

(2025) 12 GUJ CK 1889
In the Gujarat High Court

Case No : R/Criminal Appeal (For Enhancement) No. 1549 Of 2017

State Of Gujarat		APPELLANT
	Vs	
Karshanbhai Bhikhubhai Kamaliya Koli		RESPONDENT

Date of Decision : 18-12-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 377
Indian Penal Code, 1860 — Section 305, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 3(a), 4, 5(j), 5(j)
(2), 6

Citation : (2025) 12 GUJ CK 1889

Hon'ble Judges : Ilesh J. Vora, J;R. T. Vachhani, J

Bench : Division Bench

Advocate : Ronak B Raval

Final Decision : Dismissed

Judgement

R. T. Vachhani, J

1. The present appeal has been preferred by the State invoking the provisions of Section 377 of the Code of Criminal Procedure, 1973, seeking enhancement of the sentence imposed by the learned Sessions Judge, Veraval in Special POCSO Case No. 28 of 2019, arising out of C.R. No. I-44 of 2015 registered with Talala Police Station for the offence punishable under Sections 376 and 305 of the IPC and sections 3(a), 4, 5(j)(2) and 6 of the POCSO Act and sentencing the respondent for the offence under Section 376 of the IPC and Sections 3(a), 4, 5(j)(2) and 6 of the POCSO Act to undergo 10 years rigorous imprisonment and a fine of Rs.10,000/-, and in default of payment of fine, to further undergo three months simple imprisonment; and for the offence under Section 305 of the IPC, to undergo 10 years rigorous imprisonment and a fine of Rs.10,000/-, and in default of payment of fine, to further undergo three months simple imprisonment.

2. The State has consciously confined the scope of the present appeal only to the issue of enhancement of sentence and has, therefore, refrained from making any

submissions on the merits of the conviction recorded by the learned sessions Court. In view of the limited scope of the present appeal, a detailed narration of the entire factual matrix is not warranted. However, for the purpose of appreciating the gravity of the offence and to effectively address the issue involved in the present appeal, the facts in brief, as emerging from the record, are required to be narrated.

3. As per the prosecution case, the respondent-accused was alleged to have developed an illicit physical relationship with the victim, who was found to be less than 16 years of age at the relevant point of time. It is alleged that as a consequence of the said relationship, the victim became pregnant. Subsequently, upon learning that the accused was already married, the victim took the extreme step of committing suicide.

4. Pursuant thereto, investigation was carried out by the Investigating Agency and upon completion of investigation, a charge-sheet came to be filed against the accused before the learned special Court where the accused was put to trial. Upon conclusion of the trial and appreciation of the oral as well as documentary evidence on record, the learned Sessions Judge convicted the accused and imposed the sentence as stated hereinabove.

5. Being aggrieved and dissatisfied with the inadequacy of the sentence awarded, the State has preferred the present appeal under Section 377 of Cr.P.C., contending that considering the nature of the offence, the age of the victim and the resultant consequences, the punishment imposed by the learned Sessions Court is neither just nor proportionate and therefore deserves enhancement.

6. Further the submissions advanced on behalf of the appellant- State, that the learned Sessions Court ought to have taken into consideration the provisions of Sections 5(j) and 6 of the POCSO Act. It is submitted that the learned Sessions Judge has recorded a categorical finding that the victim was less than 16 years of age and that due to the illicit physical relationship developed by the respondent with the deceased, she became pregnant with a foetus of about five months. It is further submitted that upon learning about the marital status of the accused, the victim committed suicide. However, from the impugned judgment, it transpires that there was no direct or indirect evidence on record to establish the physical relationship, except the DNA report which confirmed that the respondent was the biological father of the foetus. No medical evidence of sexual assault was available on record as the victim had expired. The learned Sessions Judge, after appreciating the evidence in entirety on record and by granting due opportunity of hearing to the concerned, exercised discretion in imposing the sentence.

6.1 The issue that therefore arises for consideration before this Court is whether the sentence so imposed can be said to be grossly inadequate or disproportionate so as to warrant interference by this Court in exercise of powers under Section 377 of Cr.P.C.

7. At this juncture, it is required to be placed on record that since the present

appeal, as fairly submitted by the learned APP for the State, is confined only to the issue of enhancement of sentence, the other aspects of the matter are not required to be dealt with. However, in order to address the issue as to whether the sentence awarded by the learned Sessions Judge is appropriate, adequate, just and proportionate, commensurate with the nature and gravity of the crime and the manner in which the crime was committed, it is necessary to consider the crux of the conclusions recorded by the learned Sessions Judge along with provisions contenting punishment.

8. At this stage, it would be apposite to refer to the statutory provisions under which the respondent-accused has been convicted, in order to examine whether the sentence imposed is commensurate with the nature and gravity of the offences.

I.P.C. Section 376: Punishment for rape. Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

I.P.C. Section 305: Abetment of suicide of child or insane person. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any persons in a state of intoxication commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

9. The Hon'ble Supreme Court has referred to the case of Soman vs. State of Kerala, reported in (2013) 11 SCC 382 and Alister Anthony Pareira v. State of Maharashtra reported in (2012) 2 SCC 648 and has made observations in Paragraphs 10, 11, 12, 13 and 14 as under :-

"10. Currently, India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the Courts have framed certain guidelines in the matter of imposition of sentence. A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly. There cannot, therefore, be any uniformity. However, this Court has repeatedly held that the Courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

11. This Court in the case of Soman Vs. State of Kerala [(2013) 11 SCC 382] observed thus :

"27.1. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor."

12. The same is the verdict of this Court in *Alister Anthony Pereira Vs. State of Maharashtra* [(2012) 2 SCC 648] wherein it is observed thus:

"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."

10. In *Bed Raj v. State of Uttar Pradesh* reported in 1955 (2) SCR 583, the Hon'ble Supreme Court has concluded that the question of 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 the accused person except for very strong reasons, which must be disclosed on the face of judgment. It was further held that in a matter of enhancement, there should not be interference when the sentence passed imposes substantial punishment wherein it has been held that in matters relating to enhancement of sentence, interference is not warranted where the sentence imposed is just and proper.

11. From the aforementioned observations, it is clear that the principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and

the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence. It further transpires as observed that the Court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The Courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance.

12. It is further pertinent to note that the appellant had also preferred Criminal Appeal No. 1630 of 2017. However, the respondent-appellant therein had already undergone the sentence and paid the fine. In the absence of any challenge to the order of conviction on merits, and considering the aforesaid facts, the said appeal came to be disposed of as having become infructuous, by an order dated 24/02/2025.

13. In view of the aforesaid discussion, this Court is of the considered opinion that the sentence imposed by the learned Sessions Judge cannot be said to be either inadequate or disproportionate so as to warrant interference in an appeal for enhancement under Section 377 of the Code of Criminal Procedure. The learned Sessions Judge has exercised discretion judiciously and within the statutory framework. No compelling or exceptional circumstances are made out by the State to justify enhancement of sentence. Accordingly, the present appeal stands dismissed. Record and Proceedings be sent back to the concerned Sessions Court forthwith.