

(2024) 12 GUJ CK 0021

Gujarat High Court

Case No: Criminal Appeal (For Enhancement) No. 1955 of 2024

State of Gujarat

APPELLANT

Vs

Vs Karanbhai @ Dargo Laljibhai
Umedbhai Parmar

RESPONDENT

Date of Decision: Dec. 6, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 164, 313, 377
- Indian Penal Code, 1860 - Section 354D(1)(i)
- Protection of Children from Sexual Offences Act, 2012 - Section 11(1), 12

Hon'ble Judges: Vimal K. Vyas, J

Bench: Single Bench

Advocate: Shruti Pathak

Final Decision: Dismissed

Judgement

WITNESSES,,

1.,Deposition of the victim/complainant,08

2.,Deposition of the victim ~V~™,11

3.,Deposition of the victim ~N~™,13

4., "Rameshbhai Hukabhai Parmar, Panch-Witness",15

5., "Umeshbhai Viththalbhai Parmar, Father of the victim",17

6., "Shaileshbhai Mavjibhai Patel, P.S.I., Nadiad",19

7., "Hitesh Ranchhodbhai Prajapati, I.O. (P.S.I., Nadiad Rural)",21

enhancement of the sentence imposed upon the respondent-accused mainly on the grounds that the sentence awarded by the trial court is highly,,

inadequate and disproportionate to the offence committed by the respondent-accused and the trial court has committed an error in taking a lenient,, view while imposing a lesser sentence.,,

SUBMISSION ON BEHALF OF THE APPELLANT-STATE.,,

7. Ms.Shruti Pathak, learned APP appearing for the appellant-State has submitted that the trial court has, without assigning any adequate and special",,

reasons, awarded inadequate sentence. The law in this regard is well-settled that while awarding the punishment, the court should take into",,

consideration the nature of the offence, the circumstances under which it was committed and the degree of deliberation shown by the offender.",,

Ms.Pathak has submitted that the measure of punishment should be proportionate to the gravity of the offence. In the facts of the present case, the",,

respondent-accused has been held guilty for the commission of offence under Section 354D(1)(i) of the IPC, for which, the punishment on first",,

conviction is imprisonment of either description for a term which may extend to three years and shall also be liable to fine, and for the commission of",,

offence under Section 12 of the POCSO Act, the punishment is imprisonment of either description for a term which may extend to three years and",,

shall also be liable to fine. However, the trial court, considering the age of the respondent-accused as well as considering the fact that the respondent-",,

accused was not having any past antecedents, imposed minimum sentence of simple imprisonment of six days for the offences under Section 354D(1)",,

(i) of the IPC and Section 12 of the POCSO Act. In the facts of the present case, despite the overwhelming evidence against the respondent-accused",,

the trial court awarded lesser sentence which, ultimately, will result into travesty of justice and spread a wrong message to the society. The trial court",,

ought to have taken a deterrent view while imposing the sentence in such a serious offence. Learned APP Ms.Pathak has lastly submitted that taking,,

into consideration the aforesaid circumstances as well as the seriousness and gravamen of the offence committed by the respondent-accused, the",,

appeal is required to be admitted and allowed, thereby the sentence awarded by the trial court may be enhanced to the maximum punishment for the",,

offences with which the respondent-accused has been charged.,,

ANALYSIS AND FINDINGS :,,

8. Having heard the learned advocates for the respective parties and having regard to the facts and circumstances of the present case, prima facie it",,, appears that the trial court has convicted the present respondent-accused for the alleged offence and sentenced him for a short term of sentence to,, undergo imprisonment for six days and also imposed a fine of Rs.25,000=00. It prima facie appears that the appellant-State has filed the present",,, appeal for enhancement of sentence on a very limited ground. It is an admitted fact that after the judgment of conviction and order of sentence passed,, by the trial court, the appellant-State has preferred the present appeal being Criminal Appeal No.1955 of 2024. Admittedly, it appears from the bare",,, perusal of the judgment of the trial court that the trial court, after taking into consideration the age of the respondent-accused as well as the",,, considering the fact that the respondent-accused was not having any past antecedents, has imposed minimum sentence of six days and a fine of",,, Rs.25,000=00 upon the respondent-accused for the offences under Section 354D(1)(i) of the IPC and Section 12 of the POCSO Act. The trial court",,, has, in its judgment at para-33, assigned the reasons for awarding the punishment.",,,

9. The punishment for the offence under Section 354D(1)(i) of the Indian Penal Code on first conviction is imprisonment of either description for a,, term which may extend to three years and shall also be liable to fine. Section 354D(1)(i) of the IPC reads thus :,,

“354D. Stalking.”(1) Any man who--,,

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of",,,

disinterest by such woman; or,,

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking :",,,

Provided that such conduct shall not amount to stalking if the man who pursued it proves that--,,

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the,,

responsibility of prevention and detection of crime by the State; or,,

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or,,

(iii) in the particular circumstances such conduct was reasonable and justified.,,

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which,,

may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of",,,

either description for a term which may extend to five years, and shall also be liable to fine.â€",,,

10. The punishment for the offence under Section 12 of the POCSO Act is imprisonment of either description for a term which may extend to three,,

years and shall also be liable to fine. Section 12 of the POCSO Act reads thus :,,

â€œ12. Punishment for sexual harassment.â€"Whoever, commits sexual harassment upon a child shall be punished with imprisonment of",,,

either description for a term which may extend to three years and shall also be liable to fine.â€",,,

11. On the overall appreciation and reanalysis of the entire evidence, prima facie, it appears that the trial court, after taking into consideration the",,,

seriousness of the offence, declined to grant the benefit of probation to the respondent-accused. However, considering the fact that the respondent-",,,

accused was not having any past criminal antecedent as well as taking into consideration the nature of the incident as well as the circumstances and,,

the manner in which it was occurred, the trial court has imposed the minimum sentence of simple imprisonment for six days along with a fine of",,,

Rs.25,000=00, which cannot be said to be perverse or illegal since the trial court has exercised its discretion to impose the minimum sentence.",,,

Therefore, this Court does not find any infirmity in the order passed by the trial court, since, while exercising the judicial discretion, the trial court has",,,

recorded sufficient and adequate reasons. This Court is satisfied with the reasoning assigned by the trial court on the aspect of sentence and",,,

therefore, no interference is required to be made with the discretion exercised by the trial court. It is settled position of law that the question of",,,

sentence is a matter of discretion and if sufficient reasons are recorded by the trial court, then the High Court should not interfere with the decision of",,,

the trial court on the issue of sentence. This Court deems it fit to refer to the principles, as laid down by the Supreme Court in the case of *Bed Raj vs.*,",,

State of U.P., reported in AIR 1955 SC 778, governing the exercise of power by the High Court while enhancing the sentence imposed by the trial",,,

court, which reads thus :",",,

“A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted,,

judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be",,,

disclosed on the face of the judgment; see for example the observations in -'*Dalip Singh v/s. State of Punjab*', and '*Nar Singh v/s. State of*",",,

Uttar Pradesh'.",,,

In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only,,

called for when it is manifestly inadequate. In our opinion, these principles have not been observed. It is impossible to hold in the",,,

circumstances described that the Sessions Judge did not impose a substantial sentence, and no adequate reason has been assigned by the",,,

learned High Court Judges for considering the sentence manifestly inadequate.,,,

In the circumstances, bearing all the considerations of this case in mind, we are of opinion that the appeal (which is limited to the question",,,

of sentence) should be allowed and that the sentence imposed by the High Court should be set aside and that of the Sessions Court,,

restored.â€",,,

12. Considering the peculiar facts and circumstances of the present case, more particularly, the fact that the respondent-accused had uttered only the",,,

words “have our mobile numbers, donâ€™t you like us?” and he had not uttered any bad word or used any filthy language or shown any indecent",,,

behaviour or abused the victim girls physically, this Court is of the considered opinion that the findings recorded by the trial court while imposing the",,,

sentence do not suffer from any perversity or illegality. The findings recorded by the trial court are absolutely just and proper, and in recording the",,,

same, no illegality or infirmity has been committed by the trial court. Therefore, this Court does not find any ground warranting interference with the",,,

order of sentence passed by the trial court.,,

13. On the facts and in the circumstances of the case, this Court is in complete agreement with the findings, ultimate conclusion and the resultant",,

order of sentence passed by the trial court, therefore, no interference is warranted. The appeal, therefore, fails and the same is hereby dismissed in",,

limine. Records and proceedings be sent back to the concerned court.,,