

Rajendra Bhagwanji Umraniya vs The State Of Gujarat on 9 May, 2024

2024 INSC 413

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos 2481-2482 of 2024
(Arising out of SLP (Crl) Nos 2653-2654 of 201

Rajendra Bhagwanji Umraniya

Versus

State of Gujarat

ORDER

1 Leave granted.

2 Since the issues raised in both the captioned appeals are

parties are also the same and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common order. 3 The appellant before this Court is the original first informant (complainant).

The appellant lodged a First Information Report No I-179/2012 at the Surendranagar City Police Station for the offence punishable under Sections 147, 148, 149, 427, 323, 325, 506(2), 384 of the Indian Penal Code 1 and Section 135 of the Gujarat Police Act. The FIR was lodged in all against five accused persons.

CHETAN KUMAR 4 The respondents before this Court are the original accused Nos 1 and 2 Date: 2024.05.14 17:17:44 IST Reason:

respectively. Out of the five accused persons, two were named in the FIR, 1 “IPC” SLPR 2653-54/2016 whereas three were not named. The respondents herein ultimately were put to trial for the offence punishable under Sections 147, 148, 149, 329, 384, 387, 427, 506(2), 323 and 325 respectively of the IPC and Section 135 of the Bombay Police Act.

5 The respondents herein came to be convicted by the Sessions Court for the offence punishable under Section 325 of the IPC and were sentenced to undergo rigorous imprisonment of five years with fine of Rs 5,000/- each. The trial court also convicted the respondents for the offence punishable under Section 323 of the IPC and sentenced them to undergo rigorous imprisonment for a period of one year and for the offence punishable under Section 135 of the Gujarat Police Act, they came to be sentenced with rigorous imprisonment of one year with fine of Rs 1,000/-. 6 The original accused Nos 3, 4, and 5, who were not named in the FIR came to be acquitted by the trial court.

7 Against the judgment and order of conviction passed by the trial court, the respondents herein went in appeal before the High Court. 8 The two captioned appeals before this Court originate from Criminal Appeal (For Enhancement) No 906 of 2014 and Criminal Appeal No 1330 of 2014 decided by the High Court.

9 These two appeals, i.e. Criminal Appeal Nos 906 of 2014 and 1330 of 2014 respectively came to be preferred by the appellant herein, one for enhancement of sentence and the connected appeal against the order of acquittal so far as the original accused Nos 3 to 5 are concerned. It may not SLPR 2653-54/2016 be out of place to state at this stage that the respondents as original convicts also preferred Criminal Appeal Nos 723 of 2014 and 733 of 2014 respectively against the order of conviction and sentence. 10 The High Court heard in all five appeals, two filed by the appellant herein, two filed by the respondents and the fifth appeal was filed by the State of Gujarat. The acquittal appeal filed by the State of Gujarat was against the original accused Nos 3 to 5. The High Court disposed of all the five appeals by a common judgment. The operative part of the judgment and order passed by the High Court reads thus:

“(a) The impugned judgment and order dated 31.05.2014 passed by the learned Sessions Judge, Surendranagar in Sessions Case No.14/2013 is modified only to the extent that sentence imposed upon both original accused no.1 & 2 for conviction u/s.325 IPC is reduced from Five Years to Four Years, without disturbing the order regarding fine and default sentence. Rest of the impugned judgment and order remains unaltered.

(b) Considering the principle rendered by Apex Court in Ankush Shivaji Gaikwad v. State of Maharashtra, 2013 (6) SCC 770 and the request made by learned counsel Mr. Hriday Buch that both Rs.2.50 lacs each, totalling Rs.5.00 Lacs (Rupees Five Lacs only), to the victim under the provisions of Section 357 Cr.P.C., we do not find any reasons in the facts and circumstances of the case for denying the said benefit in favour of both accused no.1 &

(c) Accordingly, while granting benefit of the judgment rendered in Ankush Shivaji Gaikwad's case (supra) to original accused no.1 & 2, it is directed that if both accused no.1 & 2 deposit a sum of Rs.2.50 lacs each, totalling Rs.5.00 Lacs (Rupees Five lacs only), before the Registry of the

concerned Sessions Court, within a period of TEN WEEKS from today, which, in turn, shall be paid as compensation to the victim, then both accused no.1 & 2 are not required to undergo the remainder sentence imposed upon them, which has been modified by this Court as aforesaid. On such deposit being made, the Registry of concerned Sessions Court shall pay the entire SLPR 2653-54/2016 amount to the victim, after due verification. It is clarified that if any one or both the accused persons fail to deposit the amount as aforesaid, they shall surrender to custody on expiry of the aforesaid period failing which the investigating agency shall take necessary steps for sending them to jail custody. The impugned judgment and order stands modified accordingly.” 11 Thus, it appears that the sentence of five years’ imprisonment as imposed by the trial court came to be reduced to four years. The High Court further held that if an amount of Rs 2.50 lakh is paid by each of the two respondents before it, then the respondents need not undergo even the four years’ of sentence as reduced by the High Court.

12 In such circumstances referred to above, the appellant (original complainant) is before this Court with the present appeals.

13 Mr Harin P Raval, the learned senior counsel appearing for the complainant vehemently submitted that what has been done by the High Court is something impermissible in law. The amount of compensation which is awarded to the victim has nothing to do with the substantive order of sentence which the court imposes upon holding the accused guilty of the alleged offence. According to Mr Raval, the High Court having reduced the sentence of five years as imposed by the trial court to four years could not have further modified the order of sentence on the premise that the respondents are ready and willing to pay an amount of Rs 5 lakh by way of compensation to the victim. He further submitted that the reliance placed by the High Court on the decision of this Court in the case of Ankush Shivaji Gaikwad vs State of Maharashtra², is completely misplaced. 2 (2013) 6 SCC 770 SLPR 2653-54/2016 14 In such circumstances referred to above, Mr Raval prayed that the impugned judgment of the High Court be set aside and the respondents be asked to undergo sentence of four years’ rigorous imprisonment. 15 On the other hand, these appeals have been vehemently opposed by Mr Purvish Malkan, the learned counsel appearing for the respondents (original accused persons). He would submit that no error much less an error of law could be said to have been committed by the High Court in passing the impugned order. He also submitted that it’s been now twelve years since the incident had occurred. He also submitted that the amount of Rs 5 lakh has been deposited before the trial court.

16 In such circumstances referred to above, he prayed that there being no merit in these appeals, the same may be dismissed.

ANALYSIS 17 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the procedure adopted by the High Court, as reflected in paragraph 19 of the operative part of the order, could be said to be in accordance with law.

18 Section 357 of the Code of Criminal Procedure, 1973 reads thus:

“357. Order to pay compensation.—(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when SLPR 2653-54/2016 passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a civil court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal. (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.” SLPR 2653-54/2016

19 Way back in 1981, this Court speaking through Krishna Iyer, J. in Maru Ram vs Union of India & Others³, held that while social responsibility of the criminal to restore the loss or heal the injury is part of the punitive exercise; the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty. Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. Time and

again this Court has reiterated that it is an important provision but courts seldom invoke the same. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. 20 In *Hari Singh vs Sukhbir Singh and Others* 4, this Court held that the power to award compensation under Section 357 of the CrPC is not ancillary to other sentences, but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. As observed in *Hari Singh (supra)*, it is a measure of responding appropriately to crime as well as of reconciling the victim with the offender. It is, a constructive approach to crimes. 21 The High Court having upheld the conviction for the offence punishable under Section 325 of the IPC so far as the two respondents herein are concerned and having reduced the sentence from five years rigorous imprisonment to four years rigorous imprisonment could not have further diluted the order of sentence by asking the accused persons to pay 3 (1981) 1 SCC 107 4(1988) 4 SCC 551 SLPR 2653-54/2016 compensation. In other words, the High Court having once affirmed the conviction and awarded sentence of four years could not have further in lieu of the same reduced it by ordering compensation. To this extent, we have no hesitation in holding that the High Court fell into error. 22 The idea of victim compensation is based on the theory of victimology which recognizes the harsh reality that victims are unfortunately the forgotten people in the criminal justice delivery system. Victims are the worst sufferers. Victims family is ruined particularly in cases of death and grievous bodily injuries. This is apart from the factors like loss of reputation, humiliation, etc. Theory of Victimology seeks to redress the same and underscores the importance for criminal justice administration system to take into consideration the effect of the offence on the victim's family even though human life cannot be restored but then monetary compensation will at least provide some solace.

23 The provision of Section 357 recognizes the aforesaid and is victim centric in nature. It has nothing to do with the convict or the sentence passed. The spotlight is on the victim only. The object of victim compensation is to rehabilitate those who have suffered any loss or injury by the offence which has been committed. Payment of victim compensation cannot be a consideration or a ground for reducing the sentence imposed upon the accused as victim compensation is not a punitive measure and only restitutory in nature and thus, has no bearing with the sentence that has been passed which is punitive in nature.

SLPR 2653-54/2016 24 The words “any loss or injury” used in Section 357 of the CrPC clearly indicates that the sole factor for deciding the compensation to be paid is the victim’s loss or injury as a result of the offence, and has nothing to do with the sentence that has been passed. Section 357 of CrPC is intended to reassure the victim that he/she is not forgotten in the criminal justice system. It is a constructive approach to crimes based on the premise that mere punishment of the offender may not give solace to the victim or its family.

25 As such, when deciding the compensation which is to be paid to a victim, the only factor that the court may take into consideration is the convict’s capacity to pay the compensation and not the sentence that has been imposed. In criminal proceedings the courts should not conflate sentence with compensation to victims. Sentences such as imprisonment and / or fine are imposed

independently of any victim compensation and thus, the two stand on a completely different footing, either of them cannot vary the other. Where an accused is directed to pay compensation to victims, the same is not meant as punishment or atonement of the convict but rather as a step towards reparation to the victims who have suffered from the offence committed by the convict.

26 If payment of compensation becomes a consideration for reducing sentence, then the same will have a catastrophic effect on the criminal justice administration. It will result in criminals with a purse full of money to buy their way out of justice, defeating the very purpose of criminal proceedings. SLPR 2653-54/2016 27 Having held so as above, the last question that falls for our consideration is how do we modify the order of the High Court. According to Mr Raval that part of the High Court's order be set aside and the respondents be directed to undergo sentence of four years' rigorous imprisonment. 28 We could have easily done as submitted by Mr Raval, but in the facts and circumstances of the case, more particularly, keeping in mind that a period of twelve years has elapsed and when the respondents (original convicts) have already deposited the amount of Rs 5 lakh, we are not inclined to direct the respondents to undergo further sentence of four years. However, having said so, we direct each of the respondents to deposit a further sum of Rs 5 lakh, i.e. in all Rs 10 lakh, in addition to what they have already deposited before the trial court. This deposit shall be made within a period of eight weeks from today. The trial court shall disburse the entire amount of Rs 15 lakh to the appellant herein (original complainant) after proper identification. 29 With the aforesaid, the appeals are disposed of. 30 Pending applications, if any, stand disposed of.

.....J. [J B Pardiwala]J. [Manoj Misra] New
Delhi;

May 9, 2024
CKB

SLPR 2653-54/2016

ITEM NO.22

COURT NO.15

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) Nos.2653-2654/2016 (Arising out of impugned final judgment and order dated 29-10-2015 in CRLA No.960/2014 and CRLA No.1330/2014 passed by the High Court of Judicature of Gujarat) RAJENDRA BHAGWANJI UMRANIYA Appellant(s) VERSUS THE STATE OF GUJARAT Respondent(s) (With IA No. 35887/2020 - EXEMPTION FROM FILING O.T., IA No.5856/2016 - EXEMPTION FROM FILING O.T. and IA No.34536/2020 - PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS) WITH S.L.P.(Crl) Nos.7072-7073/2016 (II-B) (With IA No.14382/2016 - CONDONATION OF DELAY IN FILING and IA No. 15004/2016 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT) Date :

09-05-2024 These matters were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA HON'BLE MR. JUSTICE MANOJ MISRA For Appellant(s) Mr. Pradhuman Gohil, Adv.

Mr. Purvish Jitendra Malkan, Adv.

Mr. Vikash Singh, AOR Ms. Ranu Purohit, Adv.

Mr. Alapati Sahithya Krishna, Adv.

Mr. Rushabh N. Kapadia, Adv.

Mr. Mohit Prasad, Adv.

Mr. Siddharth Singh, Adv.

Mr. Harin P Raval, Sr. Adv.

Mr. Ritvik Bhanot, Adv.

Ms. Shrestha Narayan, Adv.

Ms. Urmi H Raval, Adv.

SLPR 2653-54/2016 Ms. Shreya Bhansal, Adv.

For Respondent(s) Ms. Swati Ghildiyal, AOR Ms. Devyani Bhatt, Adv.

Ms. Srujana Suman Mund, Adv.

Mr. Pradhuman Gohil, Adv.

Mr. Purvish Jitendra Malkan, Adv.

Mr. Vikash Singh, AOR Ms. Ranu Purohit, Adv.

Mr. Alapati Sahithya Krishna, Adv.

Mr. Rushabh N. Kapadia, Adv.

Mr. Mohit Prasad, Adv.

Mr. Siddharth Singh, Adv.

UPON hearing the counsel the Court made the following O R D E R SLP (Crl) Nos 2653-2654 of 2016 1 Leave granted.

2 The criminal appeals are disposed of in terms of the signed order. 3 Pending applications, if any, stand disposed of.

SLP (Crl) Nos 7072-7073 of 2016 1 We are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution of India.

2 The Special Leave Petition is accordingly dismissed. 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. - cum - P.S.

(RAM SUBHAG SINGH)
Court Master

(Signed Reportable Order is placed on the file)