

KALIBEN RABARI

A

v.

STATE OF GUJARAT & ORS.
(Criminal Appeal No. 571 of 2009)

MARCH 27, 2009

B

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

Penal Code, 1860 – s. 304 (Part I) and (Part II) – Order of High Court altering conviction from s. 304 (Part I) to s. 304 (Part II) and sentence from ten years to two and half years – Also reduction of compensation from Rs. 5 lakhs to Rs. 3 lakhs – Challenge to – Held: When custodial sentence was substantially reduced, there was no basis for reducing compensation as awarded from Rs. 5 lakhs to Rs. 3 lakhs – Also reasons were not indicated to justify reduction – Thus, quantum of compensation enhanced to Rs. 5 lakhs – Code of Criminal Procedure, 1973 – s. 357.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 571 of 2009.

E

From the Judgment & Order dated 13.03.2007 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No.1290/2005.

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Shanker Divate for the Appellant.

Hemantika Wahi, K. Enatoli Sema, Meenakshi Arora, S. Gupta, Mohit D. Ram and P. Kataki, for the Respondents.

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. The only question of importance which is raised by the

- A learned counsel for the appellant is that the High Court while reducing the sentence from 10 years to two and half years in respect of offence punishable under Sec. 304 Part I to 304 Part II of the Indian Penal Code, 1860 (in short the IPC) also reduced compensation from Rs.5 lakhs to Rs. 3 lakhs. Learned counsel for the appellant submitted that there was no basis for such reduction after the custodial period was substantially reduced. The High Court in fact refused to extend the benefits of the Probation of Offenders Act 1958 (in short the Probation Act) to the accused persons. By applying the parameters of Sec.357 of the Code of Criminal Procedure, 1973,(in short the 'Code'), the trial Court had fixed the quantum of compensation of Rs.5 lakhs. Learned counsel for the accused respondent supported the judgment of the High Court.

- D 3. We find that in a case of this nature where the High Court has altered conviction from Section 304 Part I to 304 Part II IPC and has considerably reduced the period of custodial sentence, there was no basis for reducing the compensation as awarded, i.e. Rs. 5 lakhs to Rs. 3 lakhs. No reason has been indicated to justify the reduction. Accordingly, we enhance the quantum of compensation to Rs. 5 lakhs. The balance of amount, if any, required to be deposited shall be so done within a period of four weeks from today.
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4. The appeal is disposed of.

F N.J.

Appeal disposed of.