
(2011) 11 GUJ CK 0092
In the Gujarat High Court
Case No : Criminal Appeal No. 880 of 2006

Sanjaykumar Nanakprabhu Saroj (Pasi) APPELLANT
Vs
State of Gujarat RESPONDENT

Date of Decision : 22-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2011) 11 GUJ CK 0092

Hon'ble Judges : Paresh Upadhyay, J; Jayant Patel, J

Bench : Division Bench

Advocate : Mitesh R Amins, for the Appellant; KL Pandya, Ld. APP for Opponent(s) : 1, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Jayant Patel

1. The present appeal arises against the judgment and order passed by the learned Addl. Sessions Judge, Fast Track Court No. 3, Headband in Sessions Case No. 102/2005, whereby, the learned Sessions Judge has convicted the accused (appellant herein) for the offence u/s 376 of IPC and imposed punishment of 10 years rigorous imprisonment with the fine of Rs. 5000/-and further imprisonment of six-month in default of payment of fine. The learned Sessions Judge has also convicted the appellant for the offence u/s 363 of IPC and imposed punishment of five years rigorous imprisonment with the fine of Rs. 2000/-and further imprisonment of six months in default of payment of fine. The learned Sessions Judge has also convicted the appellant for the offence u/s 366 of IPC and imposed punishment of seven years rigorous imprisonment with the fine of Rs. 3000/-and further imprisonment of six months in default of payment of fine. All the sentences were ordered to undergo concurrently.

2. As per the prosecution case, a complaint was filed by the victim that she was doing the work of cleaning in the bungalows, and at that time, she had come in

contact with Sanjay Bhaiya and prior to two months, she had sexual intercourse with Sanjay Bhaiya. Thereafter, she was called at another place and they had stayed together and had physical relations by committing sexual intercourse. The police had investigated the complaint and thereafter charge sheet was filed and the matter was thereafter committed to the Court of Sessions. The learned Sessions Judge framed the charge. The evidence was led on behalf of the prosecution comprising of 13 witnesses and 23 documentary evidence, which have been narrated by the learned Sessions Judge at para-4 of the impugned judgment. The learned Sessions Judge thereafter recorded further statement of the accused, in which, he stated that he is innocent and he hasn't committed any crime. The learned Sessions Judge has, after giving opportunity of hearing to both the sides, found the appellant guilty for the offence under sections 376, 363 and 366 of IPC. The learned Sessions Judge thereafter heard the matter for sentence. It is under these circumstances, the present appeal before this Court.

3. We have heard Mr. Brijesh Limbachiya for Mr. Mitesh R. Amin for the appellant and Mr. K.L. Pandya learned APP for the State.

4. Learned counsel at the out set submitted that the appellant is not assailing the judgment and order passed by the learned Sessions Judge for finding the appellant guilty for the offence under sections 376, 363 and 366 of IPC and he also submitted that the appellant is restricting the case for the present appeal on the aspect of quantum of punishment. It was submitted by the learned counsel for the appellant that there is evidence available on record, and more particularly of the medical history showing that the prosecutrix had every point of time consented for the sexual intercourse and there was no compulsion made. He fairly conceded that the age of the prosecutrix was 13 years and 2 months, and the offence was found as proved by the learned Sessions Judge, but he submitted that keeping in view the said aspect, the punishment of 10 years imposed upon the appellant is improper, and therefore, this Court may reduce the sentence to the minimum of 7 years. He also relied upon the decision of this Court in the case of *Thakore Tejaji Devaji & Ors. vs. State of Gujarat*, reported in 2006 (4) GLR 2807 and in the case of *Shanabhai Chandubhai Vasava Vs. State of Gujarat and Another*,

5. Whereas, the learned APP supported the quantum of punishment imposed by the learned Sessions Judge contending, inter alia that, once the offence is proved, the Court has appropriately imposed the punishment. Therefore, it was submitted that no interference be made by this Court on the quantum of punishment.

6. We may state that on the aspect of proportionality of punishment, the law is by now well settled. It is not that the punishment has to be imposed to the fullest extent or to the maximum in every case once the accused or offender is convicted for a particular offence, but at the time of imposition of punishment, the nature of the offence, its gravity, the effect on the society and the personal circumstances are some of the aspects which would be required to be taken into

consideration. But at the same time, it cannot be said that they are exhaustive, there may be additional circumstances warranting the Court to modulate appropriate punishment unless it is barred by express provision of the statute. However, it would be required for the Court to record specific reason at the time when the punishment is to be imposed including that for a minimum provided by the statute or higher up to the maximum punishment.

7. Examining the facts of the case, it does appear that the offence can be said as committed on account of the age of the prosecutrix u/s 376 of IPC. So far as the punishment imposed by the learned Sessions judge for the offences u/s 363 and 366 of IPC are concerned, they are in any case not exceeding 7 years, and as all the sentences are to be undergone concurrently. The punishment which may be required to be considered by us in the present appeal now would be u/s 376 of IPC and the reason being that the appellant, as declared by the learned counsel for the appellant, has already completed about seven years imprisonment on 10.11.2011.

8. It does appear from the evidence on record of Dr. Nitinbhai Janakbhai Dave, PW-9 Exh.35, that the prosecutrix in medical history had declared that she had gone with consent and they had stayed together for one night and the prosecutrix had intercourse with the boy Sanjay. She has not declared about any force or compulsion for such purpose. The very doctor has also deposed that when he examined the prosecutrix, there was no injury on any part of the body of the prosecutrix. In the deposition of Dr. Kaushik Narendrabhai Vyas, PW-10 Exh.38, in the medical history, there is reference to the sexual intercourse with consent two years back and thereafter it was stated that the accused had sexual intercourse without consent. In the said evidence also, nothing has come out from the medical papers that there was any injury on the body or private part of the prosecutrix. Therefore, the circumstances of applying force or creating compelling circumstances by the accused though may not be relevant aspect for finding him guilty for the commission of the offence u/s 376 of IPC since the age of the prosecutrix was 13 years and 2 months only, but such may be one of the relevant aspect while considering the question of quantum of punishment. In the case of Thakore Tejaji Devaji (supra), this Court, more particularly in para-16, did observe that when a technical rape is established by the prosecution, there was no reason for the Court to impose the punishment which is more than minimum punishment prescribed. The Court further observed that while imposing punishment, the Court should look to such an accused with reformatory eyes and may not be so harsh. In the case of Shanabhai Chandubhai Vasava (supra), this Court, more particularly in para-12, did observe taking into consideration the socioeconomic background of the parties and circumstances in which the offence has been committed deserve to be considered on the point of quantum of sentence.

9. It is in view of the aforesaid facts and circumstances referred to hereinabove by us, we find that the appropriate punishment could be imposed by the learned

Sessions Judge for the offence u/s 376 of IPC of 7 years rigorous imprisonment being the minimum sentence provided.

10. Under the circumstances, while maintaining the conviction of the accused in view of the declaration made by him hereinabove on the aspect of sentence, we find that it would be just and proper to reduce the punishment for the offence u/s 376 of IPC by seven years imprisonment in place of 10 years imprisonment, as imposed by the learned Sessions Judge. The other part of the sentence for imposition of fine of Rs. 5000/-and six months imprisonment in default of payment of fine, does not deserve to be interfered with.

11. In view of the aforesaid observations and discussions, the appeal is partly allowed. The impugned judgment and order of conviction passed by the learned Additional Sessions Judge, Fast Track Court No. 3, Ahmedabad in Sessions Case No. 102/2005for the offence u/s 376, 363 and 366 of IPC is hereby confirmed, but on the aspect of sentence, the judgment and order of learned Additional Sessions Judge is modified to the effect that sentence for the offence u/s 376 of IPC shall be 7 years R/Iin place of 10 years R/I. The other part of the sentence imposed is not interfered with.