

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1138/2011

BADRUBHAI BAVKUBHAT DARIYA

Appellant(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

O R D E R

This appeal is filed by the accused-appellant questioning the legality and correctness of the judgment and order dated 27.01.2009, passed by the High Court of Gujarat in Criminal Appeal No. 981 of 2005 affirming the judgment and order of conviction passed by the trial court for the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code (for short 'IPC') and sentencing him rigorous imprisonment for two years and fine of Rs.1500/- under Section 363 IPC, in default simple imprisonment for 10 months, three years rigorous imprisonment under Section 366 and a fine of Rs.1000/-, in default simple imprisonment for 10 months and for offence under Section 376 rigorous imprisonment for ten years and a fine of Rs.3000/-, in default simple imprisonment for 20 months, to run concurrently, is under challenge in this appeal.

The trial court on appreciation of the evidence on record accepted the prosecution case and held that the accused-appellant is guilty of the offences referred to supra. The correctness of the same was challenged before the High Court inter alia urging various legal contentions.

The principal contention urged on behalf of the appellant before the High Court and this Court is that the age of the prosecutrix is more than sixteen years and she has lived with the accused-appellant without any objection for more than 20 days and this fact is spoken to by the prosecutrix herself in her deposition before the trial court. Thus, the charges levelled against the appellant are false charges and, therefore, the concurrent finding of fact recorded by the appellate court is an erroneous finding, ignoring the material evidence on record in favour of the appellant and the appellant has been wrongly convicted and sentenced. The learned counsel further submitted that having regard to the facts and circumstances of the case particularly the fact admitted by the prosecutrix that she lived with the appellant voluntarily for more than twenty days is itself a consensual act on the part of the prosecutrix and this aspect of the matter is an adequate and sufficient reason

as provided under Section 376 proviso of the Indian Penal Code, for the High Court for exercising its appellate power and granting relief to the appellant. Therefore, the learned counsel requested us to set aside impugned judgment and order of conviction and sentence. Learned counsel for the appellant also requested us to reduce the punishment to the period which the appellant had already undergone the imprisonment and grant relief to this extent.

Per contra, learned counsel appearing on behalf of the respondent submitted that the concurrent finding of fact recorded by the High Court in the impugned judgment and order does not call for interference for the reason that the same is not vitiated either on account of erroneous reasoning or error of law. Learned counsel appearing on behalf of the State placed strong reliance upon Paras 9 and 10 of the deposition of PW-1, which is extracted hereinbelow:

"9. It is true that I stated in my police statement that "Badrubhai caught. Due to this incident, my parents beat me and so, I felt tiresome. As I do not want to go to my father's house and so, I request to send me to Vikas gruh." I stayed at Vikas Gruh for 2-3 months and during this period, my mother-father came to meet me. It is not true that I insisted my parents that I have relation with Badrubhai and I will continue it."

10. It has happened two to three times that I went with Badrubhai and returned home. No complaint was lodged during this period. It is not true that I went with Badrubhai because I wished. It is not true that I depose false deposition due to pressure from my parents. It is not true that I mentioned my wrong birth date."

The aforesaid evidence has been accepted by the appellate court in exercise of its appellate jurisdiction. The learned counsel for the respondent further submitted that there is concurrent finding of fact that the charges levelled against the appellant are proved and therefore, the same is based on proper re-appreciation of the evidence on record. Therefore, there is no miscarriage of justice caused to the appellant and, therefore, there is no ground for interference in this appeal. Hence, he requested this Court not to interfere with the order impugned and prayed for dismissal of this appeal.

We have very carefully examined the rival legal contentions urged on behalf of the parties in this case, perused the impugned judgment and order passed by the Division Bench of the High Court and scrutinised the deposition of the prosecutrix, to consider the submission made on behalf of the appellant. Having regard to the facts and circumstances of the case, particularly the evidence of the prosecutrix, which has been extracted

hereinabove in the instant order and evidence of PW-9 and PW-10, we are of the view that the conviction recorded by the Courts below is liable to be affirmed. It is brought to our notice that the appellant has already undergone more than five years imprisonment. In this view of the matter, in the facts and circumstances of the case, we feel that it is a fit case to exercise our discretionary power to reduce the imprisonment to subserve the interest of justice. Accordingly, we modify the impugned judgment and order by reducing the sentence from 10 years to the period already undergone.

Since the appellant has been enlarged on bail vide this Court's order dated 20.09.2013, on furnishing bail bonds and sureties to the satisfaction of the trial court, the bail bonds and the sureties shall stand discharged.

With the aforesaid observations, the appeal is disposed of.

.....J.

(V.GOPALA GOWDA)

.....J.  
(ADARSH KUMAR GOEL)

NEW DELHI  
SEPTEMBER 03, 2014

ITEM NO.112

COURT NO.13

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1138/2011

BADRUBHAI BAVKUBHAT DARIYA

Appellant(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

(with appln. (s) for bail and office report)

Date : 03/09/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA  
HON'BLE MR. JUSTICE ADARSH KUMAR GOELFor Appellant(s) Mr. Rajesh Inamdar, Adv.  
Ms. Sania Husaini, Adv.  
Mr. Rauf Rahim, Adv.For Respondent(s) Ms. Hemantika Wahi, Adv.  
Ms. Preeti Bhardwaj, Adv.  
Ms. Puja Singh, Adv.UPON hearing the counsel the Court made the following  
O R D E R

The appeal is disposed of in terms of the signed order.

(VINOD KUMAR)  
COURT MASTER(MALA KUMARI SHARMA)  
COURT MASTER

(Signed order is placed on the file)