

Reserved On : 12/03/2025

Pronounced On : 28/03/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (FOR ENHANCEMENT) NO. 2637 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE VIMAL K. VYAS

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Approved for Reporting	Yes	No

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XYZ
Versus
STATE OF GUJARAT & ORS.

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Appearance:

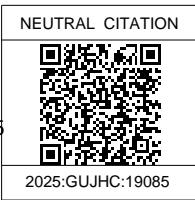
MR NIRAV V PARGHI(8032) for the Appellant(s) No. 1
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 2,3
MS ASMITA PATEL, APP PUBLIC PROSECUTOR for the
Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE VIMAL K. VYAS**

CAV JUDGMENT

1. The captioned Criminal Appeal has been preferred under Section 372 of the Code of Criminal Procedure by the victim (through her father), praying for the enhancement of the compensation amount awarded by the trial court and for the modification of the impugned judgment and order dated 27.01.2023 passed by the learned Special (POCSO) Judge and



Additional Sessions Judge, Bharuch, in Special (POCSO) Case No.51 of 2018, to that effect.

2. As per the case of the prosecution, the minor, who was aged about 14 years and 13 days at the time of the incident, was lured and kidnapped by the accused-convict from the lawful guardianship of her father (i.e. the complainant) with an ulterior motive to commit sexual intercourse with the victim and thereafter she was subjected to rape by the accused-convict for several times and was impregnated by the accused.

3. Learned advocate Mr.Nirav Parghi, at the outset, has submitted that for the alleged incident, the complainant (i.e. the father of the victim) had filed a complaint against the accused before the Vaghra Police Station, District Bharuch, which was registered as I-CR No.07/2018 on 03.03.2018 for the offences punishable under Sections 363, 366, 376 of the Indian Penal Code as well as under Sections 4, 5 read with Section 6 of the POCSO Act. The learned Special (POCSO) Judge and Additional Sessions Judge, Bharuch, *vide* judgment and order of conviction and sentence dated 27.01.2023 passed in Special (POCSO) Case



No.51 of 2018, convicted the accused for the offences punishable under Sections 363, 366, 376 of the Indian Penal Code as well as under Sections 4, 5 read with Section 6 of the POCSO Act and sentenced him to undergo imprisonment as under :

Section	Imprisonment	Fine (Rs.)	In default of payment of fine
363 IPC	Rigorous Imprisonment for three years	3000	Simple Imprisonment for one month
366 IPC	Rigorous Imprisonment for three years	3000	Simple Imprisonment for one month
376 IPC	Rigorous Imprisonment for seven years	5000	Simple Imprisonment for three months
4 of POCSO Act	Rigorous Imprisonment for seven years	5000	Simple Imprisonment for three months
5 r/w 6 of POCSO Act	Rigorous Imprisonment for ten years	15000	Simple Imprisonment for five months
The trial court had also directed to pay compensation of Rs.3,00,000=00 to the victim.			

4. Learned advocate Mr.Parghi has submitted that in the alleged incident, the victim was impregnated by the accused-convict, therefore, the victim had applied for medical termination of her pregnancy before the trial court, and as per the order of the trial court dated 18.07.2018, her pregnancy was terminated.



5. Learned advocate Mr.Parghi has fairly submitted that an application being Criminal Misc. Application No.333 of 2023 was preferred under Section 357A of the Code of Criminal Procedure before the trial court for enhancement of the compensation amount awarded by the trial court, however, considering the position of law and the factual aspects of the matter, the trial court, *vide* order dated 10.04.2023, dismissed the application observing as under :

“Recitals of Section 372 CrPC makes the factum abundantly clear that the only remedy available with the victim/prosecutrix qua the grievance of inadequate compensation is to prefer an appeal before the forum to which an appeal already lies against the order of conviction passed by learned predecessor of this court in Special POCSO Case No.51/2018.”

6. While drawing attention of this Court to the Notification No.GG/47/2019/SB.2/COM/132018/663 dated 26.04.2019 issued by the Home Department, Sachivalaya, Gandhinagar, learned advocate Mr.Parghi has submitted that the State of Gujarat has provided for a scheme to compensate the victims or



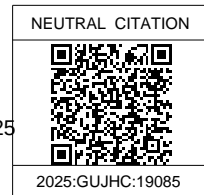
the dependent/guardian/parents of the victims who have suffered loss or injury on account of an offence against body and who require rehabilitation, namely, the Gujarat Victim Compensation Scheme, 2019, and as per the said scheme, the victim is entitled to a maximum amount of Rs.19,50,000=00 as compensation, however, as against the same, only a compensation of Rs.3,00,000=00 has been awarded by the trial court, which is inadequate. Therefore, the present appeal.

7. Learned advocate Mr.Parghi appearing for the appellant-victim, has submitted the following table showing the breakup of the compensation amount of Rs.19,50,000=00 that the victim is entitled to under the scheme :

Serial Number as mentioned in the Schedule	Category	Maximum compensation entitled to as per the Gujarat Victim Compensation Scheme, 2019
3	Rape	7 lakh
9	Grievous physical injury or any mental injury requiring rehabilitation	2 lakh
11	In case of pregnancy on account of rape	4 lakh

	Compensation to be 50% higher than the amount mentioned (i.e. Rs.7 lakh + Rs.2 lakh + Rs.4 lakh = Rs.13 lakh. So, 50% of Rs.13 lakh is Rs.6.5 lakh)	6.5 lakh
	Thus, the total compensation entitled to the victim	19.5 lakh

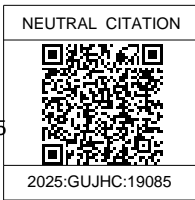
8. Heard learned advocates for the respective parties and perused the documents as adduced by them. It appears from the judgment of the trial court that there is no specific reference as to on what basis the trial court has fixed the amount of compensation to be Rs.3,00,000=00. This Court has also gone through the Gujarat Victim Compensation Scheme, 2019, and it *prima facie* appears that as per sub-clause (5) of Clause 9 of the said scheme, if the victim is minor, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the schedule appended to the scheme. It *prima facie* appears that the appellant-victim has suffered a lot of physical harassment, mental agony & trauma and had to pass through aggravating circumstances where she had to medically terminate her pregnancy because of the rape committed on her several times by the accused-convict. It is, therefore, abundantly, clear that the victim is covered under sub-clauses (a), (f) and (g) of clause (8) of the scheme for the compensation amount.



9. This Court finds the impugned judgment and order of the trial court dated 27.01.2023 to be non-speaking so far as the amount of compensation awarded to the victim-girl is concerned since no reasons have been assigned for awarding the amount of compensation of Rs.3,00,000=00 to the victim-girl, who was minor at the time of the incident and who had to medically terminate her pregnancy. This is a very serious case of rape on the minor victim girl who had to pass through aggravating circumstances, under which a compensation on a higher side ought to have been awarded by the trial court.

10. This Court has carefully gone through the entire Gujarat Victim Compensation Scheme, 2019, and for the purpose of determining the amount of compensation to be awarded to the minor victim-girl, this Court has taken into consideration the following aspects :

- (i) As per category-3 of the schedule appended to the scheme, i.e. Rape, the upper limit of compensation is Rs.7 lakh, therefore, taking into consideration sub-clauses (a)



and (f) of clause (8) of the scheme, an amount of Rs.5 lakh is considered to be just and proper to be awarded as compensation to the minor victim-girl under this category.

(ii) As per category-11 of the schedule appended to the scheme, i.e. in case of pregnancy on account of rape, the upper limit of compensation is Rs.4 lakh, therefore, taking into consideration sub-clause (g) of clause (8) of the scheme, an amount of Rs.3.5 lakh is considered to be just and proper to be awarded as compensation to the minor victim-girl under this category.

(iii) As per sub-clause (5) of clause (9) of the scheme, if the victim is minor, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the Schedule appended to this Scheme.

11. Considering the aforesaid, this Court is of the view that the minor victim girl is entitled to a compensation amount of Rs.12,75,000=00. The breakup of the said compensation amount, in a tabular form, is reproduced as under :-



Sr. No. as per the Schedule	Particulars of loss or injury	Compensation Amount (in Rs.)
3	Rape	5.00 lakh
11	In case of pregnancy on account of rape	3.50 lakh
Compensation to be 50% higher than the amount mentioned (i.e. Rs.5.0 lakh + Rs.3.5 lakh = Rs.8.5 lakh. So, 50% of Rs.8.5 lakh is Rs.4.25 lakh)		4.25 lakh
Thus, the total compensation entitled to the victim :		12.75 lakh

12. In view of the above, the appeal stands allowed. It is hereby directed that the appellant-victim is entitled to a total compensation amount of Rs.12,75,000=00 being the victim of rape at a very young age of nearly 14 years as she suffered a lot of physical harassment & mental trauma and also passed through aggravating circumstances where she had to medically terminate her pregnancy because of the rape committed on her several times by the accused-convict. The compensation amount of Rs.12,75,000=00 so awarded would include the compensation amount of Rs.3,00,000=00 earlier awarded by the trial court to be paid to the appellant-victim. The impugned judgment and order dated 27.01.2023 passed by the learned Special (POCSO)



Judge and Additional Sessions Judge, Bharuch, in Special (POCSO) Case No.51 of 2018, so far as the amount of compensation awarded to the victim is concerned, is modified to the aforesaid extent.

13. The State Legal Services Authority is directed to release the total compensation amount of Rs.12,75,000=00 to the appellant-victim, however, if the amount of Rs.3,00,000=00 awarded by the trial court is already paid to the victim, then the same shall be deducted from the total compensation amount of Rs.12,75,000=00. The District Legal Services Authority, Bharuch, is directed to take appropriate steps for compliance of the order.

14. With the aforesaid, the present appeal stands allowed. Registry is directed to send a copy of this order to (i) the District Court, Bharuch; (ii) the District Legal Services Authority, Bharuch; and (iii) the State Legal Services Authority, for necessary compliance of the order.

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(VIMAL K. VYAS, J.)