

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2323 OF 2014

BHAVANBHAI BHAYABHAI PANELLA

...APPELLANT

VERSUS

THE STATE OF GUJARAT

...RESPONDENT

ORDER**ADARSH KUMAR GOEL, J.**

1. This appeal has been preferred against judgment and order dated 25th March, 2011 passed by the High Court of Gujarat at Ahmedabad in Criminal Appeal No.1298 of 2005.
2. The case of the prosecution is that on 19th September, 2004 at 1330 hrs., the appellant took the prosecutorix aged eleven years near Khojawadi plot in village Jasvantgadh, Taluka and District Amreli and committed rape. He also threatened the prosecutorix that he would kill her if she would disclose the facts to anyone. However, she informed her mother about the occurrence who in turn informed her husband on his return to the house in the night. In the next morning, the prosecutorix was taken to the Government Hospital by her parents and First Information Report was lodged in the Police Station by the mother of the victim. Investigating Officer conducted the investigation and filed charge sheet against the appellant. At the trial, the prosecution examined the prosecutorix, her mother, the medical officer and the investigating officer and on the basis of the evidence led, the trial Court held the case of the prosecution proved. Accordingly, the trial Court convicted the appellant under Section 376 (2)(f) IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo RI for three months. The trial Court also awarded compensation of Rs.1,00,000/- (one Lakh) to the victim under Section 357(3). It was directed that on failure of the accused to pay

compensation, his property will be liable to be sold for recovery of the amount. The conviction and sentence have been affirmed by the High Court.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant points out that the prosecutorix in cross-examination stated that the matter had been compromised and that her mother PW-2 also stated at one stage in her statement that an unidentified person had harassed her. These aspects have been duly considered by the courts below and it has been held that from the totality of evidence, the offence stood proved. We find adequate evidence on record to justify conviction of the appellant. Thus, conviction of the appellant is upheld.

5. The only question which survives for consideration is the sentence to be awarded. We have been informed that the appellant has been in custody for about ten years. Our attention has been drawn to the custody certificate dated 27th July, 2012 according to which the appellant had completed sentence of seven years, five months and ten days. Thereafter, a period of two and a half years has gone by. Thus, the appellant has already undergone the sentence of about ten years.

6. Having regard to the totality of circumstances, we are of the view that ends of justice will be met if the sentence awarded to the appellant is reduced to RI for ten years. However, sentence of fine and compensation as also default sentence and direction for recovery of the amount payable as compensation are maintained. Ordered accordingly.

7. The appeal is disposed of.

.....J.
(T.S. THAKUR)

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

NEW DELHI
FEBRUARY 4, 2015