

(2010) 10 GUJ CK 0144
In the Gujarat High Court
Case No : Criminal Appeal No. 2010 of 2006

Varsangji Vihaji Thakor and Another

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

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

Citation : (2010) 10 GUJ CK 0144

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

Bench : Single Bench

Advocate : Suneeta Shukla, for the Appellant; H.L. Jani, APP, for the Respondent

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 04.09.2006 passed by the learned Additional Sessions Judge & Presiding Officer, Fast Track Court No. 2, Gandhinagar District, at Kalol in Sessions Case No. 60 of 2006, whereby the learned Additional Sessions Judge has held the Appellants - accused guilty for the offences punishable u/s 366 read with Section 114 of I.P. Code and sentenced them to suffer Rigorous Imprisonment for 7 (seven) years and to pay fine of Rs. 5,000/- i/d to further undergo SI for six months. The learned Judge has further held both the Appellants - accused guilty for the offence u/s 363 read with Section 114 of I.P. Code and sentenced them to suffer rigorous imprisonment for 5 (five) years and to pay fine of Rs. 3,000/- i/d to further undergo SI for three months. The learned Judge ordered both the sentences to run concurrently.

2. The brief facts of the case of prosecution are that on or about 26.9.1999 at about 2.00 P.M., the accused in abatement with each other kidnapped and abducted minor girl Manjula, aged about 14 years from the lawful guardianship of her parents with an intention to have illicit intercourse with her. Therefore, the complaint was lodged by the father of victim against the present Appellants -

accused with Kalol Taluka Police Station on 28.9.1999.

3. 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 08 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 Appellants (original accused) guilty of the offences under Sections 363, 366 and 114 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. Suneeta Shukla, appearing on behalf of the Appellants 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 Appellants - accused, has contended that the Appellants - accused have not committed any offence as alleged against them in the charge. She has contended that the statement of the victim is not recorded and in absence of evidence of victim the trial Court ought not to have held the Appellants guilty of the charges alleged against them. She has contended that there is delay in lodging the complaint by the complainant. She has contended that the complaint is filed on hearsay evidence and on suspicion and the Appellants are falsely involved in the alleged crime. She has contended that there are contradictions in the evidence of the prosecution witnesses. She has also contended that looking to the fact of the case the sentence awarded by the learned Judge is very harsh. She has contended that the Appellant has already undergone the sentence of more than one year, and at present they are on bail. She has, therefore, contended that she is not arguing the Appeal on merit, but, the sentence awarded by the learned Judge is very harsh and looking to the facts of the case and the role of the Appellants some leniency may be shown towards the Appellants - accused.

8. Learned APP has supported the judgment and order passed by the learned Special 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 Appellants - accused guilty for the offences alleged against them. However, looking to the role and conduct of the present Appellants, in my opinion, the sentence awarded by the learned Judge is very harsh. The learned Advocate appearing on behalf of the Appellant has also not argued the matter on merit and contended that the Appellants - accused are innocent and an illiterate and poor person and they are the bread-winners of the family and, therefore, some leniency may be shown towards the Appellants. It is stated at the bar that the Appellants - accused have already undergone the sentence of more than one year and at present they are on bail. Therefore, if the sentence awarded by the learned Judge is reduced to an extent of 3 (three) years the same would meet the ends of justice.

11. In view of above, the Appeal is partly allowed. The judgment and order of conviction and sentence dated 04.11.2006 passed by learned Additional Sessions Judge & Presiding Officer, 2nd Fast Track Court, Gandhinagar District at Kalol in Sessions Case No. 60 of 2006 is hereby confirmed. However, the sentence awarded by the learned Additional Sessions Judge, vide impugned judgment is reduced to an extent of 3 (three) years R.I., instead of 7 (seven) years R.I. for the offence u/s 366 read with Section 114 of I.P. Code and 3 (three) years R.I., instead of 5 (five) years R.I. for the offence u/s 363 read with Section 114 of I.P. Code as awarded by the learned Additional Sessions Judge. The Appellants - accused are at present on bail and, therefore, they are directed to surrender themselves before the Jail Authority within a period of 4 (four) weeks from the receipt of this order to undergo their remaining sentence, failing which the trial Court is directed to issue Non-bailable warrant against the accused. Rest of the judgment and order passed by the learned Additional Sessions Judge is confirmed. Bail Bonds shall stand cancelled. R & P to be sent back to the trial Court immediately.