

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 309 OF 2012
(Arising out of S.L.P. (Crl.) No. 2967 of 2011)

Bavo @ Manubhai Ambalal Thakore

.... Appellant(s)

Versus

State of Gujarat

.... Respondent(s)

J U D G M E N T

P.Sathasivam,J.

- 1) Leave granted.
- 2) This appeal is directed against the final judgment and order dated 28.08.2009 passed by the Division Bench of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 505 of 2004 whereby the High Court while affirming the conviction and sentence awarded by the trial Court dismissed the appeal of the appellant herein.

3) **Brief facts:**

(a) According to the Complainant-Ramilaben, on 02.05.2002 in the morning, when her husband had gone to work, she was in her house along with her three children. At that time, her daughter – Smita, aged seven years, was having pain in her finger, therefore, she called her distant relative Bavo @ Manubhai Ambalal Thakore - the appellant herein for taking her to the doctor.

(b) Thereafter, the appellant herein took Smita to a doctor at about 10:00 a.m. and at about 11:30 a.m. she returned home alone limping and crying. When the complainant asked her daughter as to what had happened, she narrated the whole incident that how the appellant herein over-powered her and the Complainant finally came to know that he has committed rape on her daughter which was also evident from her condition. Thereafter, the Complainant went to the house of the appellant, but he was not present there. When her husband returned home in the evening, she informed him about the incident and, on 05.05.2002, a complaint was lodged at Umreth Police Station.

(c) On 07.07.2002, the police, after conducting the investigation, filed a charge sheet before the Judicial Magistrate, First Class, Umreth. Since the case was exclusively triable by the Court of Sessions, the Judicial Magistrate committed the case to the Court of Additional Sessions Judge, Anand. On 18.03.2004, the Addl. Sessions Judge, convicted the appellant for the offence punishable under Sections 376 and 506(2) of the Indian Penal Code, 1860 (in short "the IPC") and sentenced him to undergo imprisonment for life with a fine of Rs.20,000/-, in default, to further undergo RI for three years.

(d) Being aggrieved by the order of conviction and sentence, the appellant herein preferred an appeal before the High Court. The High Court, by order dated 28.08.2009, dismissed the appeal and confirmed the conviction and sentence awarded by the Addl. Sessions Judge.

(e) Being aggrieved, the appellant herein has preferred this appeal by way of special leave before this Court.

4) Heard Mr. Merusagar Samantaray, learned counsel for the appellant herein and Ms. Hemantika Wahi, learned counsel for the respondent-State.

5) Learned counsel appearing for the appellant fairly states that he is not challenging the conviction but questioning the quantum of sentence only. According to him, taking note of various factors including the age of the appellant-accused being 18-19 years at the time of the incident and hailing from a poor family, award of life imprisonment and a fine of Rs.20,000/-, in default, to further undergo RI for three years is excessive. Learned counsel appearing for the respondent-State fairly submitted that the Court is free to impose appropriate sentence in terms of Section 376(2)(f) of the IPC.

6) In view of the limited submission, there is no need to go into the finding regarding conviction under Sections 376 and 506(2) of the IPC. The only question to be considered is whether the sentence of life imprisonment and a fine of Rs.20,000/- is reasonable or excessive.

7) Section 376 speaks about the punishment for rape. Sub-section(2)(f) makes it clear that whoever commits rape on a

woman when she is under 12 years of age shall be punished with RI for a term which shall not be less than 10 years but which may be for life and shall also be liable to fine. Proviso appended to sub-section (2) makes it clear that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than 10 years.

8) It is clear from the above statutory provision that for the offence of rape on a girl under 12 years of age, punishment shall not be less than 10 years but which may extend to life and also to fine shows that the legislature intended to adopt strictness in awarding sentence if the victim is below 12 years of age. No doubt, the proviso to Section 376(2) lays down that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than 10 years. It is settled law that courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. In the absence of any special and adequate

reasons, recourse to proviso mentioned above cannot be applied in a casual manner.

9) Learned counsel for the appellant relied on a decision of this Court in **Narayanamma (Kum) vs. State of Karnataka and Others**, (1994) 5 SCC 728 and contended that the life imprisonment is not warranted and sentence may be reduced to the period already undergone. The said decision relates to the rape on a minor girl aged 14 years. While the trial Judge convicted and sentenced the accused to three years RI, the High Court reversed the same and acquitted the accused. It was challenged before this Court. After considering the entire materials, this Court set aside the order of the High Court and affirmed the conclusion arrived at by the trial Court. Though this Court expressed displeasure in awarding only three years RI for the crime of rape, taking note of length of time, not inclined to enhance it and confirmed the sentence awarded by the trial Court.

10) Counsel for the appellant relied on another decision of this Court in **Rajendra Datta Zarekar vs. State of Goa**, (2007) 14 SCC 560. The said case also relates to the offence

under Section 376. The victim was aged about 6 years and the accused was aged about 20 years. Ultimately, this Court confirmed the conviction and sentence of 10 years as awarded by the High Court. However, the fine amount of Rs. 10,000/- awarded under Section 376(2)(f) being found to be excessive reduced to Rs. 1,000/-.

11) Considering the fact that the victim, in the case on hand, was aged about 7 years on the date of the incident and the accused was in the age of 18/19 years and also of the fact that the incident occurred nearly 10 years ago, the award of life imprisonment which is maximum prescribed is not warranted and also in view of the mandate of Section 376(2)(f) IPC, we feel that the ends of justice would be met by imposing RI for 10 years. Learned counsel appearing for the appellant informed this Court that the appellant had already served nearly 10 years.

12) Coming to the quantum of fine, in the case on hand, the learned trial Judge has imposed Rs.20,000/-, in default, to undergo RI for three years, learned counsel for the appellant submitted that the accused hails from a poor family and was

working as an agricultural labourer and is not in a position to pay such a huge amount as fine which is not disputed by the State. Taking note of all these aspects, we reduce the fine of Rs. 20,000/- to Rs. 1,000/-, in default, to further undergo RI for one month.

13) In view of the above discussion, the conviction imposed on the appellant herein is confirmed. However, the sentence of life imprisonment is modified to RI for 10 years with a fine of Rs.1,000/-, in default, to further undergo RI for one month.

14) With the above modification of sentence, the appeal stands disposed of.

.....J.

(P. SATHASIVAM)

.....J.

(J. CHELAMESWAR)

NEW DELHI;
FEBRUARY 3, 2012.