



2026 INSC 659

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NOS. \_\_\_\_\_ OF 2026**

(Arising out of Special Leave Petition (Crl.) Nos.8847-8848 of 2025)

**KARAN CHETTRI & ANOTHER**

**... APPELLANTS**

***VERSUS***

**STATE OF SIKKIM**

**... RESPONDENT**

**J U D G M E N T**

**NAGARATHNA, J.**

Leave granted.

2. The appellants have preferred the present criminal appeals aggrieved by the final judgment and order dated 12.06.2024 passed by the High Court of Sikkim in Criminal Appeal No.07 of 2022 and Criminal Appeal No.08 of 2022 wherein the High Court partly allowed the said appeals by setting aside the appellants'

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conviction under Section 376(2)(1) of the Indian Penal Code 1860 (hereinafter referred to as "IPC") but upheld the conviction under

Section 376D of IPC and Section 450 read with Section 34 of IPC and further enhanced the sentence awarded from twelve years to twenty years.

3. Briefly stated, the facts of the case are that a FIR No.01/2021 was registered on 13.01.2021 at Yangang Police Station against the appellants under Sections 376D read with Section 34 of the Indian Penal Code, 1860. In the said FIR, it was alleged that on 10.01.2021 at 00:00 hours the mother of the complainant, aged 52 was raped by the appellants herein at her residence.

4. Upon completion of the investigation and submission of chargesheet, the trial commenced against the appellants before the Sessions Court in Sessions Trial (Fast Track) Case No.02 of 2021 that ultimately culminated into their conviction vide judgement dated 19.03.2022 under Section 376D, 376(2)(1) and Section 450 read with Section 34 of IPC. The appellants were consequently sentenced to rigorous imprisonment for a term of twelve years with a fine of Rs.10,000/- each for the offence under Section 376D. They were further sentenced to rigorous imprisonment for a term of twelve years with a fine of Rs.10,000/- each for the offence under Section 376(2)(1) of IPC. Lastly, they were sentenced to rigorous

imprisonment for a term of seven years with a fine of Rs.5,000/- each for the commission offence under Section 450 of IPC. Each of the aforementioned sentences was directed to run concurrently.

5. Aggrieved by the judgment conviction and sentence dated 19.03.2022 of the Sessions Court, the appellants preferred Criminal Appeal No.07 of 2022 and Criminal Appeal No.08 of 2022 before High Court of Sikkim at Gangtok. By impugned judgment dated 12.06.2024 the High Court partly allowed the aforesaid criminal appeals preferred by the appellants and consequently set aside the order of conviction dated 19.03.2022 of the Sessions Court under Section 376(2)(1). However, the High Court upheld the appellants' conviction under Section 376D of IPC and Section 450 read with Section 34 of IPC and proceeded to enhance their sentence from twelve years to twenty years. While enhancing the sentence, the High Court observed that the sentence of twelve years meted out by the Sessions Court for the offence under Section 376D of the IPC was erroneous as the same was not in accordance with the statutory requirement of the said section and flew in the face of mandate of law.

6. Aggrieved by the judgment of the High Court dated 12.06.2024, the appellants have preferred the present criminal appeal.

7. We have heard Ms. Manika Tripathy, learned counsel appearing for the appellants and learned standing counsel for the respondent-State of Sikkim at length. We have perused the impugned judgment as well as the material on record.

8. Learned counsel for the appellants submitted both on the merits of the case as well as on the fact that there was a breach of Section 386(b)(iii) of the Code of Criminal Procedure, 1973 (Cr.PC) inasmuch as in appeals filed by the appellants herein against the judgment of conviction and sentence of twelve years of rigorous imprisonment imposed under Section 376D of the Indian Penal Code, 1860 (IPC), the High Court by exercising its jurisdiction under Section 397 read with Section 401 of the Cr.PC enhanced the sentence to twenty years. Learned counsel for the appellant(s) submitted that the expression "*but not so as to enhance the same*" in Section 386(b)(iii) has been given a go-bye and consequently the appellants have become worse off in their own appeals. She therefore submitted that both the judgment of conviction as well as

the order of sentence be set aside and alternatively, she submitted that if this Court is not inclined to interfere with the judgment of conviction, at least the sentence imposed by the Sessions Court may be reiterated by setting aside the sentence imposed by the High Court. Learned counsel for the appellants also placed heavy reliance on a judgment of this Court in ***Sachin vs. State of Maharashtra, (2025) 9 SCC 507 (“Sachin”)*** with particular reference to paragraphs 42 to 45 and 63.

9. *Per contra*, learned standing counsel for the respondent-State supported the impugned judgment of conviction and order of sentence by firstly contending that the Sessions Court had grossly erred in imposing the sentence of twelve years of rigorous imprisonment when the minimum sentence under Section 376D IPC is twenty years. Secondly, in the appeals filed by the appellants herein, the High Court was convinced that there was no merit so as not to interfere with the conviction but exercised its jurisdiction *suo motu* under Section 397 read with Section 401 of the Cr.PC. In that regard, the High Court was seeking to ensure that the minimum sentence to be imposed under Section 376D was complied with and the gross error of the Sessions Court was

rectified. He submitted that the procedure contemplated under the aforesaid provisions was complied with by giving an opportunity to the accused and they were heard and thereafter the sentence was enhanced. He further submitted that this is not a case where there has been enhancement of the sentence in the appeal(s) filed by the appellants/convict in the sense contemplated in Section 386(b)(iii) as this is not a case where inadequate sentence has been imposed. This is a case where the Sessions Court had erred in imposing the sentence below the minimum sentence prescribed under Section 376D. In order to ensure that there was compliance with Section 376D, the High Court in exercise of its *suo motu* jurisdiction enhanced the sentence. Thereby, there was no breach of what was stipulated under Section 386 (b)(iii) while exercising its appellate jurisdiction by the High Court. Therefore, the judgment passed by this Court in the case of **Sachin** has to be distinguished and the paragraphs pressed into service by learned counsel for the appellant(s) cannot be read in all situations including the case at hand. The said prescription would apply to a case where the sentence has been correctly imposed on a provision of law under the IPC but may be on the lower side or inadequate and hence it

would not cover a case where sentence imposed is below the minimum prescribed under the provision of the IPC.

10. Learned standing counsel for the respondent-State sought to distinguish the judgment of this Court in **Sachin** both on facts as well as on law. He also supported his arguments by placing reliance on the judgments of this Court in **Sahab Singh vs. State of Haryana, (1990) 2 SCC 385** (“**Sahab Singh**”) and **Kumar Ghimirey vs. State of Sikkim, (2019) 6 SCC 166** (“**Kumar Ghimirey**”).

11. We have given our anxious consideration to the arguments advanced at the Bar. It is not in dispute that the Sessions Court convicted the appellant(s) herein under Section 376D of the IPC.

The said provision reads as under-

“376D. Gang rape- Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

12. The minimum sentence that could be imposed under Section 376D is twenty years. However, the Sessions Court erred in imposing a sentence of only twelve years when “*rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person’s natural life and with fine.*” has been prescribed. The Sessions Court ought to have complied with the said prescription and therefore, the sentence could not have been less than twenty years. But in the instant case the sentence imposed was only twelve years. Therefore, even in appeals filed by the appellant(s) herein, on coming to a conclusion that there was no scope of interference on merits, the High Court sought to rectify a gross defect in the imposition of sentence by the Sessions Court by complying with what has been stipulated under Section 376D.

13. In this case, we are concerned with an appeal from a conviction. In such an appeal, the appellate court can exercise its powers in three ways, as per clause (b) of Section 386CrPC. Clause (c) is with regard to an appeal for enhancement of sentence. While an appeal from a conviction is filed by the accused, an appeal from an order of acquittal or for enhancement of sentence could be filed

either by the State or by the complainant or even by the victim under Section 378 CrPC and in the case of a victim as per the proviso to Section 372. In the case of an appeal from any other order i.e. not an order of conviction or acquittal, the High Court can either alter or reverse such order under clause (d). The High Court also has the power to make an amendment or pass any consequential or incidental order that may be just or proper in any of the above situations. However, there are two provisos to Section 386. The first proviso states that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement. The second proviso states that the appellate court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing that order for sentence under appeal.

14. Some judgments of this Court on the interpretation of Section 386 CrPC may be referred to at this stage.

15. In **Sahab Singh**, seven appellants were convicted by the learned Additional Sessions Judge, Sonapat on three counts and sentenced as follows:

- (a) rigorous imprisonment for one year under Section 148 IPC;
- (b) rigorous imprisonment for six months under Sections 323/149 IPC; and
- (c) imprisonment for life and a fine of Rs 200 under Sections 302/149 IPC.

15.1 All the said substantive sentences were directed to run concurrently. The seven appellants preferred an appeal against the order of conviction and sentence passed by the trial court. The High Court while dismissing their appeals clarified that their conviction were on six counts and altered the fine awarded under Sections 302/149 IPC from Rs.200/- to Rs.5000/- in respect of each appellant per count i.e. Rs.30,000/- per appellant. Being aggrieved by the enhancement of fine, the appellant preferred their appeal before this Court on the question of enhancement only.

15.2 While discussing Sections 374 and 401 CrPC, this Court in **Sahab Singh** observed that on a co-joint reading of Sections 377, 386, 397 and 401, if the State is aggrieved about the inadequacy of the sentence, it can prefer an appeal under Section 377(1) CrPC. The failure on the part of the State to prefer an appeal does not, however, preclude the High Court from exercising *suo motu* power of revision under Section 397 read with Section 401

CrPC since the High Court itself is empowered to call for the record of the proceedings of any court subordinate to it. Sub-section (4) of Section 401 operates as a bar to the party which has a right to prefer an appeal but has failed to do so but that sub-section cannot stand in the way of the High Court exercising revisional jurisdiction *suo motu*. But before the High Court exercises its *suo motu* revisional jurisdiction to enhance the sentence, it is imperative that the convict is put on notice and is given an opportunity of being heard on the question of sentence whether in person or through his advocate. The revisional jurisdiction cannot be exercised to the prejudice of the convict without putting him on guard that it is proposed to enhance the sentence imposed by the trial court.

15.3 Discussing the facts of the said case, it was noted in **Sahab Singh** that the accused convict had filed their appeals, while no appeal had been filed by the State against the sentence awarded by the trial court on the ground of its inadequacy vis-à-vis Sections 302/149 IPC nor did the High Court exercise *suo motu* revisional powers under Section 397 read with Section 401 CrPC. If the High Court intended to enhance the sentence the proper course was to exercise *suo motu* powers under Section 397 read with Section 401

CrPC by issuing notice of enhancement and hearing the convicts on the question of inadequacy of sentence. Without following such procedure, it was not open to the High Court in the appeal filed by the convicts to enhance the sentence by enhancing fine as this would be without jurisdiction. On this ground, the appeals were allowed and the enhanced fine imposed by the High Court set aside and fine imposed by the trial court was restored and direction was issued to refund the additional fine, if paid.

16. In ***Kumar Ghimirey***, the appellant therein assailed the judgment of the Sikkim High Court dismissing his criminal appeal questioning the order of conviction and sentence passed by the Special Judge (POCSO Act, 2012) convicting the appellant therein under Sections 9/10 of the said Act and Section 341 IPC. The appellant therein was sentenced to undergo simple imprisonment for a period of seven years and to pay a fine of Rs 50,000/- under Sections 9/10 of the POCSO Act, 2012 and under Section 341 IPC the appellant was sentenced to undergo simple imprisonment for one month by the Special Court. Aggrieved by the judgment of the Special Court, the accused filed an appeal before the High Court. The High Court dismissed the appeal and the sentence under

Sections 9/10 of the POCSO Act was converted into a sentence under Section 5(m) of the POCSO Act read with Section 6 of the said Act and the sentence was enhanced from seven years to ten years with a fine of Rs.5000/-.

16.1 Challenging the enhancement of punishment even when there was no appeal filed seeking such an enhancement and contending that the High Court ought not to have enhanced the sentence, the appellant therein filed the appeal before this Court in *Kumar Ghimirey*. While analysing Section 386(b) CrPC, which deals with an appeal from conviction, this Court noted that the High Court had enhanced the sentence in the appeal filed by the accused challenging his conviction. It was observed by this Court that the High Court generally has the power to enhance the sentence in an appropriate case. The High Court can also exercise its powers under Section 401 CrPC which deals with the power of revision of the High Court in an appropriate case. The High Court under Section 401 CrPC can exercise any of the powers conferred on a court of appeal by Sections 386, 390, 391 or a Court of Session by Section 307 CrPC. It was observed that the High Court under Section 386(c) could have enhanced the sentence but the said

course is permissible only after giving notice of enhancement. The power of the High Court has been accepted and reiterated by this Court in a large number of cases.

16.2 In this regard, in ***Kumar Ghimirey***, reference was made to ***Surjit Singh vs. State of Punjab, 1984 Supp SCC 518***, ***Govind Ramji Jadhav vs. State of Maharashtra, (1990) 4 SCC 718*** and ***Surendra Singh Rautela vs. State of Bihar, (2002) 1 SCC 266***. While discussing these cases, this Court observed that the High Court had rightly affirmed the conviction of the appellant therein. On the facts of the said case, this Court refused to reduce the sentence from seven years to five years as sought by the accused. However, it set aside the direction of the High Court insofar as it enhanced the sentence from seven years to ten years' rigorous imprisonment and the sentence awarded by the Special Judge i.e. seven years under the POCSO Act and one month under Section 341 was maintained.

16.3 We find that the above judgment in ***Kumar Ghimirey*** was a case of enhancement of sentence by the High Court in an appeal filed by the accused and this Court by its judgment maintained the sentence of seven years imposed by the Special Judge while setting

aside the direction of the High Court insofar as it enhanced the sentence from seven years to ten years' rigorous imprisonment. This Court observed that the High Court enhancing the sentence from seven years to ten years was not in accordance with the procedure prescribed.

17. The question for consideration in this case is, whether, in an appeal against conviction, the appellate court could have directed enhancement of the sentence in an appeal filed by the accused. Under clause (b) of Section 386 CrPC, *firstly*, the appellate court can no doubt alter the findings and sentence and acquit or discharge the accused or order him to be retried by a court of competent jurisdiction subordinate to such appellate court or committed for trial. *Secondly*, the appellate court can also alter the findings but maintain the sentence. *Thirdly*, the appellate court can, in an appeal from a conviction, with or without altering the finding, alter the nature and or the extent, or the nature and extent, of the sentence but not so as to enhance the same. A plain reading of this would imply that in an appeal against conviction which is obviously filed by the accused, the challenge could be twofold: *firstly*, it could be against the conviction itself in which

case there is a challenge to the sentence also; and *secondly*, the challenge could be only to the sentence while accepting the conviction. In other words, the challenge would also be only for reduction of the sentence. The question is, whether, in an appeal challenging the conviction and sentence, the appellate court could, while affirming the conviction, enhance the sentence imposed by the trial court by directing that the same had to be with reference to other statutory provisions.

17.1 There is no doubt that the appellate court while maintaining the conviction can reduce the sentence and grant partial relief to an accused. But in an appeal filed by the appellant-accused, can the appellate court not only affirm the conviction but go a step further and seek to enhance the sentence than what had been imposed by the trial court? It cannot be lost sight of that in an appeal filed by the accused, the appellant-accused is, at best, seeking a reversal of the conviction as well as setting aside of the sentence and the least that the appellant-accused can expect is even while the conviction is affirmed, the sentence could be maintained, if not reduced.

17.2 Thus, in an appeal filed by the appellant-accused against the judgment of the conviction and sentence, can the accused be left worse off while the conviction is affirmed by the appellate court exercising appellate jurisdiction by enhancing the sentence? In such an event, the appellant-accused would be better off, if he either withdraws his appeal or, not to file an appeal at all!

18. In **Sachin**, this Court speaking through one of us (Nagarathna, J.) observed as under:

“44. The right to prefer an appeal is not only a statutory right but also a constitutional right in the case of an accused because an accused has a right to not only challenge a judgment on its merits, namely, with respect to the conviction and sentence being imposed on him but also on the procedural aspects of the trial. An accused can also question procedural flaws, impropriety and lapses that may have been committed by the trial court in arriving at the judgment of conviction and imposition of sentence in an appeal filed against the same. It then becomes the duty of the appellate court to consider the appeal from the perspective of the accused-appellant to see if he has a good case on merits and to set aside the judgment of the trial court and acquit the accused or to remand the matter for a retrial in accordance with law or reduce the sentence while maintaining the conviction or, in the alternative, to dismiss the appeal.

x x x

53. The distinction between “appellate jurisdiction” and “revisional jurisdiction” is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as on facts and is invoked by an aggrieved person. Ordinarily, again,

revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without it being invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction. The conferment of revisional jurisdiction is generally for the purpose of keeping tribunals subordinate to the revising tribunal within the bounds of their authority to make them act according to the procedure established by law and according to well-defined principles of justice.

x x x

56. We have examined the scope of powers that can be exercised by an appellate court under Section 386 CrPC in juxtaposition with Section 401 CrPC which deal with the appellate and revisional powers of the High Court, respectively. We have considered the judicial dicta. On consideration of the judgments of this Court in *Nadir Khan* [*Nadir Khan v. State (UT of Delhi)*, (1975) 2 SCC 406 : 1975 SCC (Cri) 622] and *Eknath Shankarrao Mukkawar* [*Eknath Shankarrao Mukkawar v. State of Maharashtra*, (1977) 3 SCC 25 : 1977 SCC (Cri) 410] , we find that even while exercising appellate powers under Section 377 CrPC, there cannot be exclusion of revisional jurisdiction of the High Court to act suo motu for enhancement of sentence in appropriate cases and what is an appropriate case has to be left to the discretion of the High Court. Further, the High Court can suo motu call for the record of proceedings of any inferior criminal court under its jurisdiction and exercise revisional powers. The observations of this Court in *Sahab Singh* [*Sahab Singh v. State of Haryana*, (1990) 2 SCC 385 : 1990 SCC (Cri) 323] and *Govind Ramji Jadhav* have to be juxtaposed in light of their peculiar facts and in the background of the observations of this Court in *Nadir Khan* [*Nadir Khan v. State (UT of Delhi)*, (1975) 2 SCC 406 : 1975 SCC (Cri) 622] and *Eknath Shankarrao Mukkawar* [*Eknath Shankarrao Mukkawar v. State of Maharashtra*, (1977) 3 SCC 25 : 1977 SCC (Cri) 410] .

x x x

59. The trial courts should also be very careful while passing an order of sentence inasmuch as the sentence imposed must be concomitant with the charge(s) framed and the findings arrived at while arriving at a judgment of conviction. If the charges are proved beyond reasonable doubt against an accused then, the sentence following a finding and judgment of conviction must be appropriate to the nature of the charges which are proved by the prosecution.”

19. In this case, our focus of attention is whether, in the absence of any appeal or revision filed by the State, a complainant or a victim in a particular case and when the appeal has been filed only by the accused assailing the judgment of conviction and sentence, the High Court can exercise its revisional jurisdiction while dealing with an appeal filed by the accused/convict. In other words, when an accused is seeking setting aside of a judgment of conviction and sentence, can the High Court, in the absence of there being any challenge to the same from any other quarter, *suo motu* exercise its revisional power and thereby condemn the accused by awarding an enhancement in his sentence. Even if an opportunity of hearing is given to such an accused/convict, we do not think that the High Court can exercise its revisional jurisdiction under Section 401 CrPC while exercising its appellate jurisdiction in an appeal filed by the accused/convict in the High Court. All that the High Court

can do is to set aside the judgment of conviction and sentence and acquit the accused, or while doing so, order for a retrial or, in the alternative, while maintaining the conviction, reduce the sentence. In other words, in an appeal filed by the accused/convict, the High Court cannot *suo motu* exercise its revisional jurisdiction and enhance the sentence against the accused while maintaining the conviction.

20. In this regard, we find that the expression “but not so as to enhance the same” in sub-clause (iii) of clause (b) of Section 386 CrPC throws some light, which reads as under:

**“386. Powers of the appellate court.— \* \* \***

\* \* \*

(b) in an appeal from a conviction—

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(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;”

Although the said expression “but not so as to enhance the same” is in the context of sub-clause (iii) of clause (b) of Section 386, the spirit of the said provision must be understood, inasmuch as while maintaining the finding of conviction, the High Court cannot exercise its *suo motu* revisional jurisdiction under Section 401CrPC and enhance sentence awarded to the appellant-accused.

21. We find that having regard to the facts of this case, the judgment in the case of **Sachin** cannot be applied mechanically. In **Sachin**, the appellant had assailed the judgment of conviction and sentence and there was no issue with regard to there being inadequate sentence or a sentence being imposed contrary to the statutory prescription. It was in those circumstances that relief was granted in the case of **Sachin** but in the instant case while there was a challenge to the judgment of conviction and sentence, the High Court noted that the sentence imposed was contrary to what has been stipulated under Section 376D of IPC. The minimum sentence under the said provision is twenty years but may extend to life which shall mean imprisonment for remainder of that person's natural life and with fine. The Sessions Court instead of imposing the minimum sentence of twenty years imposed a sentence of twelve years. There being a breach of the stipulation under Section 376D of IPC, the High Court while dismissing the appeals filed by the accused/appellants and affirming the judgment of conviction also exercised *suo motu* revisional powers under Section 401 CrPC to enhance the sentence awarded to the appellants. The expression "but not so as to

enhance the same” under Section 386(b)(iii) CrPC cannot, in our view, come in the way of the High Court exercising its revisional jurisdiction under Section 401 CrPC in order to comply with Section 376D of IPC. This is not a case where the appellants became worse off in their appeals before the High Court. Noting the glaring error in imposition of the sentence on the appellant herein, the High Court, in our view, was justified in exercising its *suo motu* revisional powers under Section 401 CrPC. Therefore, we find that the facts and circumstances which emanated in **Sachin** are quite distinct from the facts and circumstances of the present case. Moreover, the High Court enhanced the sentence after complying with the principles of natural justice while exercising its *suo motu* revisional jurisdiction under Section 401 CrPC. Hence, the judgment in **Sachin** has to be distinguished from the present case for the aforesaid reasons. Therefore, the said judgment will not apply to a case where the Sessions Court on misreading the provision of the IPC has imposed a sentence below what is stipulated in the IPC as in the instant case. Hence, we are unable to apply the ratio of **Sachin** to the facts and circumstances of the present case.

22. We also observe that although Section 386(b) CrPC does not empower an appellate court, in an appeal preferred by the accused, to enhance the sentence, where the sentence awarded by the trial court is contrary to the statutory mandate and is below the prescribed minimum punishment, the appellate court's act of substituting the illegal sentence with the minimum sentence prescribed by law is not an "enhancement" in exercise of powers under Section 386(b). Rather, it amounts to a *suo motu* correction of an illegality/error apparent on the face of the record to bring the sentence in conformity with the mandatory statutory requirement. Consequently, increasing the sentence from twelve years to twenty years, as in the instance case, where twenty years is the minimum punishment prescribed by the statute, was legally permissible notwithstanding the bar contained in Section 386(b), since the High Court was merely replacing an illegal sentence with a lawful one and not exercising appellate powers of enhancement. The accused has a right to challenge his conviction, but he has no right to insist upon the continuance of an illegal sentence. Thus, the appellate court, by raising the sentence to the statutory minimum, is not

making the sentence harsher by choice but is merely giving effect to what the law compulsorily required from the outset.

23. The embargo contained in Section 386(b) CrPC against enhancement of sentence in an appeal preferred by the accused assumes that the sentence sought to be interfered with is one lawfully imposed and therefore capable of being protected by the procedural safeguard against aggravation. However, a sentence imposed below the statutory minimum is a departure from that assumption. Such a sentence is not merely inadequate, but it is one rendered in derogation of the legal mandate and to that extent, suffers from a jurisdictional infirmity. The accused can acquire no vested right in the continuance of an order which the law itself does not sanction.

24. That being so, the High Court, by substituting the sentence awarded by the trial court with the minimum punishment prescribed by statute, did not exercise a power of enhancement under Section 386(b). It did not impose a harsher punishment in the exercise of appellate discretion. All it did was to discharge its duty to bring the sentence into conformity with the command of the statute. The source of such action lies not in the power to enhance,

but in the obligation of the court, acting *ex debito justitiae*, to correct a patent illegality and ensure that the judgment affirmed by the judicial process is one which the law authorizes.

25. To hold otherwise would mean that a manifestly illegal sentence, merely because it was challenged by the convict and not by the State or the victim, must be perpetuated despite being contrary to the minimum punishment ordained by Parliament. Such a construction would elevate a procedural limitation over substantive legality and permit the appellate process to become an instrument for preserving an illegality. That, in our view, can never be the outcome. The prohibition under Section 386(b) cannot be understood as conferring upon an accused a right to insist upon the continuance of a sentence which the law forbids. The substitution of the sentence of twelve years with the mandatory minimum of twenty years by the High Court, therefore, is not an enhancement of punishment in the true sense, but a *suo motu* correction of an error apparent on the face of the record, undertaken to give effect to the law as it is and to restore legality to the sentencing process.

26. In the circumstances, we have no option but to dismiss the appeals.

The Appeals are hence dismissed.

.....J.  
**[B.V. NAGARATHNA]**

.....J.  
**[UJJAL BHUYAN]**

**NEW DELHI;  
MAY 20, 2026**