

(2011) 09 GUJ CK 0143
In the Gujarat High Court

Case No : Criminal Revision Application No. 655 of 2005

Khodubha Bavansinh Jhala

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2011) 09 GUJ CK 0143

Hon'ble Judges : Bankim N. Mehta, J

Bench : Single Bench

Advocate : Utpal M. Panchal, for the Appellant; K.L. Pandya, APP for Respondent No. 1 and Mr. Y.M. Thakore, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Bankim. N. Mehta

1. The Petitioner has filed this revision application u/s 397 read with Section 401 of the Code of Criminal Procedure. and challenged the legality of judgment and order dated 16.5.2005 passed by the Additional Sessions Judge, Mehsana in Sessions Case No. 75 of 2005 acquitting the Respondent accused for the offences charged against him.

2. According to the prosecution case, victim girl, aged about 16 years was the daughter of first informant - Petitioner Khodubha Bavansinh. On 14.7.2003, the victim with other family members were sleeping in her house. In the morning, the victim was not found in the house, therefore, inquiry was made and the first informant came to know that the accused had kidnapped the victim with a view to compel her to marry him against her will and the victim also took away golden ornaments with her.

3. On the basis of the first information report lodged by Khodubha, offence was registered by Sathal Police Station and investigation was started. At the end of

investigation, charge sheet came to be filed against the accused for the offence punishable under Sections 363, 366 and 376 of the Indian Penal Code in the Court of CJM, Mehsana. As the offence was triable by Sessions Court, the case was committed to the Sessions Court, Mehsana and it was registered as Sessions Case No. 75 of 2005. The learned Additional Sessions Judge, Mehsana framed charge Exh-4 for the aforesaid offences against the accused and the charge was read over and explained to him. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence. After hearing the learned Additional Public Prosecutor and learned advocate for the accused, the Court acquitted the Respondent accused. Being aggrieved by the said decision, the Petitioner - first informant has preferred this revision application.

4. I have heard learned advocate Mr. Panchal for the Petitioner, learned advocate Mr. Thakore for the Respondent accused and learned APP Mr. Pandya for the Respondent State at length and in great detail. I have also perused the impugned judgment and record and proceedings of the trial Court.

5. Learned advocate Mr. Panchal submitted that the evidence produced before the trial Court indicates involvement of the accused in the offence of taking away the victim from the lawful guardianship of first informant. It is also proved that the victim was aged about 16 years and therefore, the trial Court committed error in appreciating the evidence and acquitting the accused. Therefore, the impugned judgment is required to be set aside and this revision application is required to be allowed.

6. Learned advocate Mr. Thakore for the acquitted accused submitted that FIR does not indicate involvement of the accused. Even, the prosecution has not examined the victim to prove that she was enticed away and rapped. There is no convincing evidence to prove involvement of the accused and therefore, the trial Court was justified in acquitting the accused and no jurisdictional error is committed by the trial Court.

7. Learned APP Mr. Pandya has supported the Respondent accused and has adopted the submissions advanced by learned advocate Mr. Thakor.

8. It appears from the record and proceedings of the trial Court that the Petitioner - first informant lodged FIR on the basis of information received by him as the victim was not found in the house. However, the prosecution has not examined the victim to prove that the accused enticed her away with a view to marry her against her will. Even, the evidence of the first informant PW 1 Khodubha Exh-7 indicates that he did not see that the victim ran away with the accused and has also admitted that he has no personal knowledge about the same. It also indicates that one Kalusinh informed him about running away of his daughter with the accused. In view of this evidence, it emerges that the witness had no personal knowledge about involvement of the accused in the offence.

9. The evidence of PW 2 Chenba Khodubha Exh-9 also indicates that she had no

personal knowledge about the involvement of the accused in taking away of the victim.

10. The medical evidence of PW 3 Nitaben Patel Exh-11 indicates that she has not given a definite opinion that the victim was raped.

11. In view of above evidence, there is no cogent and convincing evidence to indicate that the victim was enticed away by the accused and she was raped. Therefore, the trial Court was justified in acquitting the Respondent - acquitted accused and it has not committed any jurisdictional error. Therefore, the revision application is required to be dismissed.

12. In the result, the revision application fails and stands dismissed. The judgment and order dated 16.5.2005 passed by the Additional Sessions Judge, Mehsana in Sessions Case No. 75 of 2005 is hereby confirmed. Rule is discharged.