

(2001) 08 GUJ CK 0066
In the Gujarat High Court
Case No : First Appeal No. 83 of 2000

Dilavar Rustamkhan

APPELLANT

Vs

Naynaben Vanmalidas Chauhan

RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 96

Citation : (2001) 3 GLR 2722

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Advocate : Suresh M. Shah, for the Appellant;

Final Decision : Dismissed

Judgement

M.R. Calla, J.—This First Appeal (by the original defendant No. 3 in the civil suit) is directed against the judgment and decree passed by the 6th Joint Civil Judge (S.D.), Bhavnagar in Special Civil Case No. 124 of 1990 on 22-12-1999. The original-plaintiffs Naynaben Vanmalidas aged 22 years and Sagirbabi Dilavarbhai i.e., minor daughter of the plaintiff No. 1 filed a suit for damages and compensation claiming a sum of Rs. 65,000/- with 12% interest. The suit was filed on 18-8-1990 and the State of Gujarat, Social Welfare Officer and Dilavar Rustamkhan were impleaded as defendant Nos. 1 to 3 respectively.

2. The case of the plaintiff No. 1 was that she was living with her widowed mother Champaben Vanmalidas and was doing the household work. Her father Vanmalidas had expired six years ago and her mother Champaben was doing the work of "Hamaal" at the Railway Station. It appears that the State of Gujarat and the Social Welfare Officer were impleaded as defendant Nos. 1 & 2 in the suit by saying that it was the duty of the Welfare State to protect the women and the members of Scheduled Caste & Scheduled Tribe against atrocities. The plaintiff No. 1 had affairs with the defendant No. 3 when she was of 15 years of age and the defendant No. 3 had promised to marry her and also had sex with her forcibly. The plaintiff No. 1 was conceived because defendant No. 3 had sex with

her and thereupon her mother lodged a complaint against the defendant No. 3 on 10-2-1984 at Police Station Division A that the plaintiff No. 1 had delivered a female child as a result of the forcible sex with the plaintiff No. 1 by the defendant No. 3. It was alleged that on this account, the defamation was suffered and there was loss of reputation in the society and physical and mental torture was suffered. A notice dated 18-9-1986 was given to the defendant Nos. 1 and 2 u/s 80 of the CPC and since the State had failed to take any action against the defendant No. 3 for the unlawful act of forcible sex and rape committed by him against the plaintiff No. 1 resulting into the pregnancy and the delivery of a female child to her, a sum of Rs. 60,000/- was claimed as a compensation and a sum of Rs. 5,000/- with 12% p.a. interest was claimed from the defendants by the plaintiff Nos. 1 and 2 respectively. It was also alleged that the defendant No. 3 was doing the business of mike and decoration at Bhavnagar and was earning a sum of Rs. 2000-2500.

3. The defendant No. 1 and 2 did not file any written statement but on behalf of the defendant No. 3, the written statement at Exh. 17/A was filed and the claim of the plaintiff was sought to be traversed. The allegations of having any affairs with the plaintiff No. 1 by the defendant No. 3 were denied and allegations of forcible sex, rape and the birth of female child to the plaintiff No. 1 at his instance were also denied and it was pleaded that the defendant No. 3 was married for last 8 years and he had 4 children, and therefore, the suit be dismissed.

4. In the trial, after the arguments were heard, an application was moved that the claim on behalf of the plaintiff No. 2 is not pressed in this suit and the same will be agitated separately for their maintenance and the liberty to agitate such claim was kept reserved. Such application moved by the plaintiff No. 1 was accepted and the name of the minor plaintiff No. 2 was deleted.

5. On the basis of the pleadings of the parties, the following issues were framed and the findings were recorded in respect of each of the issues as indicated against each of these six issues as under :-

1. Whether the plaintiff proves the contention taken in the plaint? Partly in affirmative.
2. Whether the defendant proves defence put forward by written statement? Partly in negative.
3. Whether the suit is maintainable in present form? In affirmative
4. Whether the suit is barred by limitation? In negative.
5. Whether the plaintiff is entitled to the relief claimed? If Yes, What? Partly in affirmative.
6. What order and decree? As per final order.
6. In support of the claim, the plaintiff had examined herself at Exh. 30. Vide

Exh. 38, it was shown that the plaintiff No. 1 was born on 13-5-1965 and that she was of backward class. Whereas the defendant No. 3 did not produce any evidence in his support despite sufficient opportunity. His defence was closed.

7. Issues No. 1 and 2 have been discussed by the trial Court in Para 7 to 10 of the impugned judgment. The trial Court has considered the evidence of plaintiff Naynaben at Exh. 30 that she was living in her father's house at Station Road, Bhavnagar. Her father had expired 15 years back and she was living with her widowed mother, younger sister Daksha and younger brother Vijay. Her mother was doing the job of a "Hamaal" and used to live out on the job for most of the time. The plaintiff knew the defendant No. 3 for last 10 to 12 years and as and when she used to go for domestic work at the houses of others, defendant No. 3 used to follow her. He used to visit her house frequently, they developed an affair and the defendant No. 3 had made her to believe and gave a commitment that he would marry her and keep her as a wife. That the defendant No. 3 had sex with the plaintiff of and on and the plaintiff became pregnant. When the mother of the plaintiff came to know about it, the representatives of her case approached the defendant No. 3, but the defendant No. 3 refused to marry the plaintiff. The plaintiff's mother then filed a complaint Exh. 31 at the Police Station Division A when the plaintiff gave birth to a female child at Sir Takhatsinh Hospital of Bhavnagar. She has deposed that the defendant No. 3 was the father of this female child delivered by her and the defendant No. 3 had sex with her by making her to believe that he would marry her. She has deposed that he then stopped visiting her house, she was cheated, and therefore, the notice dated 18-9-1986 was given to him, but the defendant No. 3 did not care. She also stated that the defendant No. 3 was doing the business of light decoration and sound service and now that when he had refused to marry her, it was a case of breach of promise and she stands defamed and has lost her reputation. Therefore, she was entitled to damages/compensation of Rs. 60,000/-. The testimony of the plaintiff remained unshaken in the cross-examination on behalf of the defendant No. 3 and the defendant No. 3 did not examine any witness in support of his claim. The trial Court has found on the basis of the evidence that the plaintiff was not entitled to get anything from the respondent Nos. 1 & 2 because there is no such scheme with the Government for payment of compensation in such cases, but she was entitled to the compensation of Rs. 60,000/- with 12% p. a. interest from the defendant No. 3.

8. Learned Counsel for the appellant (defendant No. 3) has submitted that on the basis of the evidence of the plaintiff alone; the finding could not have been arrived at so as to hold that the child born to her was at the instance of the appellant (defendant No. 3); that the frame of the suit was changed; that legally it could be said on the basis of the evidence that the plaintiff had partly proved her case nor it could be said that the defendant-appellant had partly failed to prove his defence; that the application for re-opening of the trial was wrongly rejected on 26-10-1999 and that the adjournment was wrongly refused.

9. I have considered the submissions made by the learned Counsel for the appellant and have gone through the impugned judgment and decree as also the records and proceedings which were summoned by order dated 1-3-2000.

10. Having gone through the evidence, this Court finds that the trial Court has not committed any error in arriving at the findings of issue Nos. 1 and 2 and further that on issue No. 3, the suit has been rightly held to be maintainable. Whereas the application in forma pauperis had been filed in 1987, the same was accepted on 18-8-1990, it could not be said that the suit was time-barred. Issue No. 4 had therefore been correctly decided. On the basis of the findings of issue Nos. 1 to 4 as above, the trial Court rightly came to the conclusion that the plaintiff was entitled to compensation of Rs. 60,000/- from the defendant No. 3 with interest at the rate of 12% p.a.

11. Apart from the fact that the present appellant-defendant No. 3 did not lead any evidence and the statements at Exh. 30 as had been made by the plaintiff also finds corroboration from the complaint which had been filed by her mother with the Police in the year 1986. The plaintiff had proved her case that the female child born to her was the daughter of defendant No. 3, yet in order to afford an opportunity to the appellant even at this stage. The Court called upon the learned Counsel for the appellant on 23-2-2000 as to whether the appellant was prepared to go for D.N.A., test at his cost or not? The learned Counsel for the appellant sought time and thereafter when the matter came up before the Court. On 1-3-2000 it was given out by the learned Counsel for the appellant that the appellant was not ready to go for D.N.A. test at his cost and he can't afford the cost for the D.N.A., test. In this age when such facts can be proved on the basis of scientific investigations and this Court itself had made an offer even at this stage to the appellant to go in for D.N.A., test, he has refused to go in for the same. The plea that he cannot afford the cost for D.N.A., test appears to be a poor excuse and pretext. That by itself is enough to draw an adverse inference against the appellant and in absence of any other evidence led by him before the trial Court in support of his case and in view of the evidence led by the plaintiff, if a sum of Rs. 60,000/- has been directed to be paid by the appellant to the plaintiff for exploiting a minor girl for sex as a result of which she got pregnant and delivered a child and then his refusal to marry her, it cannot be said that such a judgment and decree warrants interference by this Court. Strictly speaking, a sum of Rs. 60,000/- to the plaintiff is only a poor apology for the humiliation and defamation suffered by her at the instance of the appellant. The ground that the application for reopening the trial was wrongly rejected on 26-10-1999 has no basis. The appellant-defendant No. 3 failed to adduce any evidence despite repeated opportunities at different stage and the grievance that the adjournment had been wrongly refused is also erroneous, in as much as, even for the purpose of filing the written statement four adjournments were granted. In any view of the matter, this Court finds that so far as defendant No. 3 is concerned, the issue No. 1 was fully proved and so far as issue No. 2 is concerned, the appellant-defendant No. 3 had failed to prove his case at all,

inasmuch as, he did not lead any evidence. The issue of limitation has been correctly decided and suit was rightly held to be maintainable and the plaintiff was rightly found to be entitled to the damages/compensation to the tune of Rs. 60,000/-. There is no question of any change in the frame of the suit nor it can be said that the plaintiff failed to prove the case which was pleaded by her or that the order had been passed on the basis of a case which was not pleaded.

12. This Court does not find any merit in this appeal. The same is hereby dismissed. Record and Proceedings of the trial Court be sent back forthwith.

13. Appeal dismissed