AIR 2017 SC 5059 : 2017 AIR(SCW) 5059 : (2017) AllMR(Cri) 4409 : (2017) 101 AllCriC 276 : (2017) 178 AIC 249 : (2017) 8 JT 146 : (2017) 9 Scale 79 : (2017) 7 SCR 672 : (2017) 15 SCC 591

SUPREME COURT OF INDIA

Case No: Crl.A. No. 1365-1366 of 2017, (Arising out of SLP (Crl) No(s) 3509-3510 of 2017)

Mahendra Subhashbhai Vankhede	APPELLANT
Vs	
The State of Gujarat Etc.	RESPONDENT

Date of Decision: Aug. 8, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 377 - Appeal by the State Government against sentence
- Indian Penal Code, 1860, Section 114, Section 397, Section 401, Section 376, Section 363, Section 366, Section 377 - Abettor present when offence is committed - Robbery or dacoity, with attempt to cause death or grievous hurt - Punishment for belonging to gang of thieves - Punishment for rape - Punishment for kidnapping - Kidnapping, abducting or inducing woman to compel her marriage, etc - Unnatural offences

Citation: AIR 2017 SC 5059 : 2017 AIR(SCW) 5059 : (2017) AllMR(Cri) 4409 : (2017) 101 AllCriC 276 : (2017) 178 AIC 249 : (2017) 8 JT 146 : (2017) 9 Scale 79 : (2017) 7 SCR 672 : (2017) 15 SCC 591

Hon'ble Judges: N.V. Ramana, J; Prafulla C. Pant, J

Bench: Division Bench

Advocate: VIKASH SINGH

Final Decision: Allowed

Judgement

1. Leave granted.

2. Challenge in this appeal is to the judgment of the High Court of Gujarat, dated

18.07.2016, in Crim. App. No. 1546 of 2011 and Crim. Rev. App. No. 581 of 2013, wherein the High Court has enhanced the sentence of imprisonment from two years nine months and fine of Rs. 100/-, in default thereof, a further period of simple imprisonment of seven days, as convicted by the Trial Court, to an imprisonment of seven years and additional fine of Rs. 5,000/-, in default thereof, to undergo further imprisonment for a period of three months under Sections 363, 366 and 376 of Indian Penal Code, 1860 [hereinafter "IPC" for brevity].

3. From the material placed before us, the emergent facts are that the father of the victim (girl) had lodged the complaint on 13.10.2008, complaining that his daughter was missing from her school since 11.10.2008 and the accused is responsible for the same. It is clear from the written note left in her school bag, that the girl had left the school voluntarily due to harassment meted out by her mother. Accused as well as the girl stayed together until 20.10.2008 when they were nabbed finally. Additionally it is borne out of the evidence available on record that the girl had love affair with the accused and indulged herself in consensual sexual intercourse in the intervening period when they had eloped. There is no dispute as to the fact that the accused was nineteen years old and the girl was less than sixteen years old at the time of the incident. Basing on the complaint filed by the father of the girl, police registered an FIR being CR No. 344 of 2008 under Sections 363, 366, 376, 114, 377, 397 and 401 of IPC. Subsequently, 5th Addl. Sessions Judge took cognizance of the case under Section 363, 366, 376 and 114 of IPC.

4. The trial court after a full-fledged trial found the accused guilty for offences under Sections 363, 366 and 376 of IPC and ordered to undergo sentence of simple imprisonment of two years and nine months and fine of Rs. 100/- (Rupees one hundred only), failing which, he shall have to undergo further simple imprisonment of seven days. The trial court while imposing lesser sentence reasoned that this case was a love affair involving young adolescents, therefore severe punishment would not be feasible.

5. On an appeal by the complainant as well as the State, High Court further enhanced the punishment of imprisonment to seven years and ordered additional fine of Rs. 5,000/- and in default thereof, to undergo imprisonment for a period of three months for the reason that there was no adequate or special reason for the trial court to reduce the sentence. Aggrieved by the decision of the High Court, the appellant is in appeal before us.

6. Ld. Counsel for appellant contends that the trial court, by well considered judgment, has rightly imposed a lower sentence. Further he states that both accused and the girl were adolescents having love affair. Additionally he submits that the girl had voluntarily accompanied the accused and the sexual intercourse was consensual. He relies on the judgment of this Court in State of Punjab v. Rakesh Kumar, (2008) 12 SCC 33, to submit that this Court under identical circumstances had convicted the accused therein for three years under Sections 366 and 376 of IPC.

7. Per contra Ld. Counsel appearing on behalf of the State as well as complainant (father of girl) while supporting the judgment of the High Court, vehemently opposed this appeal on the ground that the rape of a minor should be dealt with in a strict manner. Reliance is placed on the judgment of this Court in Parminder v. State of NCT Delhi, (2014) 2 SCC 592, to contend that there is no adequate and special reasons for imposing lesser sentence under Section 377 of the Code of Criminal Procedure Code, 1973.

8. Having perused the documents available on record, we are of the opinion that the trial court while imposing a lesser sentence has provided valid reasons. Although the complainant places reliance on Parminder v. State of NCT Delhi, (Supra), the aforesaid case is distinguishable as the accused therein had forcibly raped the victim, when she had come to visit the sister of the accused. Further the accused therein had threatened to kill the victim, if she reveals to anybody about the incident. In the case at hand there is neither force nor threat meted out to the girl, therefore the aforesaid case has no relevancy herein. On the other hand the decision in State of Punjab v. Rakesh Kumar, (Supra), is applicable to this case. In this case at hand, there is no dispute as to the fact that the accused was nineteen years of age at the time of the incident. Additionally it is born out of the record that the accused and the girl had a love affair and she had left her parent"s house voluntarily without any force. Further it is pointed out that both of them stayed together for around ten days and the nature of sexual intercourse was consensual. Moreover the appellant herein has already undergone the period awarded (two years nine months) by the trial court.

9. In consideration of peculiar facts and circumstances herein, and as the incident relates to the date prior to the amendment of IPC (The Criminal Law (Amendment) Act, 2013, No. XIII of 2013 (w.r.f. 03.02.2013)) which came into force on 03.02.2013, and for special reasons sentence less than seven years was imposable, we think that the trial court has rightly imposed a lesser sentence. It is to be noted that after the High Court had enhanced the sentence, the accused has further undergone a sentence of six months (in all more than three years) which we feel is sufficient to meet the ends of justice. In light of the above, we allow the appeal and direct the appellant to be released forthwith, if not required in any other case.