

(2011) 07 GUJ CK 0131
In the Gujarat High Court
Case No : Criminal Appeal No. 1780 of 2008

Kamleshsinh Kalusinh Thakor

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 107, 114, 363, 366, 506(2)

Citation : (2011) 07 GUJ CK 0131

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

Bench : Single Bench

Advocate : J.V. Japee, for the Appellant; H.L. Jani, LD. Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The present appeal, filed u/s 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of conviction and sentence dated 31st May, 2008 passed by the learned 2nd Additional Sessions Judge, Sabarkantha at Himmatnagar, in Sessions Case No. 64 of 2007, whereby the learned 2nd Additional Sessions Judge was pleased to convict the Appellant for the offence punishable under Sections 363, 366, 506(2) and 114 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of five years, and also imposed fine of Rs. 1,000/- to pay jointly, and in default of payment of fine, sentenced him to undergo simple imprisonment for a further period of three months. The learned Judge has also directed the Appellant to pay Rs. 10,000/- (Ten Thousand Only) as compensation to the parents of the victim, and in default of payment of compensation, the Appellant has to undergo simple imprisonment for a further period of three months.

2. The case of the prosecution in brief is that on 14th January, 2007, when the complainant was returning back from the house of one Rahulbhai, on the way she had seen one Pravinsinh Chauhan and the present Appellant standing near

the motorcycle and said Pravinsinh had having pressed her mouth, compelled her to sit on the motorcycle and the present Appellant had driven the motorcycle. It is alleged in the complaint that the present Appellant had left Pravinsinh and the complainant at Rakhial Railway Station and thereafter he returned back to Talod. It is the say of the complainant that she was forcibly raped by said Pravinsinh. In pursuance to the said incident, a complaint was filed under Sections 363, 366, 376, 506(2) and 114 of the Indian Penal Code.

3. Thereafter, after completion of investigation, the Investigating Officer had submitted the charge-sheet. The Sessions Case No. 64 of 2007 was registered before the learned Second Additional Sessions Judge, Sabarkantha at Himmatnagar.

4. Thereafter, charge came to be framed against the accused persons for the offences as mentioned above and read over to the accused persons. The accused persons did not plead guilty to the charge and claimed to be tried.

5. In order to bring home the charges against the accused persons, prosecution has examined in all 19 witnesses and also produced documentary evidence in support of its case.

6. Thereafter, after conclusion of oral as well as documentary evidence on the part of prosecution, further statement of accused person u/s 313 of the Code of Criminal Procedure, 1973 was recorded wherein the accused not pleaded guilty.

7. After hearing both the sides, the learned Second Additional Sessions Judge, Sabarkantha, at Himmatnagar, by his judgment and order of conviction and sentence dated 31st May, 2008, in Sessions Case No. 64 of 2007, convicted the Appellant as stated above.

8. Being aggrieved by and dissatisfied with the said judgment and order of conviction and sentence dated 31st May, 2008, passed by the learned Second Additional Sessions Judge, Sabarkantha at Himmatnagar, the Appellant has preferred the present appeal before this Hon"ble Court.

9. Heard Mr. J.V. Japee, learned Counsel for the Appellant and Mr. H.L. Jani, learned Additional Public Prosecutor for the Respondent-State.

10. Mr. Japee has contended that the Appellant was not aware that as to for what purpose the main accused Pravinsinh had taken the complainant with him. Even the present Appellant was not aware that as to what had happened after he left the main accused and the complainant at Rakhiyal Railway Station. Mr. Japee has also contended that the complainant had accompanied the main accused to different places silently without any hue and cry. The complainant had moved to different public places with the main accused and therefore, it can be said that she must have consented. Therefore, no offence can be said to have been made out against the main accused and consequently, the present Appellant cannot be implicated for abatement. He has further contended that the prosecution has failed to prove the ingredients of provision of Section 107 of the Indian Penal

Code. Mr. Japee has also contended that the prosecution has failed to prove instigation or intentional aid by the present Appellant in the commission of offence by the main accused. Later on Mr. Japee has contended that he is not arguing the matter on merits, but arguing the matter only for the purpose of quantum. Mr. Japee has contended that the Appellant is the bread winner for his family. He has further contended that looking to the facts of the case as well as evidence produced on record, conviction imposed upon the Appellant is very harsh. He has also contended that looking to the circumstantial evidence and evidence produced on record, some lenient view is required to be taken in the matter.

11. As against this, Mr. Jani, learned Additional Public Prosecutor for the Respondent-State, has supported the judgment and order of conviction and sentence passed by the learned Second Additional Sessions Judge. He has contended that looking to the charge framed against the Appellant, order passed by the learned Second Additional Sessions Judge is absolutely just and proper. Mr. Jani has contended that the Appellant had drive the motorcycle and dropped the main accused-Pravinsinh and the complainant at Rakhiyal Railway Station. He has further contended that the main accused had abducted the complainant by pressing her mouth and the present Appellant had helped the main accused in doing so. Thus, ingredients of provision of Section 107 regarding abatement is proved against the present Appellant. He, therefore, contended that the present appeal is required to be dismissed.

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

13. It appears from the papers produced before me that at the time of incident, the prosecutrix was aged about 16 years and 07 months. Thus, the prosecutrix is more than 16 years of age, but below 18 years. The present Appellant helped the main accused-Pravinsinh in abducting the complainant. The Appellant had driven the motorcycle and dropped the main accused as well as the complainant at Rakhiyal Railway Station. Thus, ingredients of provision of Section 107 regarding abatement is proved beyond reasonable doubt. It appears that the main accused had forcibly taken away the complainant and fully aware about the fact that the main accused is trying to kidnap the complainant, the Appellant helped the main accused. I have also considered the submission of Mr. Japee that the Appellant is of young age and he is bread winner for his family. At present the Appellant is on bail. Therefore, looking to the facts of the case, evidence produced on record and circumstantial evidence, I am of the opinion that conviction imposed upon the Appellant is harsh. I am of the opinion that if the sentence imposed upon the Appellant be reduced, same would meet with 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.

14. Hence, in view of the foregoing reasons, present appeal is partly allowed. The impugned judgment and order of conviction dated 31st May, 2008 passed by the learned Second Additional Sessions Judge, Sabarkantha at Himmatnagar, in Sessions Case No. 64 of 2007 is hereby confirmed. However, the judgment and order of sentence dated 31st May, 2008 passed by the learned Additional Sessions Judge, Sabarkantha at Himmatnagar, in Sessions Case No. 64 of 2007 is hereby reduced and modified to the extent that now the Appellant shall have to undergo rigorous imprisonment for a period of three years instead of rigorous imprisonment for a period of five years for the offence punishable under Sections 363, 366 and 506(2) read with Section 114 of the Indian Penal Code. The Appellant is on bail. His bail bonds shall stand cancelled. The Appellant is, therefore, directed to surrender himself before the Jail Authority to undergo remaining sentence, if any, within a period of three weeks from today, failing which the trial Court concerned is directed to issue non-bailable warrant against the Appellant to effect his arrest. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.