
(2008) 04 GUJ CK 0019
In the Gujarat High Court
Case No : Criminal Appeal No. 1514 of 2003

Maniyabhai Manabhai Uma

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Penal Code, 1860 (IPC) — Section 376(1), 376(2)

Citation : (2008) CriLJ 2801 : (2008) 3 GLR 2732

Hon'ble Judges : M.R. Shah, J;J.R. Vora, J

Bench : Division Bench

Advocate : Sadhana Sagar, for the Appellant; M.R. Mengdey, APP, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Vora, J.—Instant Appeal is preferred by the Appellant u/s 374 of the Code of Criminal Procedure, 1973, against the judgment and order delivered by Additional Sessions Judge, Fast Track Court, Panchmahals, Godhra, on 11th of September, 2003, in Sessions Case No. 127 of 2003, whereby the present appellant, being accused of the said case, came to be convicted for the offence punishable u/s 376(2)(f) of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of 10 years and to pay fine of Rs. 2,000/-, in default to undergo simple imprisonment of 15 days.

2. Short facts leading to conviction and sentence of the appellant are as under:

Victim, aged about 10 years, residing at village Bilvaniya, Taluka " Morwa, at about 3.00 p.m., had been to grazing her cattle. At about 4.00 p.m. for drinking water, she went to the house of the accused, which was nearby. The accused was all alone in the house at that time and the victim asked for water for drinking. The accused instead of offering her water, caught her and dragged her to his house and committed forcibly rape upon the victim. She started bleeding from her private part. She reached at her residence and narrated this incident to her

mother. Her mother found out father of the victim and at about 21.15 hours and thereafter they reached at Morwa Police Station and victim offered complaint before PSI Hirabhai Valabhai Rathod. The victim was sent to Government Hospital at Godhra, where she was examined by Dr. Ramchandra Kodarji Chouhan and found that the victim was badly ravished. Other Dr. L.M. Chandana also examined the victim and found tears on her private part. On registration of crime, a charge sheet came to be filed against the accused and the case was committed to the Court of Sessions, which was registered as Sessions Case No. 127 of 2003. The said Sessions Case made over to Additional Sessions Judge and Fast Track Court at Godhra and the said Trial Court framed charges against accused vide Exhibit-2 on 13th of June, 2003, to which accused denied and, therefore, he was put to trial.

3. Prosecution examined as many as 11 witnesses to prove its case and thereafter further statement of the accused u/s 313 of the Code of Criminal Procedure was recorded by the Trial Judge. The accused also examined defence witness Ganpatsinh Gebhabhai Tintor at Exhibit-44 and the defence of the accused was that on account of enmity of election, a false complaint was filed against him.

4. The learned Trial Judge thereafter heard in detail the prosecution as well as the defence and came to the above conclusion to convict the accused and to sentence him and, hence, this Appeal.

5. Learned Advocate Ms. Sadhna Sagar for the appellant and learned APP Mr. M.R. Mengdey for the respondent State were heard.

6. Learned Advocate Ms. Sadhna Sagar on behalf of the appellant vehemently urged on the quantum of sentence. She did not press this Appeal so far as merits of conviction is concerned. The incident in question, according to her, occurred on 6th of February, 2003 and right from the date of arrest, according to learned Advocate for the appellant, the appellant is in jail and he has already undergone 70% of sentence awarded to him. It is submitted that there are special and adequate reasons to reduce the sentence to already undergone by the appellant, which is about five years. It is submitted that the appellant is a married person and has very big family and six children. Out of them, four are daughters, who have now grown up. Appellant " accused is an illiterate adivasi and has no source of income at present to maintain his big family. He is the only bread winner of the family consisting of four daughters. It is submitted that in this special and adequate circumstances, mercy be shown upon the appellant and sentence of imprisonment awarded the appellant be reduced to already undergone or to the proper extent, so the appellant accused may help his family. Learned Counsel in support of her contention, relied upon a decision of the High Court of Calcutta, in the matter of Gopal Tamang Vs. State of West Bengal, wherein High Court of Calcutta was pleased to reduce the sentence from life to seven years. Para-7 of the said judgment is relied upon. The other decision which relied upon by the learned Counsel for the appellant is of this Court in the matter of Shanabhai

Chandubhai Vasava Vs. State of Gujarat and Another, wherein accused was sentenced u/s 376(1) of the Indian Penal Code for 10 years, and for the reasons, this Court reduced the sentence from 10 years to seven years imprisonment which was the minimum sentence prescribed by law.

7. We have gone through the record and proceedings of the Trial Court carefully and thoroughly. We have considered reasonable probabilities arising out of the circumstances of the case. Though, this Appeal is not pressed on merits, but we have carefully gone through the evidence recorded during the trial and have re-appreciated the same. It clearly appears from the evidence of victim at Exhibit-5; from the evidence of Sureshbhai Rangabhai and Nandaben Sureshbhai, parents of the victim at Exhibits 6 and 21; from the evidence of Dr. Rameshbhai Kodarabhai Chauhan and Dr. L.M. Chauhan, at Exhibits 14 and 17 and from the evidence of Hirabhai Valabhai Rathod, at Exhibit-34, that it is proved beyond doubt by the prosecution that on 6th of February, 2003 while the victim aged 10 years was grazing her cattle near the house of the accused and when she demanded drinking water from the accused, she met with forcible intercourse by the accused. We do not find any reason to disbelieve the victim and the medical evidence led by the prosecution and the investigation carried out. There is not a single line in the evidence of the prosecution which indicates that the accused is falsely involved in the case on account of election enmity. An attempt has been made on behalf of the accused in defence to show that he was not staying at the house of his father where the alleged incident took place, and for that, as above said, the defence witness Ganapatsinh Gebhabhai Tintor is examined at Exhibit-44, who has produced ration cards on record before the Trial Court, but the same is of no assistance to the accused. When offence like rape is proved by the evidence of victim as supported by the medical evidence, only because in record of ration card, accused is shown to have lived separately from his father, would not absolve the accused appellant from the liability of the crime. Therefore, on independent examination also, we found that, the prosecution has proved its case beyond reasonable doubt. It is also proved beyond reasonable doubt by the victim and her parents as well as by Dr. Rameshchandra Kodarji Chouhan that, at the relevant juncture, the victim was about 10 years of age.

8. About the quantum of sentence, it is vehemently argued and the reasons pressed into service emphatically, one must not forget the nature of crime, which is the most essential part of any penology of any country and in criminal justice system. Many a times, the crime of rape is described not only as the physical scar but a mental wound which would not heal up. Physical scar may heal up, but when a woman is ravished, deep sense of deathless shame is also engraved in the brain of the victim, especially when the victim is mere child of 10 years. This is in our Indian social setting where a traditional bound non-permissive society of India would be extremely reluctant even to admit that any incident which was likely to reflect on the chastity of a woman that ever occurred. Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. Carnal privacy of a female is supreme honour to

her and highest self-esteem. Rape is cruel blow to the supreme honour and highest self-esteem and dignity of a female. One must not at all forget that where the victim is a helpless innocent child or a minor, rape leaves behind a traumatic experience for her and, therefore, it is universally accepted without any exception that rape is not only a crime against the person of a woman but it is a crime against the entire society and a crime against the basic human right.

9. While appreciating the contentions raised by learned Advocate for the appellant, it is necessary to keep in mind the above background and design of law as to penology in such crimes. This is not a case u/s 376(1) of the Indian Penal Code wherein minimum punishment of imprisonment prescribed for seven years, which may extent to 10 years. This is undoubtedly a case u/s 376(2)(f) of the Indian Penal Code wherein it is provided that the accused shall be punished with rigorous imprisonment for a term which shall not be less than 10 years but which may be for life and shall also be liable to fine, provided that, the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than 10 years.

10. The Hon''ble Apex Court many a times has observed that the law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. This could be achieved through instrumentality of criminal law. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law, which must be achieved by imposing appropriate sentence. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process must be stern where it so required and tempered, with mercy where it warrants to be. Broadly speaking in the realm of sentencing system, the facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, may be relevant factors for consideration. Undue sympathy or mercy to impose inadequate sentence would be more harm to the justice system to undermine the public confidence in the efficacy of law and society. It, therefore, becomes the pious duty of every court to award proper sentence in a manner protecting social interest having regard to the nature of the offence. The measurement of punishment in case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. There is no second opinion world wide that crimes and violence upon women need be severely dealt with. The socio economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Avowed object of law is protection of society and deterring the criminals and this can be achieved by adhering to appropriate sentencing policy.

11. The crime which is proved against the present appellant invites minimum

imprisonment of 10 years which may extend to life. Law is so designed to achieve sentencing policy that courts are empowered to inflict lesser punishment than minimum prescribed where there are adequate and special reasons. As above discussed, the reasons advanced on behalf of the appellant for reducing the sentences less than the minimum are hardly relevant, even to consider general sentencing policy, let alone to be labelled as special and adequate reasons. Special and adequate reasons, a phrase used in the statute, would depend upon variety of factors and peculiar facts and circumstances of each case. In any case, having large family, consisting of four daughters and appellant being an illiterate adivasi and only bread winner, could hardly be recognized as reasons for reducing ordinary sentence much less special and adequate reasons. It must not be escaped from the consideration that if the appellant has four daughters, victim aged 10 only, is also a daughter of somebody, who is ravished brutally so as to live permanent mental scar and traumatic aftermath. Two decisions, as referred above do not help the appellant in view of the decisions of the Apex Court in the matter of State of Karnataka Vs. Raju, That was a case where the victim was less than 12 years of age at the time of occurrence, and the High Court reduced the sentence because the accused was of young boy of 18 years, was illiterate and rustic. The sentence therefore was reduced for already undergone by the High Court to the extent of two years 11 months. On filing Criminal Appeal by State of Karnataka, in the above mentioned circumstances, the Apex Court allowing Appeal restored the sentence awarded by the Trial Court and observed in paras 8, 13 and 14 as under:

8. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea of leniency is wholly misplaced.

13. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a

sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes, it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes, the desirability of keeping him out of circulation, and sometimes even the tragic results of crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

14. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

12. In view of above, we are unable to agree with the learned Counsel appearing for the appellant to reduce the sentence so as to be less than even the minimum prescribed for the offence proved u/s 376(2)(f) of the Indian Penal Code. The State has not questioned the sentence as imposed. Therefore, there is no merits in the Appeal so as to the conviction is concerned and considering the legal position and in the absence of any reason, which could have been treated as "special and adequate reasons", reduction of sentence cannot be granted to the present appellant.

13. For the above said reasons and the discussion, this Appeal fails and is dismissed accordingly.