
(2010) 12 GUJ CK 0261
In the Gujarat High Court
Case No : Criminal Appeal No. 924 of 2000

Rajput Odhabhai Haribhai	Vs	APPELLANT
State of Gujarat and Another		RESPONDENT

Date of Decision : 27-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Penal Code, 1860 (IPC) — Section 376, 452, 506(2)

Citation : (2010) 12 GUJ CK 0261

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

Bench : Single Bench

Advocate : A.D. Shah, for the Appellant; H.H. Parikh, Ld. APP, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.

1 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 19.9.2000 passed by the learned Sessions Judge, Bhavnagar in Sessions Case No. 37/1996, whereby, the learned Judge has convicted the Appellant u/s 376 of IPC and sentenced to undergo imprisonment of seven years and to pay a fine of Rs. 7000/-, in default, to undergo further S/I for seven months. The Appellant is also convicted u/s 452 of IPC and sentenced to undergo S/I for a period of six months and to pay a fine of Rs 600/-, in default, to undergo further S/I for one month. The Appellant is also convicted u/s 506(2) of IPC and sentenced to undergo S/I for six months, in default, to further undergo S/I for one month, which is impugned in this appeal. It is also ordered by the learned Judge that on payment of fine of Rs. 7000/- by the Appellant-accused, Rs. 5000/- be given to the victim-prosecutrix by way of compensation.

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

3. It is the case of the prosecution that Jinabhai Vashrambhai is working at village Malpara as diamond polisher. It is the case of the prosecution that Jinabhai had to go at village Limbali to mourn the death of some one and he has left his house at 7.00am. That Jinabhai went to bus stand at outskirts of village Patana and he found that the persons with whom he was to go to village Limbali had left village Patana and hence instead of going to village Limbali for mourning death, he went to village Malpara for the work of diamond polishing. It is the case of the prosecution that at Malpara diamond factory was closed and hence, he returned to his house. It is the case of Vijuben Jinabhai that on the day of incident, her husband had gone to village Limbali for attending mourning ceremony at about 10.00am, she was doing household work in the house which consists of one room and osary and her two sons were playing outside in the compound, at that time, accused Odhabhai came to her house and gagged her mouth by cloth and thereafter removed his cloths and had sexual intercourse and she tried to come out and attempted to raise shouts but accused had given threat that if she informed any one or filed any complaint, then her husband would be killed. It is also the case of Vijuben that meanwhile, she raised shouts when neighbours Rajuben and Ramjibhai as well as Dhirubhai and Prabhaven had come and meanwhile, her husband had also come and they tried to get her free and during that attempt, her husband had picked up small stick in the house and inflicted blow on the head of accused Odha with that stick. It is also the case of Vijuben that her husband was also given threat of being killed and thereafter accused Odha put on nicker and pant and ran away from the place. It is further the case of Vijuben that thereafter her husband went to village Kundal and Vijuben in company of her two sons went to village Gadhada at the place of her maternal aunt. It is the case of Vijuben that at about 4.00pm she informed her maternal aunt about the incident, who advised her to file a complaint.

4. Therefore a complaint came to be filed by the prosecutrix at Gadhada Police Station. The panchnama of the clothes put on by the victim 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 Judicial Magistrate, First Class, Gadhada. Thereafter, as the case was exclusively triable by the Court of Sessions, the learned Magistrate has committed the case to the Court of Sessions, which was given number as Sessions Case No. 37/1996.

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

6. In order to bring the 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 Sessions Judge vide impugned judgment and order dated 19.9.2000 held the Appellant accused guilty to the charge levelled against him u/s 376, 452 and 506(2) 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 Sessions Judge, Bhavnagar, the present Appellant has preferred this appeal.

10. Heard Mr. AD Shah learned advocate for the Appellant and Mr HH Parikh learned APP for the Respondent-State.

11. Mr Shah has contended that the impugned judgment and order of conviction and sentence passed by the learned Sessions Judge is bad in law and against the oral as well as documentary evidence produced on record and therefore, the same deserves to be quashed and set aside. Mr Shah has further contended that though it was stated in the complaint that accused took her in grip and made her to fall on ground, she sustained injury on hand but that was not stated by her in evidence and medical evidence of Doctor clearly revealed that she had no extern injury on her body. Mr Shah has further contended that medical evidence does not establish any signs of recent sexual intercourse. Similarly, the report of FSL does not satisfy the signs of recent sexual intercourse. He also contended that there is no doubt about presence of semen on petticoat of prosecutrix but there is no negative evidence of group of semen of the accused and, therefore, the evidence of PW-2 Jinabhai Vashrambhai Ex. 12 is also highly unnatural and improbable and if what this witness had seen, he would have seen that Vijuben files complaint immediately to the police against the accused. However, instead of staking Vijuben to police, he went to the house of his father-in-law at village Motikundal, whereas Vijuben went to her maternal aunt's place at Gadhadra with her two sons. Mr Shah has contended that the evidence of Rajuben Ranchhodbhai PW-4, real sister of prosecutrix is also not reliable as after the incident she claims to have gone away to her parental home at village Motikundal with children instead of going with prosecutrix. Mr Shah has also contended that the husband has clearly admitted that when he went to his residence, there was no one in the house except his wife and accused. Thus, the version of prosecutrix and her sister Rajuben about prosecutrix Vijuben raising shouts and at that time neighbours coming to the house and thereafter Jinabhai coming to the house and inflicting stick blow is contradictory and not reliable. Mr Shah has also contended that the independent witness Prabhaben has not supported the case of the prosecution. Mr Shah has also contended that there is no reliable evidence to establish the case of prosecution as to rape and administering of threats by the accused. The husband and others would not have allowed accused to go away in the manner in which it is alleged by the prosecution. Mr Shah has also contended that the conduct of the prosecutrix and other witnesses is highly unnatural and improbable and, therefore, the impugned judgment and order of conviction and

sentence requires to be quashed and set aside.

12. Mr HH Parikh learned APP has read oral as well as documentary evidence produced on record and the impugned judgment and order passed by the learned Sessions Judge and argued that the learned Judge after considering the oral as well as documentary evidence has rightly convicted and sentenced the Appellant - accused and the same 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-prosecutrix and also perused the charge framed against the Appellant. I have also considered the rival submissions of both the parties. From the perusal of the papers, it appears from the oral evidence of prosecutrix that the prosecution story is concocted one due to the influence of maternal aunt of the prosecutrix, the complaint is filed on the next day and she is not examined by the prosecution. In that view of the matter, the prosecution has failed to prove its case beyond reasonable doubt and the conduct of the prosecutrix creates some doubt and therefore, the impugned judgment and order of conviction and sentence requires to be quashed and set aside.

14. In the result, this appeal is allowed. The impugned judgment and order of conviction and sentence dated 19.9.2000 passed by the learned Sessions Judge, Bhavnagar in Sessions Case No. 37/1996 is hereby quashed and set aside. Fine, if paid, be refunded to the Appellant. Bail bond stands cancelled. R & P to be sent back to the trial court forthwith.