

ITEM NO.103

COURT NO.14

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

Criminal Appeal No(s). 838/2016

YOGESH JAYANTILAL BHAVASAR

Appellant(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

**(FOR EXEMPTION FROM FILING O.T. ON IA 7894/2016
IA No. 7894/2016 - EXEMPTION FROM FILING O.T.)**

WITH

CrI.A. No. 839/2016 (II-B)

Date : 09-01-2025 These matters were called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN**

For Appellant(s) Mr. Raj Kamal, AOR
Ms. Pallavi Malhotra, Adv.
Ms. Troeeta Bhuniya, Adv.
Ms. Stuti, Adv.
Mr. Harneet Singh, Adv.
Ms. Nupur Kaushik, Adv.

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

**UPON hearing the counsel the Court made the following
O R D E R**

**1. The operative part of the judgment and order passed
by the trial court reads thus:-**

"for the offence punishable u/s.376 and 114 of

the I.P.C. the accused No.1 Yogesh Jayantilal Bhavsar is ordered to undergo a rigorous imprisonment of 3 (Three) years and to pay a fine of Rs.3,000/- (Rupees Three Thousand only) and in default of payment of fine, he shall undergo a further simple imprisonment of 6 (Six) months.

Further, for the offence punishable u/s.418 and 114 of the I.P.C. the accused No.I Yogesh Jayantilal Bhavsar is ordered to undergo a rigorous imprisonment of 2 (Two) years and to pay a fine of Rs.3,000/- (Rupees Three Thousand only) and in default of payment of fine, he shall undergo a further simple imprisonment of 3 (Three) months.

Further, for the offence punishable u/s.420 and 114 of the I.P.C. the accused No.I Yogesh Jayantilal Bhavsar is ordered to undergo a rigorous imprisonment of 2 (Two) years and to pay a fine of Rs.3,000/- (Rupees Three Thousand only) and in default of payment of fine, he shall undergo a further simple imprisonment of 6 (Six) months.

Whereas, for the offence punishable u/s.376 and 114 of the I.P.C. the accused No.2 Sheelaben \V/o. Goldenbhai @ Ganeshbhai and the accused No.3 Goldenbhai @ Ganeshbhai both, are ordered to undergo a rigorous imprisonment of I (One) year and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) each and in default of payment of fine by any of them, they shall undergo a further simple imprisonment of 3 (Three) months.

Further, for the offence punishable u/s.418 and 114 of the I.P.C. the accused No.2 Sheelaben W/o Goldenbhai @ Ganeshbhai and the accused No.3 Goldenbhai @ Ganeshbhai both, are ordered to undergo a rigorous imprisonment of I (One) year and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) each and in default of payment of fine by any of them, they shall undergo a further simple imprisonment of 3 (Three) months.

Further, for the offence punishable u/s.420 and 114 of the I.P.C. the accused No.2 Sheelaben W/o Goldenbhai @ Ganeshbhai and the accused No.3 Goldenbhai @ Ganeshbhai both, are ordered to undergo a rigorous imprisonment of 1 (One) year and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) each and in default of payment of fine by any of them, they shall undergo a further

simple imprisonment of 3 (Three) months.

It is hereby ordered that all the sentences awarded to the accused persons shall run concurrently and the period spent by them in the prison shall be given as set off.

It is also hereby ordered that the muddamaal of the instant case shall be disposed of after expiry of the appeal period and each accused herein shall be provided with one copy of this judgment, free of cost."

2. We fail to understand how trial court could have imposed sentence of three years rigorous imprisonment for the offence of rape punishable under Section 376 of the Indian Penal Code, 1860 (for short "the IPC"). Section 376 of the IPC, even prior to its amendment in 2013, provided that the minimum punishment shall be that of seven years, which may be for life or for a term which may extend to 10 years.

3. We also take notice of the fact that the State had preferred an appeal seeking enhancement of sentence. However, the said appeal was dismissed by the High Court.

4. Even the High Court while dismissing the criminal appeal filed by the appellants herein did not take notice of the fact that how could the trial court have imposed sentence of three years for the offence of rape punishable under Section 376 of the IPC whereas the minimum is seven years.

5. According to Ms. Swati Ghildiyal, the learned

counsel appearing for the State of Gujarat, it is a serious error on the part of both, the trial court as well as the High Court going to the root of the matter. However, even according to her, she has been left wondering how this situation can be taken care of the absence of any appeal by the State before this Court.

6. We will have to look into this aspect closely. The learned counsel appearing for the appellants shall first address us on this issue on the next day of hearing.

7. We also also take notice of the observations made by the High Court in para 8 of its impugned judgment. The plain reading of para 8 would indicate that the High Court was conscious of this error committed by the trial court in imposing sentence of three years. However, the High Court seems to have overlooked this aspect of the matter.

8. The learned counsel appearing for the parties shall be provided with the soft copy of the entire record of the case at the earliest.

9. Post this matter as item no.2 on 23.1.2025 on the Board.

(CHANDRESH)
COURT MASTER (SH)

(POOJA SHARMA)
COURT MASTER (NSH)