IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 500 of 1998

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
[redacted]

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Appearance:
MR UTKARSH SHARMA APP for the Appellant(s) No. 1
DR. HARDIK K RAVAL(6366) for the Opponent(s)/Respondent(s) No. 1
HCLS COMMITTEE(4998) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 29/10/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK)

1. The appellant has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order dated 31.01.1998 passed by the learned Additional Sessions Judge, Nadiad in Sessions Case No. 136 of 1997, whereby the learned

Additional Sessions Judge has acquitted the original accused (respondent herein) from the offences punishable under Sections 363, 366, 376, 201 etc of the Indian Penal Code.

2. It is the case of the complainant that on 19.12.1996, her daughter (the victim) came home at about 2.00 p.m. and informed her that examination of the other students were going on and, therefore, the students had been released during recess hours and hence, she had not attended the school. The victim then demanded 50 paise from her mother and after receiving the same, she went to the Pan Galla. It is further averred that though the victim did not return home, at about 4.00 p.m., the complainant went to search of the victim. At that time, one Kevadbhai Pujabhai Dabhi informed the complainant that a girl had been found near the bus stand. On reaching the spot and making inquiry, the complainant found her daughter lying there in an unconscious condition and saw bloodstains on the frock and on undergarment of the victim and she also saw injuries on the private part of the victim. Thereafter, Kevadbhai and Vasantbhai took the victim on a scooter to the Navagam District Panchayat Hospital. Subsequently, for further treatment, she was shifted to the V. S. Hospital, Ahmedabad, where the complainant lodged the complaint. It is further alleged in the complaint that some unknown person had committed rape upon the victim and the blood was oozing from her private part and thereafter abandoned her on the road near the canal. Therefore, for investigation, the complainant approached the Senior Police Station, Matar Camp / Ahmedabad and a complaint was lodged by the complainant before Matar Police Station for the aforesaid offences, which was registered as C.R.No. I – 308 of 1996. The police prepared panchnama of the scene of offence and after preparing the arrest panchnama and then the accused was

arrested. On completion of investigation, the charge sheet was filed before the Court of learned Judicial Magistrate First Class.

2.1 The charge against the accused came to be framed by the trial Court for the aforesaid offences against the accused. On being explained it to them, the accused have denied having committed any offence. The accused pleaded not guilty to the charge and pleaded for trial and hence, the case was tried by the learned Sessions Judge.

3. It appears from the records that to prove the case, the prosecution has examined the following witnesses:-

P.W. No.	Name of Witnesses	Exhibit
1	Dr. Khemchand Bijalbhai Parmar	07
2	Manjulaben Thakorbhai Patel	11
3	Thakorbhai Prabhubhai Patel	13
4	Victim	14
5	Ranchhodbhai Shakarabhai Rabari	15
6	Vasantbhai Govindbhai Patel	16
7	Ramsingbhai Bhathibhai Jhala	21
8	Bakorbhai Somabhai Prajapati	23
9	Nishant Nanjibha Dodiya	26
10	Premal Jashvantlal Shah	30
11	Dineshbhai Gandubhai Pethani	33
12	Indiraben Ashabhai	36
13	Pareshbhai Vithalbhai	37
14	Budhabhai Gordhanbhai Baraiya	39
15	Jayeshkumar Jashubhai Patel	40
16	Bipinbhai Mohanbhai	42
17	Bachimiya Kalumiya Shaikh	44

18	Ramtubhai Motibhai Chauhan	46
19	Bharatsinh Bhagvatsinh Rana	48

4. In addition to this, the prosecution has also produced the following documentary evidence.

Sr. No.	Particulars	Exhibit
1	Medical certificate issued by Medical Officer, Civil Hospital, Kheda	08
2	Complaint	12
3	Panchnama of physical condition of the accused	17
4	Birth certificate of victim issued by Gram Panchayat, Balot	18
5	Certificate issued by Kanya Shala Navagam	19
6	Medical certificate of victim issued by Medical Officer, District Panchayat dispensary, Navagam, Taluka: Matar, District: Kheda	27
7	Medical certificate of victim issued by Sheth Vadilal Sarabhai General Hospital, Ahmedabad	31
8	Medical certificate of victim issued by Sheth Vadilal Sarabhai General Hospital, Ahmedabad	34
9	Panchnama of the scene of offence where the victim was lying	38
10	Seizure panchnama	41
11	Panchnama of the scene of offence	47
12	FSL report	53
13	Analysis report	54

5. After closure of the evidence, the statement of the accused under section 313 of the Criminal Procedure Code, 1973 has been recorded wherein he denied of having committed any offence and have stated that he is innocent. Upon hearing both sides and

considering the evidence on records, the learned Sessions Judge by impugned judgment and order has acquitted the accused from all the charges levelled against him.

6. Being aggrieved by and dissatisfied with the aforesaid judgment and order of acquittal the appellant has preferred this appeal.

7. Heard Mr.Utkarsh Sharma, learned Additional Public Prosecutor for the appellant – State of Gujarat and Dr.Hardik K. Raval, learned counsel for the respondents – accused at length.

8. Mr.Sharma, learned Additional Public Prosecutor appearing for the appellant – State of Gujarat has submitted the same facts which are narrated in the memo of appeal and has also submitted that the prosecution has examined witnesses and produced documentary evidence, despite this fact, the trial Court has not considered the same in its true and proper perspective in passing the judgment and order of acquittal. Mr.Sharma, learned Additional Public Prosecutor, while referring to the entire oral as well as documentary evidence, has assailed the impugned judgment and order and submitted that the trial Court has not taken into consideration the evidence connecting the accused to the alleged offence in its proper perspective and even the prosecution has been able to prove the charges levelled against the accused.

8.1 While referring to the evidence of the witnesses and the material collected against the accused, Mr.Sharma, learned Additional Public Prosecutor has submitted that the prosecution has established the case against the accused by examining the witnesses, who have supported the case of the prosecution, however, the learned Sessions

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Judge has discarded and disbelieved the evidence of these witnesses. He has submitted that the witnesses have fully supported the case of the prosecution, however, the trial Court has not appreciated the same and passed the judgment and order of acquittal which is illegal and unjust.

8.2 Mr.Sharma, learned Additional Public Prosecutor has submitted that it is settled legal position that the evidence of a single witness is sufficient for conviction if the same is reliable and trustworthy and in the present case, though the evidence of all the witnesses are reliable and trustworthy, without any cogent reason, the learned Sessions Judge has disbelieved and discarded the evidence of the witnesses.

8.3 Mr.Sharma, learned Additional Public Prosecutor has further submitted that the impugned judgment of acquittal is contrary to the evidence on record, based on erroneous appreciation of material evidence, and has resulted in a miscarriage of justice and the findings recorded by the learned Sessions Judge are perverse and unsustainable in law, thereby calling for interference by this Court in the exercise of its appellate jurisdiction. Learned Additional Public Prosecutor has also submitted that the learned Sessions Judge has materially erred in holding that the prosecution has failed to prove its case beyond reasonable doubt and the findings recorded by the learned Sessions Judge were therefore perverse, illegal, and contrary to the evidence on record.

8.4 Mr.Sharma, learned Additional Public Prosecutor has also submitted that the accused kidnapped the daughter of the complainant, who was aged about 7 years at the time of incident from her lawful guardian and committed rape on victim and hence the

accused ought to have convicted for the offence punishable under Sections 363, 366, 376 etc of the IPC. He has submitted that the father of the victim and the complainant have fully supported the case of the prosecution, however, the learned Sessions Judge has not considered the evidence of the said witnesses and passed the judgment and order acquitting the accused. He has submitted that the accused was identified by the prosecutrix during the T.I. Parade before the Executive Magistrate and therefore there is no reason to disbelieve and discard the case of the prosecution. He has submitted that the learned Sessions Judge has not properly appreciated the FSL Report at Exhibit 53 and serological report at Exhibit 54 and these two reports are corroborative and shows blood group "A" on the clothes of the victim and the accused.

8.5 According to Mr.Sharma, learned Additional Public Prosecutor, the trial Court ought to have convicted the accused and ought to have imposed necessary sentence. Mr.Sharma, learned Additional Public Prosecutor has prayed to allow the present appeal and to quash and set aside the impugned judgment and order of acquittal.

9. Per contra, Dr.Raval, learned counsel for the respondent – accused has supported the impugned judgment and order and has submitted that the learned Sessions Judge has not committed any error of law and fact in acquitting the accused from the charges levelled against him. He has submitted that the ingredients of the offence alleged against the accused are not proved beyond reasonable doubt and, therefore, the learned Sessions Judge has rightly acquitted the accused as the complainant has failed to prove the charge levelled against the accused. He has also submitted that there is no iota of evidence to connect the accused with the alleged

crime in question. He has submitted that the evidence led by the prosecution suffers from material contradictions, omissions, and inconsistencies, which create serious doubt about the veracity of the prosecution case and the prosecution has failed to establish the essential ingredients of the alleged offences and has not produced reliable, trustworthy, and corroborative evidence connecting the respondent with the commission of the alleged offence. He has submitted that it is a settled principle of criminal jurisprudence that the presumption of innocence in favour of an accused is further strengthened by an order of acquittal. It is submitted that unless the findings recorded by the learned Sessions Judge are shown to be perverse, illegal, or contrary to the evidence on record, the Appellate Court should be slow in interfering with an order of acquittal. It is submitted that the appellant has failed to point out any infirmity, illegality, perversity, or misreading of evidence in the impugned judgment and order and the findings recorded by the trial Court are based upon proper appreciation of the evidence and settled legal principles. Dr.Raval, learned counsel for the respondent has submitted that the appeal being meritless deserves to be dismissed and the impugned judgment and order of acquittal deserves to be confirmed.

10. Considering the aforesaid submissions and the relevant aspects of the matter, this Court is required to first examine the facts of the case that the alleged kidnapping and rape of the victim, for which, the complaint was lodged. It is the case of the prosecution that on 19.12.1996, during the afternoon hours, as examination of other students were going on at the school, the victim returned home and thereafter went out to play with her friends and the complainant gave her 50 paise, thereafter, the victim went to the Pan Galla. It is further alleged that though the victim did not return home, the complainant

went to search of the victim at about 4.00 p.m. After some time, one Kevadbhai Pujabhai Dabhi informed the complainant that a girl had been found in an injured condition near the bus stand and accordingly, the complainant went there and found that the girl was her daughter. Upon examining the victim, the complainant noticed bloodstains on her private part and on her clothes. Thereafter, the complainant and one Vasantbhai took the victim in injured condition to the nearest hospital. Upon examining her, the doctor advised them to take her to Ahmedabad for better treatment. Accordingly, the victim was taken to the concerned hospital at Ahmedabad, where she was admitted as an indoor patient for a period of ten days. When the doctor inquired about the injuries, the victim did not disclose anything about the alleged incident but stated that she had fallen down while playing, she sustained the injuries. Thus, at the time of referring the victim to the V. S. Hospital, Ahmedabad, neither the complainant nor the other persons accompanying her were aware of the alleged incident and consequently, no such history was given to the concerned doctor. Considering these facts, it emerges that the FIR came to be lodged after a considerable delay.

11. On perusal of the deposition of P.W.2 – Manjulaben Thakorbhai Patel, the mother of the victim, it appears that she deposed that the victim was admitted in the hospital as an indoor patient for a period of ten days and continued to take treatment for about one month. She further stated that after about one month, when the victim was outside the house to brush her teeth, she saw a boy i.e. the respondent herein, passing through their house, at that time, the victim informed her mother that he was the person who had taken her away and committed rape upon her. Consequently, the FIR came to be lodged after about four days. So far as the delay in lodging the FIR is

concerned, neither the complainant nor the concerned Investigating Officer offered any satisfactory explanation for such delay in their respective depositions.

12. So far as the identification of the accused is concerned, the same creates serious doubt. On perusal of the testimonies of the victim and the complainant, it emerges that the prosecution has failed to establish beyond reasonable doubt the identification of the accused in the Test Identification Parade (T.I. Parade) conducted by the Magistrate. It further appears that the Investigating Officer did not properly follow the prescribed procedure while conducting the T.I. Parade and the Executive Magistrate also failed to comply with the mandatory requirements of law.

13. On perusal of the deposition of P.W.10 – Dr. Premal Jashvantlal Shah, it appears that this doctor admitted that as per the history given by the victim, she sustained the injuries after falling down while playing. The victim had not disclosed any details regarding the alleged incident as narrated by the complainant.

14. On perusal of the depositions of P.W.15 – Jayeshkumar Jashubhai Patel and P.W.16 – Bipinbhai Mohanbhai, who had taken the victim to the nearest hospital at Village Navagam, it appears that both witnesses admitted that the victim had informed the doctor that she had sustained the injuries while playing.

15. On perusal of the deposition of the independent witness, Indiraben Ashabhai (P.W.12), it appears that she stated that when she saw the victim and inquired about her injuries, the victim informed her that she had fallen down while playing and consequently sustained

the injuries.

16. So far as the panch witnesses are concerned, they have not supported the case of the prosecution and they were, therefore, declared hostile.

17. We have also examined the scientific evidence including the serological report and the other documentary evidence on record. It appears that the prosecution has failed to bring on record any cogent evidence connecting the accused with the crime in question. The serological report reveals that the prosecution had not collected the blood samples either of the victim or the accused. Consequently, the prosecution has failed to establish the necessary link connecting the accused with the alleged crime and has also failed to prove his involvement in the alleged offence beyond reasonable doubt. In view of the evidence adduced by the prosecution, it appears that the learned Sessions Judge has discussed the facts and circumstances of the case in detail and after appreciating the depositions of the prosecution witnesses, recorded reasons in Paragraphs 6 to 10 and thereafter, in Paragraph 11 onwards, explained the reasons for not accepting the prosecution case. The prosecution has also failed to establish any fundamental fact through independent evidence connecting the accused with the crime in question. In the absence of cogent and reliable evidence establishing the involvement of the accused, the prosecution cannot be said to have proved the charges beyond reasonable doubt. The learned Sessions Judge, after considering the relevant circumstances including the considerable delay in lodging the FIR, the inconsistent history given by the victim before the doctors at the initial stage of treatment, the identification of the accused in the T.I. Parade is doubtful and in the absence of any

clinching evidence, the learned Sessions Judge rightly concluded that the prosecution had failed to establish the charges against the accused beyond reasonable doubt. So far as the history given by the victim before the first doctor and subsequently before the other doctor is concerned, she did not disclose anything regarding the alleged offence committed by the accused. Further, the manner in which the T.I. Parade was conducted by the Investigating Officer also creates serious doubt as the prescribed precautions and procedure were not duly followed. In the absence of any clinching evidence against the accused, the prosecution has failed to prove the charges for the alleged offences beyond reasonable doubt. In view of the aforesaid discussion and the evidence on record, we are of the opinion that the learned Sessions Judge has not committed any error of fact or law in passing the impugned judgment and order of acquittal. We do not find any illegality, infirmity or perversity in the impugned judgment and order warranting interference by this Court.

18. It is well settled by catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

19. Further, if two reasonable conclusions are possible on the basis

of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which they are charged.

20. The scope and principles are enunciated by the Hon'ble Apex Court in case of ***Chandrappa and others Vs. State of Karnataka*** reported in ***(2007) 4 SCC 415***, more particularly ***paragraph Nos. 42 and 43***, which was subsequently re-affirmed by the Hon'ble Apex Court in the case of ***Rajesh Prasad Vs. State of Bihar and another***, reported in ***[2022] 3 SCC 471***, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in ***paragraph No. 26*** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of ***Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC***

2252 = (2024) 8 SCC 149, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in ***paragraph Nos. 37 to 40.*** Hence, we are in complete agreement with the findings recorded by the trial Court.

21. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of ***Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169***, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

> *"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:*
>
> *"42. .... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is*

available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

22. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record. On perusal of the impugned judgment and order, it clearly transpires that the learned Sessions Judge has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against him. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled

against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the learned Sessions judge is sustainable and the present appeal is liable to be dismissed.

23. In view of the above, the present appeal is devoid of merit and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the learned Sessions Judge is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(BHARGAV D. KARIA, J)

(HEMANT M. PRACHCHHAK,J)

V.R. PANCHAL

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: VIJAYKUMAR RAMESHBHAI PANCHAL(HC00171), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 06/11/2026 15:23:51

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