

(2016) 07 GUJ CK 0034

In the Gujarat High Court

Case No : Criminal Appeal No. 1546 of 2011, 581 of 2013.

**State of Gujarat - Appellant @HASH Mahendra Subhashbhai Vankhede -
Opponent/Respondent**

Date of Decision : 18-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377

Penal Code, 1860 (IPC) — Section 114, Section 363, Section 366, Section 376

Citation : (2016) CriLJ 4652 : (2017) 1 GLR 328

Hon'ble Judges : Anant S. Dave and B.N. Karia, JJ.

Bench : Division Bench

Advocate : Mr. Rutvij Oza, APP, for the Appellant No. 1; Mr. Kunal S Shah, Advocate, for the Opponent/Respondent No. 1

Final Decision : Allowed

Judgement

Mr. B.N. Karia, J. - Criminal Appeal No. 1546 of 2011 is preferred by the State of Gujarat under Section 377 of the Code of Criminal Procedure, 1973 ("CrPC" for short) against the judgment and order of sentence passed by the learned Principal District & Sessions Judge, Surat in Sessions Case No. 39 of 2010 dated 26th July 2011. Whereas, Criminal Revision Application No. 581 of 2013 is preferred by the original Complainant under Section 397 read with Section 401 CrPC for enhancement of the sentence awarded by the learned trial Judge. Since both these proceedings call in question the very judgment and order of sentence, they are heard together.

2. The broad essential facts, which need to be adumbrated for the decision of the present Appeal as well as Revision Application are that - on 11th October 2008 at about 10:20 hours, the present respondent-Mahendra Subhashbhai Vankhede along with another accused Babubhai Anilbhai alias Hanifbhai Rathod induced and enticed away minor daughter of the complainant named Jyoti from Englo Vaidik Hindi Vidyalaya, Surat and taken away at various places and committed rape on her against her will and consent. Thus, both the accused persons in connivance of each other, committed heinous offence punishable under Sections

363, 366, 376, 114 IPC, and therefore, a complaint came to be lodged at Udhana Police Station, Surat which was registered as I C.R No. 344 of 2008, moving the wheels of investigation machinery into motion.

3. After investigation, Police laid charge sheet before the 11th Addl. Chief Judicial Magistrate, First Class, Surat. Since the offence committed by the respondent and another accused was absolutely triable by the Court of learned Sessions Judge, the matter was committed to the learned Principal District & Sessions Judge, Surat and numbered as Sessions Case No. 39 of 2010.

4. At trial, the respondent pleaded not guilty and claimed to be tried for the charges levelled against him. Therefore, the prosecution examined, complainant, Medical Officer, Police witnesses and panch witnesses. The prosecution also placed reliance on documentary evidence in support of oral evidence. The learned trial Judge, after appreciating evidence was pleased to convict the respondent-Mahendra Subhashbhai Vankheda for the offence punishable under Section 363, 366, 376 IPC and ordered to suffer simple imprisonment for a period of two years and nine months and to pay fine of Rs. 100/-, and in default thereof, to undergo further simple imprisonment for a period of seven days. And whereas, the learned trial Judge was pleased to acquit another accused named Babubhai Anilbhai alias Hanifbhai Rathod for the offence punishable under Sections 363, 366 read with Section 114 IPC. The learned trial Judge directed the respondent herein to suffer all sentences concurrently and gave set off, for which he has already undergone during his judicial custody, giving rise to filing of the present Appeal by the State of Gujarat and the Revision Application by the original complainant on the grounds pleaded therein.

5. At the outset, it needs to be mentioned that Criminal Misc. Application No. 17224 of 2011 moved by the State of Gujarat seeking leave to appeal against the very judgment and order dated 26th July 2011 qua another accused viz. Babubhai Anilbhai alias Hanifbhai Rathod came to be rejected by this Court (Coram : Ravi R Tripathi & Paresh Upadhyay, JJ.) vide Order dated 6th September 2012.

6. Heard learned APP Mr. Rutvij Oza appearing for the respondent-State, learned advocate Mr. Manan A. Shah for the applicant-original complainant and learned advocate Mr. Kunal S. Shah appearing for the respondent.

7. It is urged by learned APP that the sentence imposed by the learned trial Judge for the offence punishable under Section 363, 366, 376 IPC is highly inadequate and disproportionate to the offence committed by the respondent, and therefore, the same deserves to be enhanced by this Court. It is further urged that the learned Judge below was wholly wrong in his approach and did not take even into consideration the mandatory requirement of the law, while reducing the sentence to a period of two years and nine months for an offence of rape, which was committed on a minor girl. He submitted that the impugned judgment suffers from lack of application of mind and the sentence awarded is

wholly disproportionate not only to the mandate of law but also to the nature of gravity of offence committed by the respondent. That, the learned Judge has not properly appreciated the evidence of the complainant (PW-1 : Exh. 10) along with evidence of Rameshbhai Tulsiram (PW-11 : Exh. 48) and Principal - Renukaben Manilal (PW-12 : Exh. 49) from where it is crystal clear that the accused person has abducted minor daughter of the complainant, aged about 14 years and 9 months from the lawful possession and committed rape on her against her will and consent. That, the learned Judge has committed an error in taking lenient view, while imposing sentence for an offence punishable under Section 363, 366, 376 IPC. That, the sentence awarded by the learned trial Judge for the offence is nothing but mockery of justice, and therefore also, the same deserves to be enhanced. He added that looking to the nature of evidence of victim and the seriousness of the crime committed by the accused, the learned trial Judge ought to have imposed maximum punishment. That, without assigning any adequate reason, the learned Judge has committed an error in imposing lesser sentence upon the accused as it is not in accordance with the provisions of the law. That, the evidence of PW-7 victim at Exh. 34 is not properly appreciated by the learned Judge. It was further urged that when from the record it is clearly made out that the accused person has forcefully committed rape against the will and consent of the minor, the learned Judge ought to have placed reliance upon the version of the victim. However, the learned trial Judge has committed an error in not relying upon the evidence of victim by imposing lesser sentence. Under the circumstances, it is requested by the learned APP to allow this appeal and thereby enhance the sentence imposed by the learned Judge. In support of his arguments, learned APP has placed reliance upon the following authorities, viz.,

- (a) *Shimbhu & Anr. v. State of Haryana*, (2014) 13 SCC 318;
- (b) *Parminder alias Ladka Pola v. State of Delhi*, (2014) 2 SCC 592;
- (c) *State of Rajasthan v. Vinod Kumar*, (2012) 6 SCC 770;
- (d) *State of Madhya Pradesh v. Balu*, (2005) 1 SCC 108.

8. Learned advocate Mr. Manan A. Shah appearing for the applicant in Criminal Revision Application has supported the arguments advanced for and on behalf of the State by the learned APP Mr. Rutvij Oza. He further contended that the sentence awarded to the accused by the Court below is contrary to the law and without any adequate reasons, and therefore, the same should be enhanced by this Court.

9. Per contra, learned advocate Mr. Shakeel Kureshi appearing for the respondent-accused strongly supported the impugned judgment and order by contending that the respondent-accused was himself 18 years" of age at the time of the occurrence, and hence, severe sentence as contemplated under Section 376 IPC would be counter productive. He further submitted that the respondent accused as well as the victim were in love. The victim was never

abducted by the respondent-accused or she was never committed rape against her wish or desire, and therefore, compassionate view should be taken, more so in the background of the fact that the incident in question had occurred nearly eight years back. He further contended that the learned trial Judge has given adequate and cogent reasons for awarding lesser sentence than the minimum prescribed under the law, as she was below sixteen years of age and had fallen in love with the respondent. That, they had no idea about the result in future of their love affair, and therefore, discretion has rightly been exercised by the learned trial Judge in awarding lesser sentence upon the accused. He added that there was no injury on her body and that the sexual intercourse, if any was done, was done with the consent of the victim and hence, the accused could not be convicted by imposing maximum punishment for an offence punishable under Section 376 IPC. In support of his arguments, learned advocate Mr. Kureshi placed reliance upon the following authorities :

- (a) State of Chhatisgarh v. Lekhram, (2006) 5 SCC 736;
- (b) Ashi Devi & Ors. v. State (NCT of Delhi), (2014) 12 SCC 591;
- (c) Sushil Ansal v. State, thro" C.B.I., (2015) 10 SCC 359;
- (d) Mohd. Imran Khan v. State Government (NCT of Delhi) (2011) 10 SCC 192;
- (e) Lavjiji S/o. Chaturji Kamaji Thakore v. State of Gujarat, 2014 (2) GLH 153;
- (f) M/s. Indus Airways Prvt. Ltd & Ors. v. M/s. Magnum Aviation Private Limited & Anr., 2014 (2) GLH 161;
- (g) Jarnail Singh v. State of Punjab, (1998) 7 SCC 629;
- (h) Pareshbhai Annabhai Sonvane v. State of Gujarat & Ors., 2016 (3) Scale 349;
- (i) Lalit Kumar Yadav alias Kuri v. State of Uttar Pradesh, (2014) 11 SCC 129;
- (j) Dhaval Dalpatbhai Patel v. State of Gujarat, (Criminal Appeal Nos. 178-179 of 2016 : DD on 29/2/2016).

10. Lastly, it was urged by the learned advocate appearing for the respondent-accused to confirm the judgment and order of the trial Court and thereby dismiss the present Appeal preferred by the State, as well as Criminal Revision Application moved by the original complainant.

11. In Appeal filed against the conviction and sentence, learned advocate appearing for the respondent did not challenge the findings of conviction and addressed the Court only in respect of sentence awarded on the ground that the same was sufficient, considering the love affair between the victim and the respondent. He contended that the age of the accused is one of the vital consideration. According to the learned advocate the respondent-accused has already undergone sentence of two years and nine months. He has no criminal history, and therefore, the learned trial Judge, considering the letter written by the victim and other circumstances; including the age of the respondent has

rightly considered it to be a fit case for reducing the sentence to the period already undergone, which as noticed above, was about two years and nine months.

12. Let us, first of all, consider the question of sentence. Section 376 IPC imposes an obligation on the Court convicting the accused of that offence to impose a minimum sentence of seven years. However, an exception is made for adequate and special reasons to be recorded in the judgment. Thus, the Court can impose a sentence of less than seven years, but for good reasons. However, in the instant case, by the impugned judgment, the learned trial Judge had assigned the following reasons for reducing the sentence against the minimum period prescribed of seven years, to the period already undergone i.e., 2 year and 9 months.

"Reasons - In the further statement recorded by the Court, the accused has stated that he was of 18 years" of age at the time of incident. From the record of the Court below, on a statement of identification, the age of the respondent is shown as 20 years by applying whitener on the previous written figure. In a Certificate issued by the Doctor at Exh. 37, the age disclosed is 20 years. In the history given by the victim before PW-9 Dr. Anjali, the age of the respondent was declared as 18 years. When the charge was framed on 9th April 2009, the accused had declared his age as 19 years. As per the observations of the learned Sessions Judge, in short, the age of the respondent-accused was 18 years which cannot be either termed as minor or major, in a case of love affair, where the parties would not be aware of consequences, nor they would care for the result. But, considering the conduct of the victim, where it is proved that offence is constituted as per the law, it is not justifiable to award severe punishment when the minimum punishment can be imposed as per the law by mentioning reasons for the same, the accused can be given relief by taking into consideration the facts of the case."

13. The learned Sessions Judge also considered that the respondent-accused was in judicial custody from 20th October 2008 and had completed two years and nine months, and therefore, lessor sentence should be awarded.

14. Per se, none of the reasons given by the learned Sessions Judge in his judgment and as quoted here in above can be construed as either "adequate" or "special" reasons for reducing the sentence from minimum period of seven years prescribed for an offence punishable under Section 376 IPC. The learned trial Judge does not seem to have applied his mind to the gravity of the offence and instead reduced the sentence on the ground that the accused was 18 years" of age; they were not aware of the result in a case of love affair, or would not care of the consequences at the young age as well as the conduct of the victim. We think that the sentence of two years and nine months for an offence punishable under Section 376 IPC is ridiculously low and is not commensurate with the gravity of the crime proved. As the sympathy shown by the learned Sessions Judge is wholly misconceived and likely to send a wrong signal in the society, we

would like to review the same by delving into the matter by scrutinising and analysing the law on the subject.

15. In case of *State of Chhatisgarh v. Lekhram*, AIR 2006 SC 1746 (Supra), the Apex Court, while allowing the appeal preferred by the State held and observed that the prosecutrix was a mature girl. She was married. She spent few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the fact that both the courts have arrived at the conclusion that she was a consenting party, it may not be proper to send the appellant back to prison. Comparing the facts of the present case with this decided case, the same are totally different. Here, the prosecutrix is a minor girl and unmarried, and therefore, this decision would render no assistance to the respondent-accused.

16. In case of *Ashi Devi & Ors. v. State (NCT of Delhi)*, AIR 2014 SC 1255 (supra), the charge levelled against the accused, aged 93 years, who remained imprisoned from 5th February 2009 until bail came to be granted by the Apex Court by Order dated 13th May 2009 sentence was modified, considering old age from three years' rigorous imprisonment under Section 379 IPC and one year's rigorous imprisonment under Section 448 IPC. Facts of this case differs from the one, which this Court adjudicates, and therefore, decision relied upon by the learned advocate for the respondent will not be applicable in the facts of the case. In the cited case, considering the age of the lady accused, the Apex Court modified the sentence awarded to her. It hardly needs to be mentioned that appropriate sentence has to be awarded by taking into consideration the gravity of the offence, the manner of commission of crime, age of the accused and other mitigating circumstances. The sentence should neither be excessively harsh nor ridiculously low.

17. In another decision relied upon by the learned advocate for the respondent-accused in case of *Sushil Ansal v. State through Central Bureau of Investigation* (Supra), the charges qua accused were for the offence punishable under Sections 304-A, 337, 338 & 36 of the Penal Code for criminal negligence causing death or endangering the human life or safety causing hurt/grievous hurt/negligence, and for breach of duties and obligations under the common law and statutory

provisions. It was a case of Uphaar Cinema where conviction and quantum of sentence warranted to A-1, A-2 (owners of Uphaar Cinema) of Criminal Appeals No. 597-98 of 2010 and A-15 (Delhi Fire Service Officer who had issued NOC from fire safety and escape point of view, to Uphaar Cinema). As per the facts of this case, the appellants - the owners of Uphaar Cinema closed one of the exits of the balcony to accommodate more seats. This in effect compromised the safety of viewers and when a fire occurred due to electrical faults, 59 persons died and 100 others got injured. If the owners would not have closed one of the exits, perhaps the damage to human life would have been to a lesser extent. The conviction of appellants A-1 and A-2 was affirmed by the Supreme Court. A-1 and A-2 were convicted for offences under Sections 304-A/337/338 read with Section 36 IPC and Section 14 of the Cinematograph Act, 1952. A-15 was convicted under Sections 304-A/336/338 read with Section 36 IPC. Sentence was enhanced to maximum period of two years from one year imposed by the Courts below. As no civil damages were claimed and considering old age and health condition, fine of Rs. 3 Crores was imposed on each A-1 & A-2 in lieu of their remaining period of sentence. On the ground of parity, A-15 was also released on similar terms but the fine amount was fixed at Rs. 10 lacs. On the issue of A-1 Sunil Ansal in respect of his sentence, as the matter was referred to three-Judge Bench, the Apex Court observed in para-17 that, "..We are conscious of the fact that matter of this magnitude may call for a higher sentence, but the Court has to limit itself to the choice available under the law prescribing sentence. The fact that remains is that the maximum sentence prescribed under the law is period of two years and the High Court had chosen, in the facts and circumstances of the case, to award sentence of one year.." The Apex Court was of the view that the sentence awarded by the High Court needs to be enhanced to the maximum period of two years under Section 304-A IPC, but in lieu of additional period of sentence of one year, the substantial amount of fine needs to be imposed. And hence, both the Accused (A-1 & A-2 therein) were ordered to pay fine of Rs. 3 Crores and if the said fine is paid within a period of three months, the sentence shall be reduced to the sentence already undergone. The Apex Court also noted that appellant no.1 there was fairly aged, and therefore, it may not be fruitful to ask him to undergo rigorous imprisonment.

18. In another decision rendered in case of Mohd. Imran Khan v. State Government (NCT of Delhi) AIR 2012 SC (cri) 5 (Supra), the accused were charged under Sections 366 & 376 IPC. Both the accused were convicted by the trial Court. The High Court of Delhi affirmed conviction of appellants-accused by its Order dated 8th December 2009 under Section 376 IPC, however, set aside their conviction under Section 366/34 IPC and further reduced the sentence from seven years rigorous imprisonment with fine of Rs. 10,000/- each; and in default of payment of fine, to undergo further punishment for three months. The High Court considered all the circumstances; including that the incident took place in the year 1998, the appeal before it was pending for more than 10 years, the prosecutrix had willingly accompanied the appellants to Meerut and stayed with

them in a hotel and she was more than 15 years of age when she eloped with the appellants and the appellants were young boys, reduced the sentence to 5 years which was less than the minimum prescribed sentence for the offence. In this decision, as per the opinion of the Apex Court, as the High Court itself had awarded sentence less than the minimum sentence prescribed for the offence by recording special reasons, the Apex Court did not think it to be a fit case to further reduce the sentence, in a proved case of rape of a minor, and accordingly, appeals preferred by the accused were dismissed. Here also, the facts in the cited case as well as the case on hands are quite different, as there the incident occurred in the year 1989 and the Apex Court decided the appeals on 10th October 2011. Therefore, no such long period has elapsed in the present case.

19. In case of Lavjiji S/o. Chaturji Kamaji Thakore v. State of Gujarat 2013 Cri LJ (NOC) 637 (Guj.)(Supra), the accused was charged for offence punishable under Sections 363, 366 and 376 IPC, however, the learned trial Judge ordered his acquittal for the offence punishable under Section 363 and 366 IPC after extending him benefit of doubt and was convicted and sentenced to two years R.I with fine of Rs. 2000/-; in default, to undergo two months simple imprisonment for the offence punishable under Section 376 IPC. The question that arose for consideration before the learned Single Judge of this Court was as to what were adequate and special reasons given by the trial Court while imposing lesser sentence than the minimum prescribed under the law. In this case, the High Court on appreciation of evidence on record and provisions of law came to the conclusion independently that the trial Court has not committed any lawful error in disposing of the matter/case as well as rightly considered the adequate source circumstances/reasons for imposing punishment lesser than the minimum sentence prescribed for the offence of rape under Section 376 IPC. The discretion in passing lesser sentence than the minimum sentence prescribed under the law is always faced with the Court, but the facts of each case would require to be considered and examined by the Court, while granting lesser sentence.

20. In case of Jarnail Singh v. State of Punjab (Supra), rape of a minor girl aged 15 years was committed by a young boy of 17 years of age. The prosecutrix was a consenting party, and therefore, in view of the fact that it was a one-time act and also the young age of the appellant, the Apex Court reduced the sentence of imprisonment to the period already undergone with a fine of Rs. 12,000/- to be paid to the prosecutrix as compensation. In the present case, fine of Rs. 100/- only is imposed by the learned Sessions Judge, Surat. Further, in the cited case, it was a one-time act and not a continuous cause of conduct by the accused. Therefore, facts of the case on hand are quite different from the one, on which reliance is being placed for and on behalf of the respondent-accused.

21. In case of Pareshbhai Annabhai Sonvane v. State of Gujarat & Ors. AIR 2016 SC 1432 (Supra), conviction was awarded for an offence under Section 395, 397 & 504 IPC. Accused Nos. 1 to 3 therein were convicted by the trial Court for

offence under Section 395 IPC, while other charges were not proved by the prosecution. Considering the fact that value of the alleged loot including cash and mobile was only Rs. 16,550/- and the young age of appellant, the trial Court inflicted rigorous imprisonment of only one year along with fine of Rs. 100/-. On appeal, the High Court enhanced the sentence to five years rigorous imprisonment along with fine imposed by the trial Court. Appellant remained in jail for three years and two months, since his surrender in the year 2008. The question was whether sentence imposed on appellant is liable to be reduced to period already undergone. Replying the same in affirmative, the Apex Court reduced the period of sentence imposed upon the appellant to the period already undergone i.e., three years and two months of actual imprisonment, particularly when the trial Court found that nothing was recovered from the custody of the accused, who was the sole accused appellant before the Apex Court.

22. In another decision rendered in case of Lalit Kumar Yadav alias Kuri v. State of Uttar Pradesh AIR 2014 SC (Cri) 1350 (Supra), conviction recorded by the trial Court under Section 376/511 and 302 IPC was confirmed and death sentence awarded was converted and commuted to life imprisonment by the Apex Court by holding that the case does not fall under rarest of the rare category.

23. Last judgment relied upon by the learned advocate for the respondent-accused is in case of Dhaval Dalpatbhai Patel v. State of Gujarat, (Criminal Appeal No. 178-179/2016) wherein the appellant was charged with offence under Sections 363, 366 and 375 IPC. The learned Sessions Judge, convicted the appellant for the aforesaid offence. The main allegation was that the appellant had eloped with prosecutrix, who was 14 years and 10 months old. However, since she was less than 15 years of age, the offence under Section 376 IPC was also made out. The trial Court invoked the provisions of Section 376 and stated that there were adequate and special reasons to give lessor sentence, and accordingly, awarded sentence of two years of rigorous imprisonment to the appellant. In Appeal preferred by the State, the High Court held that the minimum sentence of seven years should have been given, and accordingly, it was enhanced from two years to seven years. The order of the High Court was challenged in Appeal before the Apex Court, where the Hon''ble Court found that there were certain such reasons which in the opinion of the trial Court were adequate enough to grant lessor sentence, and therefore, the High Court should not have enhanced the sentence. Here, in the instant case, the reasons recorded by the learned Sessions Judge, Surat can never be said to be adequate and/or special for awarding lessor sentence i.e., 2 years and 9 months with fine of Rs. 100/-, as mentioned earlier.

24. In case of State of Madhya Pradesh v. Balu, AIR 2005 SC 222 (Supra), the accused was punished under Section 376 IPC to suffer 7 years rigorous imprisonment for commission of rape, which has been reduced by the High Court to the period of sentence already undergone i.e., 10 months. The Apex Court, while allowing the appeal and restoring the sentence of seven years'' rigorous

imprisonment awarded for rape by the trial Court, held and observed that, "...none of the reasons mentioned by the High Court can be construed as either adequate or special reasons to reduce the minimum mandatory period of sentence for an offence punishable under Section 376 IPC. The High Court does not seem to have applied its mind to the gravity of the offence. Having found that the respondent has committed rape of a minor, to reduce the sentence on the ground that the accused was either 17 years or 19 years of age, or that the accused is an illiterate villager coming from a rural area is neither adequate nor special reason contemplated under section 376 IPC." Therefore, on the established facts and circumstances of the case, the Apex Court restored the sentence awarded by the trial Court.

25. In case of *State of Rajasthan v. Vinod Kumar*, AIR 2012 SC 2301 (Supra), while allowing the appeal moved by the State, the Apex Court held and observed that, power to award punishment less than prescribed minimum sentence is not to be used indiscriminately or routinely. It is to be used sparingly with reasons for its justification. The Court further held that the judicial discretion must be exercised objectively and recording of special and adequate reasons is a mandatory requirement for granting this extra ordinary relief.

26. In case of *Parminder alias Ladka Pola v. State of Delhi*, AIR 2014 SC 1035 (Supra), the Apex Court held and observed that what is adequate and special, would depend upon several factors and on the facts of each case and no straitjacket formula has been laid down by this Court. The Legislature, however, requires the Court to record the adequate and special reasons in any given case where the punishment less than the minimum sentence of seven years is to be imposed. Conduct of accused at the time of commission of offence of rape, age of prosecutrix and consequences of rape on prosecutrix are some of relevant factors which the Court should consider while considering the question of reducing sentence to less than minimum sentence. The fact that rapist had since got married, was the sole breadwinner, had a family, etc., held to be not adequate and special reasons to reduce sentence of rape below statutory minimum. In the present case also, no adequate and special reasons to reduce the sentence to less than minimum prescribed under Section 376(1) IPC have been assigned by the learned Sessions Judge.

27. In case of *Shimbhu & Anr. v. State of Haryana*, AIR 2014 SC 739 (Supra), the Full Bench of the Apex Court, while deciding on the question of reduction in sentence awarded to the appellant-accused under Section 376(2)(g) IPC (as it stood prior to Criminal Law (Amendment) Act, 2013) rejected the plea of the appellant for reduction of the sentence to less than 10 years made on the basis of compromise affidavit of victim that the occurrence took place 18 years ago and victim was settled in life. As per the observations of the Apex Court, subsequent compromise between parties whereby victim having no objection to reduction of accused's sentence to period already undergone, may often be an outcome of pressure and her compulsion and it would be unsafe to consider it a

ground for reducing the sentence under the proviso. The Courts should not take softer view while awarding sentence for heinous crime like rape. The Apex Court reiterated that the proviso being an exception clause, it should be construed strictly.

28. Considering the reasons given by the learned Sessions Judge, Surat while awarding lesser sentence to the respondent-accused than the minimum prescribed under the law reflects most casual approach on the part of the learned trial Judge. Moreover, there are no good reasons given by the learned Sessions Judge while reducing the sentence much less "adequate or special reasons". The learned trial Judge has exhibited lack of sensitivity towards the victim of rape and the Society at large. The Courts are expected to properly operate the sentencing system and impose a sentence commensurate with the crime committed. Hence, the present Criminal Appeal as well as Revision Application preferred by the original complainant deserves to be allowed.

29. Under Section 376 IPC, whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both. Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a terms of less than seven years. Here, as observed earlier, no adequate or special reasons are available to the accused for a sentence less than seven years. The minimum sentence prescribed is seven years under this offence. The learned trial Judge has also accepted the prosecution case of committing of rape by the accused, but has awarded lessor sentence for the reasons mentioned here in above. The accused was convicted for the offence punishable under Sections 360, 366 & 376 IPC by awarding common sentence of simple imprisonment for a term of two years and nine months and a fine of Rs. 100/- only. Here, we must observe that the sentencing Courts are expected to consider all the facts and circumstances, bearing in mind the question of sentence and impose a sentence commensurate with the crime committed. The Courts must hear the loud cry for justice by the Society in cases of heinous crime of rape on innocent, helpless girls of tender age, as in this case and respond to it by imposing appropriate sentence. Moreover, social impact of the crime particularly where it relates to offence against women, cannot be lost sight of and per se requires exemplary treatment. Therefore, Courts are expected to try and decide the case of sexual crime against women with utmost sensitivity. Such cases need to be dealt with strictly and severely. Once a person is convicted for an offence of rape, he should be treated with heavy hand. Thus, considering all the circumstances and the legal position, this Court is of the view that when there are no adequate or special reasons in this case, the accused should be sentenced as prescribed under the law, for a

term of seven years and fine of Rs. 5,000/- for the offence punishable under Sections 363, 366 & 376 IPC; and in default of payment of fine, to undergo further simple imprisonment for a period of three months.

30. Resultantly, Criminal Appeal preferred by the State of Gujarat as well as Criminal Revision Application preferred by the original complainant stood allowed. The respondent-accused is directed to suffer rigorous imprisonment for a term of seven years for the offence punishable under Sections 363, 366 & 376 IPC and pay additional fine of Rs. 5,000/-, and in default thereof, to undergo imprisonment for a period of three months. All the sentences to run concurrently. He shall surrender himself before the learned Sessions Judge, Surat within a period of six weeks from today and shall undergo remaining part of the sentence. The time spent by the accused in judicial custody would be given set-off.

31. In case the respondent fails to surrender himself within the said period, the learned 11th Chief Judicial Magistrate, First Class, Surat is directed to take him into custody and send him to prison for serving the remaining part of the sentence.

32. Rule nisi issued in each case is made absolute in the above terms.

33. Registry is directed to send a copy of this judgment to the learned Sessions Judge, Surat.