

(2010) 11 GUJ CK 0011
In the Gujarat High Court
Case No : Criminal Appeal No. 2595 of 2008

Pratik @ Pintuji Jayantiji Thakore

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357(3), 374
Penal Code, 1860 (IPC) — Section 114, 341, 363, 366, 376

Citation : (2010) 11 GUJ CK 0011

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

Bench : Single Bench

Advocate : Kiran D. Pandey, for the Appellant; H.L. Jani, APP, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The appellants - original accused have filed this Appeal u/s 374 of Code of Criminal Procedure against the Judgment and order of conviction and sentence dated 19.05.2008 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Mehsana, in Sessions Case No. 73 of 2008, whereby the learned Additional Sessions Judge has held the appellant - accused guilty (i) for the offence punishable u/s 376 of I.P. Code and sentenced him to suffer Imprisonment for 7 (seven) years and to pay a fine of Rs. 5,000/- i/d to further undergo imprisonment for six months, (ii) for the offence punishable u/s 366 of I.P. Code and sentenced him to suffer Imprisonment for 7 (seven) years and to pay a fine of Rs. 2,000/- i/d to further undergo imprisonment for one year, (iii) for the offence punishable u/s 363 of I.P. Code and sentenced him to suffer Imprisonment for 3 (three) years and to pay a fine of Rs. 1,000/- i/d to further undergo imprisonment for 15 days, (iv) for the offence punishable u/s 341 of I.P. Code and sentenced him to suffer Imprisonment for 1 (one) months and to pay a fine of Rs. 500/- i/d to further undergo imprisonment for six days and (v) for the offence punishable u/s 506(2) of I.P. Code and sentenced him to suffer imprisonment for one year and to pay a fine of Rs. 500/- i/d to further undergo

imprisonment for one month. The learned Judge ordered all the sentences to run concurrently. The learned Judge has also ordered that out of amount of fine, Rs. 2500/- shall be paid to the prosecutrix towards maintenance as per the provision of Section 357(3) of Code of Criminal Procedure.

2. The brief facts of the case of prosecution are that the complainant Savitaben @ Sajjanben, wife of Somaji Vihaji, has filed complaint before Bavlu Police Station, alleging that on 16th May 2007 her husband had gone out with tractor and as the complainant was suffering from fever she was at home. It is alleged that in the after-noon the prosecutrix had gone for washing the clothes at the bore of Patel Govindbhai Madhavlal. After some time, she did not return back and, therefore, they made search. During search they were informed by Vaghri Bhavabhai Hirabhai that when their daughter was washing the clothes at that time brother in law of Thakor Babuji Chanduji, viz. "Pintuji" (appellant herein) came and after some conversation the prosecutrix had gone with "Pintuji". It is alleged that at that time Rabari Nagjibhai Sartanbhai and Pashabhai Sartanbhai, who were grazing the cattles, have informed them that their daughter (prosecutrix) had gone with "Pintuji". Thereafter, the complainant, along with her husband, had gone to the house of Babuji Chanduji, sangitaben and Menaben Chanduji and informed them that "Pintuji" had taken away their daughter. Therefore they have abused the complainant and her husband and also threatened them that if they come again then they would be killed. Thereafter, the complainant filed complaint against the accused before the P.S.O., Bavlu Police Station, for the offences punishable under Sections 363, 366, 504, 506(2), 114 of I.P. Code, which was registered as CR No. 42 of 2007. Thereafter, prosecutrix appeared before the Bavlu Police Station. Her statement was recorded. In her statement she had stated that "Pintuji" (appellant herein) was frequently doing sexual intercourse with her, without her consent. Thereafter the prosecutrix was sent for medical examination. The police inquired at the house of accused Pintuji and he was found and arrested. On receipt of medical certificate and sample, Offence u/s 376 of I.P. Code was added.

3. The accused were arrested. Necessary investigation was carried out by the Police. The statements of the complainant and other witnesses were recorded. Thereafter, after completion of investigation the charge-sheet against the accused came to be submitted before the Court. As the offences were triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions. The learned Additional Sessions Judge framed the charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried.

4. To prove the case against the accused, the prosecution has examined 12 witnesses and also relied upon documentary evidence and at the end of trial, after recording the statement of the accused u/s 313 Code of Criminal Procedure, and after hearing the arguments on behalf of the prosecution and the defence, the learned Additional Sessions Judge held the appellant (original accused) guilty of the offences under Sections 376, 366, 363, 341, 506(2) of I.P.

Code.

5. Being aggrieved by and dissatisfied with the aforesaid Judgment and order of conviction and sentence the appellants - accused has preferred this Appeal.

6. Heard learned advocate Ms. Kiran Pandey, appearing on behalf of the appellant and learned APP Mr. H.L. Jani on behalf of the respondent - State. I have gone through the Judgment and order passed by the trial Court. I have also considered the documents produced on the record of the case.

7. Learned Advocate, appearing on behalf of the appellant - accused, has contended that the appellant - accused has not committed any offence as alleged against him in the charge. She has contended that without properly appreciating the evidence in its true perspective and without considering the defence raised by the accused, the trial Court has booked the accused just for the sake of conviction. She has contended that the prosecution has not produced any documentary evidence to establish that the prosecutrix is below the age of 16 years. She has contended that it is a case of love affairs. The prosecutrix was in love with the appellant and she had gone with the accused at her own and with her consent. She has contended that looking to the evidence produced on record it is clearly established that the prosecutrix was in love with the accused and, therefore, the prosecution has failed to establish its case beyond reasonable doubt that the accused has committed rape on the prosecutrix without her consent. She has contended that looking to the oral as well as medical evidence the prosecution has failed to establish its case beyond reasonable doubt. She has also contended that looking to the facts of the case, the sentence awarded by the learned Judge is also very harsh.

8. Learned APP has supported the Judgment and order passed by the learned Judge and contended that looking to the seriousness of offence no interference of this Court is called for. He has contended that looking to the facts and evidence on records the learned Judge has rightly held the accused guilty for the offence alleged against him and, therefore, no interference is called for.

9. I have gone through the Judgment and order passed by the learned Additional Sessions Judge and also gone through the documents produced before me. I have also considered the submissions made by the learned Advocates for the parties.

10. I have gone through the record and proceedings of the case. I have also gone through the evidence of the prosecution witnesses and other material evidence. I have also considered the Judgment of the trial Court. From the evidence on record it clearly appears that the learned Judge has not committed any error in holding the appellant - accused guilty of the offences alleged against him. However, looking to the facts of the case, in my opinion, the sentence awarded by the learned Judge is very harsh. The learned Advocate appearing on behalf of the appellant has also contended that the appellant - accused is innocent and is a bread-winner of the family and, therefore, some leniency may

be shown towards the appellant. It is stated at the bar that the appellant - accused is in jail and as per the jail reported dated 07.10.2010 he had already undergone the sentence of more than 2 years and 7 months. I am, therefore, of the opinion that if the sentence awarded by the learned Judge is reduced to an extent of five years, the same would serve the ends of justice.

11. In view of above, the Appeal is partly allowed. The Judgment and order of conviction and sentence dated 19.05.2008 passed by learned Additional Sessions Judge, 2nd Fast Track Court, Mehsana, in Sessions Case No. 73 of 2008 is hereby confirmed. However, the sentence awarded by the learned Additional Sessions Judge, vide impugned judgment, holding the appellant - accused guilty for the offences u/s 366 & 376 of I.P. Code is modified and reduced to an extent of 5 (five) years imprisonment, instead of 7 (seven) years imprisonment. Rest of the Judgment and order passed by the learned Additional Sessions Judge is confirmed. R & P to be sent back to the trial Court immediately.