

(2011) 02 GUJ CK 0177
In the Gujarat High Court
Case No : Criminal Appeal No. 1243 of 2008

Mohansinh alias Pappusinh Roopsinh Rajput

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 363, 366, 376, 506(1)

Citation : (2011) 02 GUJ CK 0177

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

Bench : Single Bench

Advocate : M.H.M. Shaikh, for the Appellant; H.L. Jani, Ld. APP, for the Respondent

Judgement

Z.K. Saiyed, J.—The present Appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 29.2.2008 passed by the learned Addl. Sessions Judge, Fast Track Court No. 2, Ahmedabad in Sessions Case No. 283/2007 whereby, the learned Judge has convicted the Appellant u/s 363 of IPC and sentenced to undergo R/I for three years and to pay a fine of Rs. 1000/-, in default to undergo further S/I for three months. The Appellant is also convicted u/s 366 of IPC and sentenced to undergo R/I for a period of five years and to pay a fine of Rs 2000/-, in default, to undergo further S/I for four months. The Appellant is also convicted for the offence u/s 376 of ICP and sentenced to undergo R/I for seven years and to pay a fine of Rs. 3000/-, in default, to undergo S/I for six months and the Appellant is also convicted for the offence u/s 506(1) of IPC and sentenced to undergo R/I for three months and to pay a fine of Rs. 200/-, in default, to undergo further S/I for one month, which is impugned in this appeal.

2. The brief facts of the prosecution case is as under:

3. That on 10.11.2006, the complainant had gone to Redreshwar Mahadev Temple for darshan at 2.00pm and she returned from the temple at about

5.00pm. It is also alleged in the said complaint that the daughter of the complainant namely Kusum told the complainant that at about 4.30pm, when she was returning from her tuition classes, at that time, the present Appellant-accused met her and took her to the house of Ved Prakash and he forcefully thrown her on the cot and removed her Payjama and nicker and when she tried to shout, the Appellant had forcefully pressed her hands on the mouth of the victim girl and had forcefully sexual intercourse with her between 4.30 to 4.45pm. and threatened her that if she tell any person about the incident, she would be killed.

4. Therefore a complaint came to be filed by the complainant. The panchnama of the clothes put on by the victim on 10.11.2006 was prepared in the presence of panch witness and statements of prosecutrix and other witnesses were recorded and on completion of the investigation, charge-sheet was filed in the Court of learned Metropolitan Magistrate, Court No. 7, Ahmedabad. Thereafter, as the case was exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate has committed the case to the Court of Sessions, which was given number as Sessions Case No. 283/2007.

5. Thereafter, the charge was framed at Ex. 2 against the Appellant. The Appellant # accused has pleaded not guilty and claimed to be tried.

6. In order to bring home the charge levelled against the Appellant- accused, the prosecution has examined the witnesses and also produced documentary evidence before the trial Court.

7. Thereafter, after examining the witnesses, further statement of the Appellant accused u/s 313 of Code of Criminal Procedure was recorded in which the Appellant-accused has denied the case of the prosecution.

8. After considering the oral as well as documentary evidence and after hearing the parties, learned Addl. Sessions Judge, Ahmedabad vide impugned judgment and order dated 29.2.2008 held the Appellant # accused guilty to the charge levelled against him u/s 363, 366, 376 and 506(1) of IPC and convicted and sentenced the Appellant accused, as stated above.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Addl. Sessions Judge, Ahmedabad, the present Appellant has preferred this appeal.

10. Heard Mr. MHM Shaikh learned advocate for the Appellant and Mr HL Jani learned APP for the Respondent-State.

11. Mr. Shaikh learned advocate for the Appellant has argued that looking to the facts of the prosecution case, no doubt, the Appellant has a very good case to argue on merits, but when he has read the oral evidence of the prosecutrix and medical evidence, then, he has contended that he is not arguing the matter on merits, but simply he is arguing this matter only on the point of quantum of punishment. He has contended that the Appellant is a very young boy and very

poor person and he is the only bread winner member in the family and, therefore, the sentence imposed the present Appellant by the learned Addl. Sessions Judge, Ahmedabad may be reduced. He has also submitted that no doubt, the age of the prosecutrix was 14 years, 4 months and 12 days at the time of incident and it is not a case of consent but the age of the Appellant is also required to be considered. He has further contended that the looking to the conviction and sentence, the same is very harsh in nature and therefore, the sentence imposed upon the present Appellant requires to be reduced.

12. On the other side, learned APP Mr. HL Jani has read the impugned judgment and order of conviction and sentence passed by the learned Judge and contended that the impugned judgment and order of conviction and sentence requires to be confirmed.

13. I have gone through the oral as well as documentary evidence produced on the record. I have read the oral evidence of prosecution witness-complainant and also perused the charge framed against the Appellant. From the oral evidence of prosecutrix Ex. 31 and complaint Ex. 44, it appears that the age of the prosecutrix was below 15 years at the time of incident and it is not a case of consent. Prima facie the prosecution has proved the case beyond reasonable doubt, however, looking to the submission of Mr. Shaikh, the age of the present Appellant is also very young and from the observation of the learned Judge, the conviction is very harsh in nature and is required to be reduced from seven years to 4 1/2 years.

14. In the result, this appeal is partly allowed. The impugned judgment and order of conviction and sentence passed in Sessions Case No. 283/2007 by the learned Addl. Sessions Judge, Fast Track Court No. 2, Ahmedabad convicting the Appellant -accused u/s 363, 366, 376 and 506(1) of IPC is hereby confirmed. However, the order of sentence sentencing the Appellant-accused to undergo R/I for 5 years for the aforesaid offence u/s 366 of IPC and the order of sentence sentencing the Appellant-accused to undergo R/I for 7 years for the aforesaid u/s 376 of IPC, is hereby modified to the extent that instead the Appellant accused is hereby sentenced to undergo R/I for 4 & ? years. Rest of the impugned judgment and order is confirmed. R & P to be sent back to the trial court forthwith.