FIR No. 160 of 2012 with Vyara

Police Station for the alleged offence under Section 376 IPC.

3. As the offence is triable by the Court of Sessions, the Court of Sessions proceeded with the trial after it was committed by the Court of Magistrate.

4. In order to bring home the charges levelled against the Appellant Accused, the prosecution has examined the witnesses, including the complainant victim and other witnesses and also relied upon the other evidences.

5. After the recording of the evidence of the prosecution witnesses was over, the further statement of the Appellant Accused under Section 313 of the Cr.P.C. was recorded.

6. After hearing the learned Advocate for the Appellant and learned PP, the learned Sessions Judge, as stated above, recorded the conviction on appreciation of material and evidence.

7. It is this judgment and order which has been assailed in the present Appeal on the grounds stated in the memo of Appeal.

8. Heard learned Advocate Shri Madansingh O. Barod for the Appellant Accused and learned APP Shri H.L. Jani for the Respondent - State of Gujarat.

9. Learned Advocate Shri Barod for the Appellant Accused has referred to the testimony of the victim PW-1 at Exh. 7 and her complaint at Exh. 8. Learned Advocate Shri Barod has also referred to the testimony of the two Doctors PW-12 and PW-13 at Exh. 23 and Exh. 27 respectively. Learned Advocate Shri Barod referring to this evidence has tried to submit that the offence is not established as there are no marks of any injury. He submitted that the victim was aged about 43 years and therefore could have offered any resistance. He further submitted that there are contradictions in the versions stated by the victim. Learned Advocate Shri Barod submitted that on the one hand it is said that her mouth was gagged whereas on the other hand it is stated that she raised the shout and when the son came who had gone out, the Appellant Accused ran away. Learned Advocate Shri Barod therefore submitted that as there are no marks of injury as could be seen from the medical evidence and the fact that she was a able woman, it could be a matter of consent or a false implication. Learned Advocate Shri Barod also tried to submit that as the Appellant Accused is the son-in-law who had married her daughter and there were some problems, he could have been falsely implicated particularly when the victim is said to have illicit relations with other person for which she was also scolded. Learned Advocate Shri Barod therefore submitted that the offence of rape is not established beyond reasonable doubt. He pointedly referred to the FSL report at Exh. 37, Serological reports at Exh. 38 and Exh. 41 and submitted that it is not believable that if the offence was committed such a negative report could be made with the absence of any blood stain and semen on either clothes or any genital part of the victim. Learned Advocate Shri Barod therefore extraneously submitted that the impugned judgment and order recording the conviction may be quashed and set

aside.

10. In support of his submission, learned Advocate Shri Madansingh Barod referred to and relied upon the judgment of the Hon"ble Apex Court reported in , (2012) 8 SCC 73 in case of K. Venkateshwarlu v. State of Andhra Pradesh and emphasized the observations made in paragraph 6. He emphasized that the FSL report would have provided a clinching circumstances. As observed in that judgment, because of lack of such report, the benefit of doubt was given. Similarly, he referred to and relied upon the judgment of the Hon"ble Apex Court reported in , (2011) 7 SCC 130 in case of Krishan Kumar Malik v. State of Haryana and he has pointedly referred to Head Note-J. Learned Advocate Shri Barod submitted that in the facts of the case, FSL report is negative and therefore it would go in favour of the Appellant Accused and therefore the impugned judgment and order may be quashed and set aside.

11. Learned APP Shri H.L. Jani referred to the testimony of the witnesses with details and submitted that it cannot be said that there was no resistance offered. Learned APP Shri Jani also submitted that it cannot be said that there are no marks of injury. For that learned Advocate Shri Jani pointedly referred to the medical evidence in the form of testimony of the Doctor PW-12 at Exh. 23. Learned APP Shri Jani submitted that in the cross-examination it has been admitted that there were some injuries found on the cheek of the Appellant Accused and the clothes were torn. Learned APP Shri Jani submitted that the marks of injuries which were found on the right cheek of the Appellant Accused itself would suggest about the resistance offered by the victim. Learned APP Shri Jani also referred to the testimony of PW-13 at Exh. 27 and submitted that this witnesses has also stated that the victim while giving the history has stated as to what has transpired. He submitted that there are some marks of injuries found on the left shoulder. Learned APP Shri H.L. Jani referred to the medical certificate at Exh. 28 and pointedly referred to the history as well as the injuries and submitted that it cannot be said that there are no marks of injuries. He also referred to the panchnama of the scene of offence at Exh. 12A and submitted that the holder of the light was broken as stated by her. Similarly, the pieces of broken bangles were also found which would also suggest about the resistance offered by the victim. Learned APP Shri Jani therefore submitted that the submission that the offence is not committed or is not established is misconceived and may not be accepted. Learned APP Shri Jani submitted that even otherwise it is well settled that merely because there are no injuries by itself would not be sufficient. In support of this submission, learned APP Shri Jani has referred to and relied upon the judgment of the Hon"ble Apex Court reported in , (2010) 5 SCC 445 in case of Santhosh Moolya and anr. v. State of Karnataka wherein the Hon"ble Apex Court has made the observation that no marks of injuries found either on the Accused or on the victim does not lead to the inference that the Accused has not committed the forcible intercourse. Learned APP Shri Jani further submitted that the presence of the Accused is established and the marks of injuries are also found which corroborate the version of the

victim which cannot be brushed aside. Learned APP Shri Jani also submitted that merely because the FSL report is negative by itself would not be a ground to discard the entire evidence of the prosecution. He submitted that in a judgment referred to by the learned Advocate for the Appellant Accused, it was a case of circumstantial evidence and therefore the observations have been made that, had there been a FSL report, it could have been relevant. He submitted that in the facts of the case there is a direct evidence of the victim which cannot be brushed aside. He therefore submitted that the present Appeal may be dismissed.

12. In view of the rival submissions, it is required to be considered whether the present Appeal deserve consideration.

13. As it transpires from the rival submissions and appreciation of material and evidence on record, the victim is the mother-in-law and unless there is a strong motive she would not implicate the Appellant - Accused falsely. Further, there is no evidence led on this aspect of motive by the defence to bring on record any material. Therefore considering the testimony of the victim and the testimony of the son PW-5, the presence of the accused is established. Further, the victim who is a village woman has stated as to what has transpired and how she was overpowered. It is required to be stated that it cannot be readily accepted that there are no marks of injuries inasmuch as the medical evidence in the form of testimony of the Doctor PW-13 at Exh. 27 who examined her has stated about some injuries on the left shoulder. It is required to be mentioned that she was a full grown woman and therefore there may not be injuries and in the medical certificate at Exh. 28 she has stated about the history which has been recorded by the Doctor in his certificate at Exh. 28. Thus, the victim has given the history of rape by the Appellant Accused who is a son-in-law, with name, which has been recorded by the Doctor in the medical certificate at Exh. 28. Further, the another Doctor PW-12, who had examined the Appellant Accused has also admitted in the cross-examination that there were marks of injuries (bruises) on his right cheek and the clothes were torn. Though in the history the accused is said to have stated about such injury caused due to falling down from motorcycle. There is no further corroboration. Again the panchnama of scene of offence at Exh. 12-A referred to the pieces of broken bangles of the victim which again suggest about some amount of resistance which is also corroborated by the medical evidence. It is in this background the submission of learned Advocate Shri Barod cannot be readily accepted.

14. The Hon''ble Apex Court in a judgment reported in , (2015) 4 SCC 762 in case of Deepak v. State of Haryana has observed that though there were some effect in the investigation, the Hon''ble Apex Court has made the observation that the testimony of the prosecutrix is vital and unless there are compelling reasons, there is no reason for rejecting the testimony. It is also well settled by catena of judicial pronouncements that for such offences the conviction could be based solely on the testimony of the victim if her testimony is found to be trustworthy and reliable. A useful reference can be made to the observations

made by the Hon"ble Apex Court in a judgment reported in , (1996) 2 SCC 384 in case of State of Punjab v. Gurmit Singh. In the facts of the case as stated above, the children of the victim have also corroborated and therefore the submission mainly emphasizing on the absence of marks of injury and the FSL report cannot be readily accepted. The Hon"ble Apex Court in a judgment in case of State of Punjab v. Gurmit Singh (supra) has made the observations:

"The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable..... Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity least that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

15. Further, the Hon"ble Apex Court in a judgment reported in , (2009) 16 SCC 69 in case of Rajinder v. State of Himachal Pradesh has made the observations:

"While appreciating the evidence of the prosecutrix, the Courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for."

16. Therefore, having regard to the aforesaid discussions, the impugned judgment and order cannot be said to be erroneous which would call for any interference.

17. It is in these circumstances, the present Appeal cannot be entertained and deserves to be dismissed. Therefore the impugned judgment and order recording conviction of the Appellant Accused deserves to be confirmed and the present Appeal cannot be entertained and accordingly stands dismissed.