

**(2015) 10 GUJ CK 0037**  
**In the Gujarat High Court**

**Case No :** Criminal Appeal (For Enhancement) No. 1398 of 2014 and Criminal Appeal No. 824 of 2015

State of Gujarat

APPELLANT

Vs

Sureshbhai Ramanbhai Nayka

RESPONDENT

**Date of Decision :** 06-10-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 376(2)(f), 506

**Citation :** (2015) 10 GUJ CK 0037

**Hon'ble Judges :** K.S. Jhaveri and G.B. Shah, JJ.

**Bench :** Division Bench

**Advocate :** C.M. Shah, A.P.P., for the Appellant; Kaivan K. Patel, Advocate, for the Respondent

**Final Decision :** Dismissed

## Judgement

K.S. Jhaveri, J.—Both these Criminal Appeals are preferred against judgment and order dated 30.6.2014 passed by Principal Sessions Judge, Navsari, in Sessions Case No. 32 of 2013. By the said judgment, accused is convicted for offence punishable under Section 376(2)(f) of the Indian Penal Code and ordered him to undergo rigorous imprisonment for ten years and to pay fine of Rs. 2,000/- and, in default, he was ordered to undergo further imprisonment for six months; while the accused was acquitted of the charge of offence under Section 506 of IPC. Being aggrieved by the impugned judgment, the accused has preferred Criminal Appeal No. 824 of 2015, while Criminal Appeal No. 1398 of 2014 is preferred by the State for enhancement of sentence imposed by the impugned judgment upon the accused.

2. As both these appeals are arising out of the same judgment rendered in connection with the same incident and the evidence is also common in these appeals, the same are taken up for hearing together.

3. The case of the prosecution is that the complainant, mother of the victim,

registered a complaint against present accused with Bilimora Police Station being I-C.R. No. 17 of 2014. As per the case of the prosecution, on 18.2.2013, husband of the complainant went to his job and thereafter the complainant sent her daughter of ten years to the school at 10 a.m. Thereafter, she went on her work and came back in the evening. At that time her daughter, the victim, told her that she is suffering from fever and there was pain in her stomach and she was also scared. Therefore, she was given medicine by her mother. However, in the night of 20.2.2013, she started shouting and said "leave me, leave me". Therefore, the complainant inquired with the victim as to what had happened. At that time victim told that on Monday, when she came from the school during recess, the accused called her in his house and committed rape on her. She was also threatened by the accused so that she may not reveal the incident to anyone. On the next day i.e. on 19.2.2013 also the accused had committed rape on another girl, who happened to be the daughter of sister-in-law of the complainant. With such allegations, the complaint was filed against the accused for the offences as aforesaid.

3.1 Investigation was carried out and charge sheet was submitted in the Court of learned Magistrate. However, as the case was exclusively triable by the Court of Sessions, the same committed to Sessions Court. Thereafter, charge was framed against the accused. The accused pleaded not guilty and claimed to be tried.

3.2 During the trial, the prosecution had examined following witnesses;

3.3 The prosecution has also produced and relied upon following documentary evidence:-

3.4 At the end of trial, the Court below recorded further statements of accused persons under Section 313 of Cr.P.C. and thereafter, passed the impugned judgment and order awarding the sentence, as aforesaid. Being aggrieved and dissatisfied with the impugned judgment of the trial Court, present appeals are preferred before this Court.

4. Mr. Gajendra Baghel, learned advocate for the appellant-accused in Criminal Appeal No. 824 of 2015 has taken us through the evidence and submitted that the prosecution has miserably failed to prove its case against the appellant. He also submitted that the doctor has not taken the history of the victim and just referred to the police yadi and prepared medical papers. Therefore, the medical evidence is not reliable and the accused is wrongly convicted. He also submitted that the medical evidence do not suggest that there was any injury on the private part of the victim and, therefore, the case of the prosecution is doubtful. He also submitted that there is delay in giving the complaint which is not explained. He also submitted that so far as another case is concerned, no FIR is filed and the second victim has directly came in the Court, therefore, it is a case of implication of the accused in the offence. He, therefore, submitted that the appellant could not have been held guilty of the offence. In view of these submissions, he prayed that this appeal may be allowed by quashing and setting

aside the impugned judgment.

5. On the other hand, Ms. C.M. Shah, learned APP appearing for the State has submitted that the order of conviction recorded against the accused is just and proper and she has supported the conviction recorded by impugned judgment. So far as Criminal Appeal No. 1398 of 2014 is concerned, which is preferred for enhancement of sentence imposed on the accused, she has taken us through the evidence and contended that the trial Court has committed an error in imposing the sentence upon the accused inspite of voluminous evidence against him and contended that the trial Court ought not to have imposed such a lesser punishment. She submitted that the prosecution has examined 11 witnesses in support of its case and has also produced 33 documentary evidences on the record of the case. However, without appreciating the documentary as well as oral evidence available on the record of the case in its proper perspective the learned Judge has erred in imposing lesser punishment upon the accused. She submitted that the reason put forth on behalf of the accused is not sufficient and reasonable for imposing the lesser sentence on the accused. She submitted that as the victims are ten years and eight years of age respectively, the sentence imposed by the learned Judge is not sufficient and reasonable the same deserves to be enhanced by this Hon"ble Court. She also submitted that from the available material and from facts and circumstances of the case, it is clear that the accused deserve maximum sentence as provided under the aforesaid provision of IPC. It is a fit case wherein the sentence imposed on the accused deserves to be enhanced by this Hon"ble Court. She further submitted that the learned Judge has failed to appreciate that there is no any mitigating circumstance to impose lesser punishment and it is very clear from the facts and circumstances of the case available on the record of the case that there are aggravating circumstances in which Hon"ble Judge ought to have imposed the maximum sentence as provided under the law. She also submitted that this is the case in which a very heinous crime is committed, therefore, maximum punishment should be imposed upon the accused. She also submitted that the learned trial Judge has committed an error in taking lenient view while imposing sentence on the accused and, therefore, the sentence imposed is required to be enhanced. Therefore, she submitted that Criminal Appeal No. 1398 of 2014 may be allowed and the sentence imposed by the trial Court may be enhanced.

6. We have heard Mr. Gajendra Baghel, learned advocate for the appellant-accused and Ms. C.M. Shah, learned APP for the State. We have also gone through the impugned judgment and evidence on record. From the evidence on record, it is not in dispute that the prosecution has successfully proved the case against the accused. The medical evidence also supports the case of the prosecution and it is clearly stated that the alleged offence is committed with the victim girls. Even the FSL report, Exh. 52 also supports the case of the prosecution. The biological analysis report produced at Exh. 51 also supports the case of the prosecution. Therefore, we are in complete agreement with the view taken by the learned Sessions Judge. We have also read the evidence of both the

victims, PW-4 and PW-5. PW-4 has identified the accused in the Court. PW-4 has stated in her evidence regarding the incident and she has also stated the incident which has taken place with another victim as it was narrated to her by the second victim. This victim is also cross-examined, however, nothing could be brought out during her cross-examination. PW-5, second victim, has also identified the accused in the Court. She also narrated the incident and supported the case of the prosecution. Though both the victims are below 12 years of age, they have clearly stated the facts and the supported the case of the prosecution. Even the complainant, PW-6, has clearly stated in her evidence that when the victim was shouting while asleep, she was saying that "Surya baapa mane chhodi do". She has also supported the case of the prosecution. Therefore, the prosecution has remained successful in proving its case against the accused. In our opinion, this is a heinous crime against minor children by a near relative and, in fact, it is an offence against society. Therefore, the maximum punishment of life should have been imposed upon the accused, however, considering the fact that the accused is also married and having children, with heavy heart we are not enhancing the sentence imposed upon the accused. Therefore, the appeal filed by the accused against his conviction as well as the appeal filed by the State for enhancement of sentence imposed on the accused both are required to be dismissed.

7. For the foregoing reasons, both these appeals are dismissed. The impugned judgment and order dated 30.6.2014 passed by Principal Sessions Judge, Navsari, in Sessions Case No. 32 of 2013 is confirmed. The accused shall undergo the remaining period of sentence. Record and Proceedings, if lying here, be sent back to the concerned trial Court forthwith.