
(2016) 01 GUJ CK 0106
In the Gujarat High Court
Case No : Criminal Appeal No. 487 of 2007

The State of Gujarat

APPELLANT

Vs

Vidhyasagar Sudishbhai Chamar

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 378
Penal Code, 1860 (IPC) — Section 363, Section 366, Section 376

Citation : (2016) 01 GUJ CK 0106

Hon'ble Judges : M.R. Shah and Z.K. Saiyed, JJ.

Bench : Division Bench

Advocate : K.P. Raval, Additional Public Prosecutor, for the Appellant;

Final Decision : Dismissed

Judgement

M.R. Shah, J.—1. Feeling aggrieved and dissatisfied with the impugned judgment and order of acquittal dated 14.11.2006 passed by the learned Additional Sessions Judge (3rd Fast Track Court), Kheda, at Nadiad (hereinafter referred to as "trial Court") in Sessions Case No. 131/2006 by which the learned trial Court has acquitted the original accused for the offences punishable under sections 363, 366 and 376 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"), the State has preferred the present Criminal Appeal under section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC").

2. The gist of the prosecution story is that on 11.01.2006, when the complainant viz. Mayaben Surendrabhai Pashavan went to market for purchasing vegetables and the father and son of the complainant were on colour work, the respondent accused after giving promise to the victim for marriage ran away with her. The complainant also searched but he could not find out the victim. The complainant informed her husband on his mobile phone regarding the same. The father of the victim also made efforts to search the victim, but she could not be found out. It is also alleged in the complaint that on 13.01.2006, the accused and the victim resided at the house of relative at Surat. Accordingly, the complaint came to be

registered for the offences punishable under sections 363, 366 and 376 of the IPC.

2.1 That the aforesaid FIR was investigated by one Prabhatbhai Ramabhai Desai, CPI, Matar Police Station. During the course of investigation the Investigating Officer recorded the statement of the concerned witnesses including the statement of one Kanjibhai Madhavbhai Desai in whose room at GIDC Colony, Vatva, both, the victim as well as the accused were staying on rent. The Investigating Officer also collected the medical evidence including the age certificate of the victim. After the conclusion of the investigation, the Investigating Officer filed the charge-sheet against the accused in the Court of learned Judicial Magistrate First Class for the offences punishable under sections 363, 366 and 376 of the IPC.

As the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate First Class committed the case to the Sessions Court, Kheda, which was transferred to the Court of learned Additional Sessions Judge (3rd Fast Track Court), Kheda, at Nadiad, which was numbered as Sessions Case No. 131/2006.

2.2 The accused pleaded not guilty and therefore, he came to be tried by the learned trial Court for the aforesaid offences. The learned trial Court framed the charge against the accused at Exh. 5, for the offences punishable under sections 363, 366 and 376 of the IPC.

2.3 To prove the case against the accused, the prosecution examined the following witnesses.

Through the aforesaid witnesses the prosecution brought on record the following documentary evidences.

2.4 That after closing purshis submitted by the prosecution, further statement of the accused came to be recorded under section 313 of the CrPC and the accused denied having committed any offence. That at the end of the trial, by impugned judgment and order the learned trial Court has acquitted the original accused. Hence, the State has preferred the present Criminal Appeal challenging the impugned judgment and order of acquittal.

3. Shri K.P. Raval, learned Additional Public Prosecutor appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the learned trial Court has committed a grave error in acquitting the original accused.

3.1 It is submitted that the learned trial Court has not properly appreciated the fact that at the time of incident the victim was minor and therefore, even if it is believed that it was a case of consent by the victim/prosecutrix, in that case also, the consent of a minor is irrelevant. [3.2] It is further submitted that the learned trial Court materially erred in holding that at the time of incident the victim was aged approximately 20 years. It is submitted that the finding recorded by the learned trial Court with respect to the age is contrary to the

evidence on record more particularly the birth certificate produced at Exh. 27 and the deposition of PW-11 Hasmukhbhai Patel, an Officer from the Municipal Borough, Vallabh Vidyanagar, who was examined at Exh. 33.

3.3 It is further submitted by Shri K.P. Raval, learned Additional Public Prosecutor that the learned trial Court has materially erred in holding that the victim ran away with the respondent accused with consent.

3.4 It is further submitted by Shri K.P. Raval, learned Additional Public Prosecutor that the learned trial Court has also erred in holding that there was love affair between the victim and the respondent accused. It is further submitted by Shri K.P. Raval, learned Additional Public Prosecutor that the learned trial Court has erred in holding that the prosecution has failed to prove that the respondent accused committed the rape on her.

3.5 It is further submitted that even the learned trial Court ought to have appreciated the medical evidence and ought to have held that the accused had sexual intercourse with the victim against her will and wish and thereby committed the offence punishable under section 376 of the IPC. It is submitted that the learned trial Court has erred in disbelieving the prosecution evidence, oral as well as documentary, which has resulted into miscarriage of justice.

Making above submissions, it is requested to allow the present Criminal Appeal and quash and set aside the impugned judgment and order of acquittal passed by the learned trial Court.

4. The bailable warrant served upon the respondent is unserved. The State has failed to serve and execute the bailable warrant upon the respondent accused even after 7 years. Therefore, we have heard the learned Additional Public Prosecutor appearing on behalf of the State.

5. We have heard Shri K.P. Raval, learned Additional Public Prosecutor appearing on behalf of the State. We have gone through the impugned judgment and order of acquittal passed by the learned trial Court and we have re-appreciated the entire evidence on record, both oral as well as documentary.

At the outset it is required to be noted that this is an appeal under section 378 of the CrPC against the impugned judgment and order of acquittal passed by the learned trial Court. As per the settled proposition of law if the finding recorded by the learned trial Court are on appreciation of evidence and the view taken by the learned trial Court is plausible and even if on evidence two views are possible and the learned trial Court has taken one view in favour of the accused, the Appellate Court is not justified in interfering with the judgment and order of acquittal passed by the learned trial Court.

5.1 In the present case, on appreciation of evidence, the learned trial Court has held the age of the victim as 20 years. By giving cogent reasons the learned trial Court has not believed the prosecution case that at the time of incident the victim was minor. Admittedly, no ossification test has been conducted to

ascertain and prove the age of the victim. Under the circumstances, the finding recorded by the learned trial Court that at the time of incident the prosecutrix was aged 20 years, is not required to be interfered with.

5.2 Now, considering the entire evidence on record and even from the deposition of the prosecutrix and her conduct, the learned trial Court has rightly observed that it was a case of consent and that both, accused and the victim were in love. From the evidence it has come on record that the victim moved with the accused from one place to another place and passed through various public places, however at no point of time she had made any grievance and/or resisted. Even both, the victim and the accused stayed at GIDC Colony, Vatva in the house of Kanjibhai Madhavbhai Desai on rent for approximately more than one month and both of them stayed as husband and wife and at that time the accused was serving in the factory at GIDC, Vatva. Considering the aforesaid conduct, the subsequent case on behalf of the victim so stated in the deposition has rightly not been believed by the learned trial Court. The conduct on the part of the victim having moved from one place to another place and at no point of time the victim shouted for help and/or resisted, is suggestive of the fact that the victim went with the accused voluntarily and with her consent, both of them had sexual intercourse. Even the medical evidence also do not support the case of the prosecution that the accused had sexual intercourse with the victim against her will and wish.

In view of the aforesaid facts and circumstances, when the learned trial Court has acquitted the original accused, it cannot be said that the learned trial Court has committed any error which calls for interference of this Court in exercise of the appellate jurisdiction. The finding recorded by the learned trial Court are on appreciation of evidence and the same cannot be said to be perverse and/or contrary to the evidence on record.

6. In view of the above and for the reasons stated above, no interference of this Court is called for against the impugned judgment and order of acquittal passed by the learned trial Court. Under the circumstances, present Criminal Appeal fails and the same deserves to be dismissed and is, accordingly, dismissed.