
(2015) 11 GUJ CK 0024
In the Gujarat High Court
Case No : Criminal Appeal No. 1515 of 2008

State of Gujarat	Vs	APPELLANT
Rafiqsha Ismailsha Shah Fakir		RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 377
Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2015) 11 GUJ CK 0024

Hon'ble Judges : K.S. Jhaveri and G.B. Shah, JJ.

Bench : Division Bench

Advocate : L.R. Pujari, APP, for the Appellant; Umang H. Oza, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The present appeal, under section 377 of the Code of Criminal Procedure, 1973 (for brevity, "the Code") is directed against the judgment and order dated 07/03/2008 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Amreli in Sessions Case No. 103 of 2006, whereby the respondent herein - original accused has been convicted for the offence punishable under Sections 363 of the Indian Penal Code, 1860 (for brevity, "the IPC") and sentenced to undergo rigorous imprisonment for two years and a fine of Rs. 1,000/- and in default of payment of fine, to undergo, further simple imprisonment for two months; for the offence punishable under Section 366 of the IPC, he was sentenced to undergo rigorous imprisonment for four years and a fine of Rs. 2,000/- and in default of payment of fine, to undergo, further simple imprisonment for four months and for the offence punishable under Section 376 of the IPC, he was sentenced to undergo rigorous imprisonment for five years and a fine of Rs. 3,000/- and in default of payment of fine, to undergo, further simple imprisonment for four months. All the sentences were to run concurrently.

2. Brief facts of the prosecution case are that 20 days prior to 15/08/2006, the

respondent herein - original accused, together with two unknown persons, abducted the victim without her consent and/or the consent of her parents, with an intention to forcefully marry her and/or rape her and thereby, committed the alleged offence, for which a complaint came to be lodged against him.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the Sessions Court, Amreli.

2.2 The trial Court framed charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence.

2.3 In order to bring home the charge against the original accused, the prosecution has examined following witnesses and produced following documentary evidence, as under:

2.4 At the end of the trial and after recording the Further Statement of the accused under Section 313 of Code and hearing arguments on behalf of prosecution and the defence, the learned Sessions Judge concluded as aforesaid by impugned judgment and order.

2.5 Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Sessions Court, the appellant - State has preferred the present appeal.

3. Mr. L.R. Pujari, learned Additional Public Prosecutor appearing for the appellant - State has mainly contended that though the prosecution has successfully proved the case against the respondent - accused, looking to the tenor of Section 376 of the IPC, which provides for minimum sentence of seven years imprisonment, the trial Court has committed an error in imposing lessor and inadequate punishment for such a serious offence and accordingly, he requested to allow the present appeal in the interest of justice.

4. On the other hand, learned advocate Mr. Oza for the respondent - original accused, fairly conceded that the accused has not preferred any appeal against conviction. However, he submitted that the respondent - accused has already undergone the sentence imposed upon him by the trial Court and accordingly he is at large. He also submitted that the financial condition of the accused is very weak and he could pay the fine imposed upon him by the trial Court only in 2011. He further submitted that the respondent - accused has settled in life and is a responsible person and accordingly, in the given facts and circumstances, he requested that when the respondent - accused has already undergone the sentence imposed by the trial Court, this Court may not interfere in the appeal.

5. We have heard the learned advocates for both the sides and examined the matter carefully and gone through the evidence on record. We have re-appreciated and re-evaluated the evidence on the touchstone of the latest decisions of the Hon'ble Apex Court. We find that though the offence is proved

by the prosecution against the respondent - accused, however, taking into consideration the circumstances put forward by the learned advocate for the accused, when the accused has already undergone the sentence imposed upon him by the trial Court in the year 2011 and has now settled, in the peculiar facts and circumstances of the case, we deem it proper not to disturb the findings recorded by the trial Court.

6. In view of the aforesaid discussion, present appeal fails and is dismissed accordingly. The impugned judgment and order dated 07/03/2008 passed by the learned Additional Sessions Judge, 2nd Fast Track Court, Amreli in Sessions Case No. 103 of 2006 is confirmed. Bail bond, if any, shall stand cancelled. Registry to return the R&P, if any, to the trial Court forthwith. However, it is clarified that this order having been passed in the peculiar facts and circumstances of the case, will not be treated as precedent.