
(1996) 07 GUJ CK 0009
In the Gujarat High Court
Case No : Criminal Appeal No. 322 of 1996

Keshvanand Harinarayan Swami

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 09-07-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 326, 376, 376(2)

Citation : (1997) CriLJ 3173(1)

Hon'ble Judges : Sharad D. Dave, J;H.R. Shelat, J

Bench : Division Bench

Advocate : J.M. Buddhbhatti and K.J. Shethna, for the Appellant; D.N. Patel, LD. Public Prosecutor, for the Respondent

Judgement

S.D. Dave, J.—The Appellant Keshvanand Swami has been convicted by the learned Addl. Sessions Judge, Jamnagar, in Sessions Case No. 118 of 1994 vide the orders dated March 18,1996, for the commission of the offence punishable u/s 376(2)(c) IPC and has been sentenced to the R.I. for 10 years, and to a fine of Rs. 35,000-00; in default to the S.I. of two years. The appeal presented by the appellant has been admitted. The notice was given to the State on the question regarding the entitlement of the appellant accused to be released on bail at the post conviction stage.

2. We are thus concerned with a prayer for bail at the post conviction stage. The endeavour on the part of the learned counsel for the appellant was to convince us that, regard being had to the overall evidence on record, it is not possible for a Court to come to the conclusion that ultimately at the conclusion of the appeal the appellant shall necessarily have to undergo the sentence awarded to him by the trial Court. In other words, the contention coming from learned counsel for the appellant is that, if ultimately the proceedings against the appellant accused are to be resulted in acquittal and if the hearing of the Criminal Appeal, as usual, is likely to take very long, the appellant accused would be entitled to the orders of bail. A reference in this respect requires to be made

to the decision rendered by the Supreme Court in *Kashmira Singh Vs. The State of Punjab*, . The say of the Supreme Court is that, so long as the Supreme Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily unless there are cogent grounds for acting otherwise, release the accused on bail in case where special leave has been granted. It is pointed out that, the very fact that the Supreme Court has granted to the appellant special leave to appeal against his conviction shows that, in the opinion of the Supreme Court, he has *prima facie* a good case to consider and in the circumstances it would be highly unjust to detain him in jail any longer during the hearing of the appeal. A reference is also required to be made to another Supreme Court pronouncement in *Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh*, . It has been pointed out that, various aspects, including the nature of the charge and the nature of the evidence would be relevant and pertinent. It has been said that, it makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded into custody.

3. On the basis of these pronouncements of the Supreme Court, it could have been urged before us that, in the instant case the evidence as a whole would not lead us to believe that, ultimately the proceedings would result in the affirmation of the conviction of the appellant accused and if that would be the position, justice would demand that, instead of keeping the appellant behind the bars for a pretty long time and ultimately saying him that he has been acquitted and he is a free citizen would be meaningless. With a view to appreciate this contention, a reference to certain aspects of the evidence was found to be necessary. Learned counsel for the appellant Mr. Buddhbatti has taken us to various aspects of the case and to some extent to the details of the evidence tendered by the prosecution. The emphasis being laid by the learned counsel is that, the evidence brought in by the prosecution falls short of establishment of the charge for the offence punishable u/s 376(2)(c) IPC. On the other hand, learned Government Counsel Mr. D.N. Patel has urged with the assistance of the evidence on record that, except some minor discrepancies apart, the substratum of the case of the prosecution has been duly proved and that, when the prosecutrix remains unshaken so far as the main thrust of the charge is concerned, it cannot be inferred or legitimately conceived that in all probabilities the accused would ultimately be acquitted by this Court on the hearing of the appeal. Learned Government Counsel therefore urges that, the prayer for the bail of the appellant at the post conviction stage cannot and should not be countenanced by us.

4. Learned Government Counsel Mr. Patel while placing reliance upon the Supreme Court pronouncement in *State of Punjab Vs. Gurmit Singh and Others*, also urges that, the Courts must, while evaluating evidence in the rape cases should remain alive to the fact that in such cases no self-respecting woman would come forward in a Court just to make a humiliating statement against her honour. Ld. Government Counsel urges that, in Indian society a woman or a girl would not come out with a false accusation against a man and involve herself in

great peril. If a girl or a woman chooses to launch a false and frivolous prosecution against a man, she knows that she would be an out caste in the society and naturally therefore she would always be reluctant of involving anybody at the cost of her own life.

5. We do not for a moment suggest that in a rape case if the evidence of a prosecutrix is found worthy of credence and inspire confidence, we, as a rule, should insist for independent corroboration. Asking for independent corroboration to the same from a prosecutrix which otherwise appears to be credit worthy and unbiased so far as the substratum on the case of the prosecution is concerned, would amount to nothing less than an insult to the injury which she has suffered at the hands of the accused.

6. Our endeavour therefore should be to see as to whether the case presented by the prosecution and accepted by the trial Court can be said to be a case in which ultimately the appellant accused stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the appellant accused appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and

7. We have been taken through the evidence laid by the prosecution with all the necessary details. Before proceedings ahead to express our opinion in respect of the evidence presented by the prosecution, we may say by way of a brief resume that, the appellant who is popularly known as "Keshavanad Swami" has got an establishment at Dwarka known as "Sanatan Seva Mandal". The appellant accused inter alia used to run a hostel or a boarding house not only for the boys but for the girls also. It appears that, at all the relevant times about 30 girls and 250 boys used to stay in the hostel. There were certain recipe in the town which had assumed out of larger proportion and ultimately the inquiries were initiated. These inquiries and investigations had led into filing of about 9 cases against the appellant accused, inter alia for the offence punishable u/s 376 IPC. We have been told that, out of these cases as many as 8 cases have resulted in the acquittal. So far as the case on hand is concerned, it requires to be appreciated that, during this investigation or inquiry the statement of various people came to be recorded and ultimately on June 18. 1994, the complaint of Mitesh Shah, a boy aged about 15 years, who happens to be the elder brother of victim Rita came to be registered. Mitesh Shah in this belated complaint has stated that, before a period of about three months at about 1.00 p.m. he had seen his sister Rita coming out of the room of the appellant accused and she was in tears and she had complained before him that, she was ravished by the appellant against her will and without her consent. This FIR has resulted in the prosecution and the conviction of the appellant accused.

8. The Court below was required to firstly decide as to whether Rita could be said to be under the age of 16 years at the relevant time. The Court records have not

been relied on by the learned Addl. Sessions Judge, on the ground that, the persons who had gone for completing the records have not been examined. The reliance has been placed upon the medical evidence on record, which would go to show that, victim Rita could be in the age group of 15 to 17 years. Taking in to consideration the credence of the say of the girl also during her evidence, the Court below has come to the conclusion that, she should be taken as a girl below the age of 16 years. We have examined the evidence in this respect with the assistance of learned counsels for the appellant and for the State. We shall have to accept that, victim Rita must be between the age group of 15 to 17 years at the relevant time. This evidence would never lead us to a conclusion that the victim Rita had completed in all probabilities the age of 16 years.

9. When we go through the evidence tendered by victim Rita, we could see that there are certain discrepancies in her evidence. Her earlier version was that, she could be ravished by the appellant accused more than once. Putting her version precisely, we should say that, according to her, this relationship could have been repeated for 5 to 6 times. Any how, ultimately during her evidence at exhibit-11 she says that, this had happened only once. Thus, it is true that some exaggeration was made not only in the evidence before the Court below but in the FIR also. But it should not be overlooked that, the FIR could be filed at a very late juncture when the hue and cry in the town had reached at its peak and the police had gone in search of the brother of the prosecutrix, namely Mitesh Shah. Because of this discrepancy, we are not in a position to say that, the say of victim Rita regarding a one time affair occurrence could be thrown over board. She has stated in clear words that, she was called in the room of the appellant accused who was in lock parentis, not to her alone but all the girls staying in the hostel of the Ashram and later on she was made to remove her skirts and under garments, and later on she was ravished. This say which is the very basis for the establishment of the offence punishable u/s 376 IPC remains intact through out. We therefore are not inclined to accede to the request coming from learned counsel for the appellant to throw the entire evidence of the prosecutrix over board, because there has been some exaggeration.

10. It was sought to be urged with great vehemence that, there has been a very late filing of the FIR. This is a fact apparent and obvious. The girl and her brother were not in a position to say anything at the relevant time. Boy Miles, he appears, had to leave the hostel and had started to work at a local hotel and he used to stay there. When the inquiries in the affairs of the Ashram had started he was contacted and his belated FIR could be registered. The circumstances in which the victim and her brother was placed and the circumstances in which the inquiries had started and ultimately the complaint could be registered, we do not feel it proper and expedient to discard the say of the prosecutrix on the ground of the filing of the late FIR. I

11. It was sought to be suggested for and on behalf of the appellant accused that, there is no corroboration from the medical evidence. We have seen the

medical evidence under a close look. It is true that the medical expert could not see any injury or signs of violation. Moreover, it could be seen during the medical examination that the hymen was found to be intact and the passage was a narrow one. But it should not be over looked that the offence of rape would be complete in other circumstances also. It is not always necessary that there should be complete action of coitus for the constitution of the offence punishable u/s 326 IPC. A mere touch of visiting organ with the visited organ would be able to constitute the offence. The medical evidence says that, the possibility of a partial sexual action can not be ruled out. Therefore, merely because of the two aspects coming out from the medical evidence, we would not like to throw out the case of the prosecution coming from the mouth of the victim that there had been a sexual action against her will and without her consent.

12. We are conscious of the fact that, ordinarily if the evidence of a prosecutrix appears to be worthy of credence and if the discrepancies are brought on record are not major and vital in nature so as to nullify the case of the prosecution, then the Court should not seek for any corroboration. This settled legal position has been reported time and again. Learned Government Counsel in this respect draws our attention to the say of the Supreme Court in case of *The State of Punjab v. Gurmit Singh*, (supra). The Supreme Court prefers to put this principle in the following manner (at page 1735 (of Cri LJ) :

...The Courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a Court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be Viewed with doubt, disbelief or suspicion? 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.

13. But here we could see a lot of corroboration coming from the evidence of Mitesh, the complainant. He has stated that, on that fateful day he had seen victim Rita when he was sitting in the campus of the Ashram near the personal room of the appellant accused. Mitesh Says that, he had seen victim Rita coming out of the room of the appellant accused and she was found to be sobbing. Mitesh says further that, upon the inquiries being made by him, victim Rita had narrated the entire incident before him and later on the himself had gone to the appellant accused making agrivance in this respect. His say is that, he was threatened of dire consequences and therefore he had not revealed this to anybody. Any how, the fact remains that. Mitesh saw the complainant victim coming out of the room of the appellant and on inquiry the victim had narrated the incident to him, fully supports and corroborates the say of the prosecutrix. Therefore, though we should not be in search of the corroboration to the evidence of the prosecutrix in such cases, we find complete corroboration in this repsect coming from the evidence tendered by Mitesh, the brother of the victim.

14. It is true that the appellant accused is a Swami. He could have his own inhibitions and limitations. But the evidence of Dr. Gupta would go to show that the appellant accused was found not to be incapable of having a coitus. Therefore the inhibitions and the limitations and the principle of celibacy in which the appellant accused would be living at the relevant time would not lead us to believe that he was incapable of doing what has been alleged against him.

15. Thus upon a scanning of the evidence, we are unable to agree with the contentions coming from learned counsel for the appellant accused that, either there is absolutely no case against the appel lanl accused or that the evidence against him is so week or feeble in nature, that, ultimately in all probabilities the proceedings would terminate in favour of the appellant accused. For the very same reason we are unable to accept the contention coming from the appellant accused through his learned counsel that, it would be meaningless, improper for unjust to keep the appellant accused behind the bars for a pretty long time till he is found not to be guilty of the charges.

16. The facts and circumstances of the case and the nature of the evidence to which we have adverted to earlier would not oblige usito take a different view, even after a careful reference to the Supreme Court pronouncement in case of Gudikanti Narasimhulu and Kashmira Singh (supra).

17. The prayer for the bail therefore coming from the appellant accused cannot be countenanced and the same is hereby rejected. The notice in this respect shall stand discharged.

18. We would like to make it clear that, learned counsel Mr. Buddhabatti and learned Government Counsel Mr. D.N. Patel had asked for reasoned orders, either in case of rejection or the allowing of the application. It is therefore that, we have assigned the reasons rather in details.