

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 262 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : No

BHARATJI NADAJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR JAL SOLI UNWALA for Petitioner

MR SR DIVETIA APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/06/98

ORAL JUDGEMENT

This application under Section 397 read with Section 401 of the Code of Criminal Procedure has been preferred against the judgment and order dated 26th March, 1996 passed by the learned Judicial Magistrate First Class, Deesa in Criminal Case No. 3710 of 1995, confirmed by the learned Addl. Sessions Judge, Banaskantha at Palanpur under his judgment and order

dated 10th March, 1998, passed in Criminal Appeal No. 15 of 1996.

2. The petitioner-convict was tried for commission of offence under section 354, 323, 506 (2) of the Indian Penal Code and under Section 135 of the Bombay Police Act. The learned trial Judge held that the offence under the aforesaid provisions were proved. For the offence committed under Section 323 of the Indian Penal Code, sentence of simple imprisonment for six months and fine of Rs. 100/- is imposed. For the offence committed under section 354 of the Indian Penal Code, simple imprisonment for a term of 730 days and fine of Rs. 1000/- has been imposed. Whereas, for the offence committed under Section 37 (1) of the Bombay Police Act, simple imprisonment for 100 days and fine of Rs. 100/- as envisaged under Section 135 of the Act has been imposed. And whereas, for the offence punishable under Section 506 (2) of the I.P Code, imprisonment for 730 days and fine of Rs. 500/- has been imposed. It has been further ordered that all the sentences should run concurrently. In the event of failure to pay fine, the petitioner is required to undergo further imprisonment for 182 days.

On appeal, the learned Addl. Sessions Judge confirmed the findings for the offences committed under Section 323, 354, 506 (2) of the Indian Penal Code and confirmed the sentence also. However, in respect of offence committed under the Bombay Police Act, the learned Addl. Sessions Judge acquitted the petitioner of the charge and has set-aside the sentence of imprisonment for 100 days and the fine of Rs. 100/- imposed upon him. Feeling aggrieved, the petitioner has preferred this petition under Section 397 of the Code of Criminal Procedure.

Mr. Unwalla, the learned advocate appearing for the applicant submitted that no independent witness has been examined by the prosecution and in absence of independent witness, the offence alleged to have been committed by the applicant in presence of the brother of the victim cannot be said to have been established. He has further submitted that the only witnesses examined by the prosecution were - the victim and her brother - both of whom are interested witnesses and ought not to have been believed. Mr. Unwalla has further argued that the victim had lodged the complaint against the applicant because of the animosity as was brought out by the applicant in the statement recorded under Section 313 of the Criminal Procedure Code. Mr. Unwalla has however not been able to show that how the victim was related to

Amraji Rawaji whose cause the victim is alleged to have espoused. Mr. Unwalla has also drawn my attention to the allegation that there was some animosity between applicant and the uncle of the complainant. However, the statement is too vague to be believed. Mr. Unwalla is also not able to say how old the brother of the complainant was, in whose presence the offence was committed. I am unable to accept the contentions raised by Mr. Unwalla. The statements of the victim and her brother cannot be discarded only because they are interested witnesses, if the same are otherwise believable. Further, it is not brought out that the brother of the victim was a healthy adult and in his presence the offence could not have been committed. The allegation of previous animosity is also vague and is not believable. The judgments of the Courts below do not warrant interference.

In the alternative, Mr. Unwalla has submitted that in past no offence was ever registered against the present applicant, and he is 23 years old at present, therefore, considering his age and his past record, he be released on probation.

Both the courts below have considered whether the applicant could be released on probation. However, keeping in view the nature of the offence, the Courts below have not thought it fit to release the applicant on probation. I also do not consider it to be a case fit to release the applicant on probation. Application is, therefore, rejected. Notice is discharged. Applicant shall surrender before the Jail Authorities on or before 7th July, 1998.

Prakash*