

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/CRIMINAL REVISION APPLICATION (AGAINST  
CONVICTION) NO. 73 of 2019**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MS. JUSTICE NISHA M. THAKORE--Sd/-**

=====

|                        |     |    |
|------------------------|-----|----|
| Approved for Reporting | Yes | No |
|                        |     | ✓  |

=====

RAJESHBHAI ASHOKBHAI GOHEL (LUHAR) & ANR.

Versus

STATE OF GUJARAT

=====

Appearance:

MR RUTVIJ S OZA(5594) for the Applicant(s) No. 1,2

MR UMANG R VYAS(5595) for the Applicant(s) No. 1,2

MS. KRINA CALLA, APP for the Respondent(s) No. 1

=====

**CORAM: HONOURABLE MS. JUSTICE NISHA M. THAKORE**

**Date : 06/07/2026**

**ORAL JUDGMENT**

1. The present application is filed at the instance of the original accused, under section 397 read with section 401 of the Code of Criminal Procedure, 1973, against the judgment and order dated 17th January, 2019, passed by the learned Addl. Sessions Judge, Rajkot at Jetpur in Criminal Appeal no.11 of 2014 and the judgment and order dated 23rd July, 2014, passed by the learned Judicial Magistrate First Class, Jetpur, District Rajkot, in Criminal Case no.360 of 2009. By the said impugned judgment and order, the learned Sessions

Judge, has, though reduced the sentence of two years rigorous imprisonment to one year simple imprisonment however has confirmed the conviction of the present applicant, under section 354 read with section 114 of Indian Penal Code. At the same time, the learned Sessions Judge has enhanced the amount of fine, as awarded by the learned Magistrate from Rs.1,000/- to be deposited by each applicant to Rs.10,000/- each. Hence, the present application, at the instance of the original accused.

2. Considering the grounds raised in the revision application, and upon hearing the learned advocate for the applicant, the learned Single Judge of this Court, vide an oral order dated 24th January, 2019, had admitted the revision application and has granted interim relief in terms of Para-7C, thereby staying the implementation, execution and operation of the aforesaid impugned orders of conviction and sentence, pending hearing and final disposal of this revision application.

3. The matter was notified for final hearing under special assignment of old matters, and the registry was directed to

call for record and proceedings of the criminal case as well as criminal appeal from the concerned Court. With the able assistance of learned advocates on record, the matter was peremptorily heard.

4. Mr. Rutvij S. Oza, learned advocate has appeared with Mr. Umang R. Vyas, learned advocate for the applicants, and has assailed the impugned judgment and order of conviction passed by the Courts below.

4.1 It was submitted that there are material contradictions about the identity of the accused, indisputably, the accused were not known to the complainant. Admittedly, the test identification parade has not been carried-out by the Investigating Officer. It was also pointed-out that there was delay in lodging of the FIR, in as much as the incident took place on 27th December, 2008, at around 8:00 a.m., whereas the FIR was registered on the same day, but around 15:40 hours. It was further pointed-out that though test

identification parade the original complaint was lodged by the victim herself, however, it has transpired in the evidence that such complaint was actually narrated by the father of the victim. It was therefore submitted that the correct facts have not been brought on record, which has led to great injustice to the applicants.

4.2 The attention of this Court was invited to the place of incident as alleged in the complaint and the Panchnama drawn. It is apparent from the appreciation of the aforesaid evidence that the incident has taken place hardly 1500 meters away from Gaushala. The defense counsel has been successful in bringing on record the fact that, on the opposite side of the river, there are residential houses and the bus stop is also located nearby. In such circumstances, the Courts below ought to have appreciated the fact that except for the evidence of two victims, and the father and mother of the victim being examined as witnesses, no independent witnesses have been examined by the prosecution.

Considering the material contradictions brought on record by the defense counsel in their cross-examination with regard to the place of incident alleged, the manner in which incident had taken place, the involvement of the accused were required to be verified by seeking higher standard of proof. In absence of any test identification parade being carried-out, the Courts below ought to have extended benefit of doubt to the applicants. While assailing the findings and reasons assigned by the trial Court as recorded in para 5, learned advocate had submitted that in fact the burden would not lie on the accused to establish that they were not present.

4.3 Learned advocate has further assailed the order passed by the appellate Court. The attention of this Court was invited to the findings and reasons recorded in para 14 of the impugned order. It was submitted that the appellate Court, though have reduced the sentence awarded by the trial Court from two years rigorous imprisonment to one year simple imprisonment, has confirmed the order of conviction and has

enhanced the amount of fine to Rs.20,000/-. The appellate Court has failed to independently re-appreciate the entire evidence on record. It was emphasised that it was a fit case for extending benefit of doubt to the applicants.

4.4 Assailing the findings and reasons assigned by the learned Session Judge, it was submitted that the impugned judgment of conviction is mainly on presumption held the applicants were involved in the offense alleged. It was submitted that the Courts are expected to adhere to the strict provisions of Evidence Law, and conviction cannot be on mere presumption of the facts. He has therefore urged this Court to re-appreciate the evidence on record and to independently examine the case of the applicants.

4.5 In this regard, learned advocate has referred to the evidence of four witnesses: the victim - original complainant, the victim - eye witness of the incident Exh.18, the father of the victim Exh.19, the mother of the victim Exh.33. Referring

to the evidence of the mother of the victim (Exh.33), it was submitted that the mother had fairly conceded in her cross-examination that it was her husband who had narrated the incident when the complaint was registered by the investigating officer.

4.6 Alternatively, learned advocate had submitted that this Court may bear in mind the fact that the incident allegedly relates to the year 2008. The order of the trial Court convicting the applicant was passed in the year 2014, followed by the order of the learned Sessions Judge in the year 2019, and finally, the revision application of the year 2019 has been taken up for hearing in the year 2026.

4.7 He has further pointed-out that the sentence has remained suspended, and the accused persons have settled in their respective lives. It was submitted that the applicants are married and have children. They are earning their livelihood for them as well as for their family by doing labor work. It was

further submitted that the entire family is looked after by the applicants. The applicants still continue to reside in the same village and during this period, no untoward incident has taken place between the parties. He has therefore submitted that this Court may extend the benefit envisaged under section 4 of the Probation of Offenders Act, 1958.

4.8 As regards the prayer for probation is concerned, learned advocate has placed reliance upon the order dated 17th September 2025 passed in Criminal Revision Application no.643 of 2009, whereby the Co-ordinate Bench has extended the benefit of section 4 of the Probation of Offenders Act, 1958. Inviting my attention to the nature of offense, learned advocate has pointed-out that, in similar set of facts involving offense under section 354 of the Indian Penal Code and the sentence of simple imprisonment of one year and fine of Rs.1,000/- being imposed, despite the serious facts about informant having sustained injuries on neck and chest, described as nail-bites, this Court has extended the benefit

envisaged under the provisions of Probation of Offenders Act. Noticing the fact that the behavior of the accused was reported good, and was keeping peace in the society, the substantive part of the sentence was directed to be inoperative.

4.9 The reliance was also placed on the judgment of Allahabad High Court as considered by the Co-ordinate Bench in the case of Sonelal Pasi Vs. State of Uttar Pradesh, Criminal Revision Application no.2820 of 2003. The attention of this Court was invited to the recent decision of Hon'ble Supreme Court in the case of Milind son of Ashruba Dhanve Vs. State of Maharashtra - 2026 0 AIJEL SC 76829. The reliance was placed on the observations made by the Hon'ble Supreme Court, while analyzing section 4 of the Act of 1958, it was expected from the Court to consider relevant factors including the age, antecedents, character and economic conditions, fixed place of abode, familiar responsibilities. Learned advocate has therefore urged this Court to quash and set

*aside* the impugned orders of conviction or to alternatively extend the benefit of probation as provided under section 4 of the Probation of Offenders Act, 1958.

5. Ms. Krina Calla, learned APP, appearing for the respondent - State, has vehemently objected to the aforesaid submissions of learned advocate for the applicants - original accused. She has submitted that there are concurrent findings of facts which are based on appreciation and re-appreciation of evidence. The core contention which has been raised by learned advocate for the applicant is mainly disputing the involvement of the accused persons in the commission of the alleged offence. The findings and reasons assigned by the Courts below on the aforesaid aspect have mainly been challenged on the ground that there is contradiction in the evidence of the witnesses and the evidence are highly doubtful.

5.1 In order to meet with the aforesaid contention of learned

advocate for the applicants - original accused, learned APP has invited my attention to the findings recorded by the learned Magistrate. It was pointed-out that the defense has tried to challenge the case of the prosecution by raising questions with regard to the victim having gone to fetch water at the Gaushala despite there being a water connection in their house. To which the primary victim as well as the second victim have categorically responded in the cross-examination that though there was a water connection, they were required to fetch drinking water from the Gaushala.

5.2 Secondly, the challenge to the case of the prosecution was on the ground that at the time of the incident, there was a likelihood of presence of village people as well as the persons working in the Gaushala. The learned Magistrate has taken into consideration the evidence of the Investigating Officer and has noted that merely because the witnesses are related to the complainant, and considering the legal position that in such kind of cases, even sole evidence of the victim is

sufficient if found trustworthy to convict the accused, has rightly not considered the aforesaid defense raised by the accused.

5.3 She has further pointed-out that merely because the mother of the victim in her cross-examination has agreed to the suggestion put by the counsel for the defense that the FIR was registered as per the statement of her husband, may not be a material contradiction as the fact remains that the prosecutrix had accompanied her father and had lodged the complaint. She has invited my attention to the fact that no question in this regard was put to the PSO of the concerned police station who has been examined as a witness by the prosecution.

5.4 Having noted the aforesaid defenses raised by the accused, the learned Magistrate, on overall appreciation of the evidence on record, has rightly believed the evidence of the prosecutrix and the victim who have categorically and

consistently maintained the manner in which the incident had taken place. Both the victims have identified the accused before the Court. The learned Magistrate has also taken note of the fact that the accused has not disputed the time of the offence and the place of the offence neither have they disputed their presence at the time of the offence. She has therefore submitted that in absence of any material contradictions being brought to the case of the prosecution and the prosecution having proved the case beyond reasonable doubt by leading cogent material on record, the learned Magistrate as well as the learned Session Judge, has rightly convicted the present applicants for the offence punishable under Section 354 of the Indian Penal Code.

5.5 She has also pointed-out that the incident had taken place in the month of December and during winter time, generally in early morning hours at 8:00 AM, there are chances of fog surrounding the fields and therefore the visibility being comparatively less. In such circumstances, the defense about

non examination of independent witnesses to create doubt on occurrence of incident is only on assumption. It was submitted that the residential houses which were otherwise situated are on the other side of the river bank and even at a distant place, though the village people or the persons working in the Gaushala may be visiting the Gaushala, however, the same is irrelevant as it would not brushed aside the evidence of victims.

5.6 She has also pointed-out that the mother of the victim (Exh.33) has though admitted that her husband had narrated to the officer registering the FIR, however on close reading of her evidence, she has also stated that her daughter had categorically stated the name of the accused who had followed them on a motorcycle. She has therefore submitted that the entire evidence of the witness has to be appreciated and not a bare statement to be read as a material contradiction.

5.7 As regards the submission made by learned advocate for grant of probation is concerned, learned APP had objected to the same. It was pointed-out that in fact, the learned Magistrate had imposed a sentence of two years whereas the learned Session Judge has partly allowed the appeal preferred by the accused by reducing the sentence for a period of one year. Considering the nature of the offence, this Court may not exercise its discretion to grant probation to the accused.

6. I have carefully considered the submissions made by the learned advocates appearing for the respective parties. I have carefully gone through the findings and reasons assigned by both the Courts. Admittedly, there are concurrent findings of facts on the aspect of involvement of the accused in the commission of the offence alleged by the prosecution.

7. In order to appreciate the arguments made by learned advocate for the applicants, I have also re-appreciated the entire evidence on record.

8. In nutshell, the case of the prosecution before the trial Court was that on 27th December, 2008, at around 8:00 hours in the morning, the victim 'X' along with her paternal cousin sister 'Y' residing in Thana Galol village, Taluka Jetpur, had left their house to fetch drinking water from the village Gaushala which was situated on the opposite side of the river. The two accused, viz. (1) Rajeshbhai and (2) Naresh @ Dakubhai, have followed them on the motorcycle. The accused persons have whistled and winked at the victim. They intercepted their path and made a vulgar solicitation by saying, "what is your wish today? Come, let us fulfill it." When the victim rejected their approach, the accused stopped their motorcycle and physically grabbed her left arm. The victim and her cousin sister immediately raised a loud alarm. As a result, the accused persons flew away from the spot on their motorcycle towards the interior part of the village. Since the spot was isolated and being under extreme fear, the victims rushed back to their home and narrated the entire incident to

their parents. It is the case of the prosecution that prior to the occurrence of the said incident, the accused had stalked and harassed the victim.

9. The aforesaid incident was registered as an FIR pursuant to the complaint lodged by the victim before the Jetpur Taluka Police Station against the accused which was registered as I-CR no.198 of 2008 for the offence punishable under Sections 354, 504, 114 of the Indian Penal Code on 27 December 2008 at around 15:40 hours. The investigation was handed over to the ASI attached to the concerned police station. The accused no.2 was arrested on 31st December 2008, whereas accused no.1 was arrested on 2nd January, 2009 and the accused were interrogated who had admitted about the offence being committed. The panchnama of the place of offence was carried-out. The statements of the related witnesses were recorded. The muddamal motorcycle was recovered from the accused. At the end of the investigation, the charge-sheet was filed against both the accused on 1st April 2009 for the

offence punishable under Sections 354, 504 read with Section 114 of the Indian Penal Code.

10. During the course of trial, the accused pleaded not guilty before the learned Magistrate, and the prosecution was called upon to prove their case. Before the trial Court, the prosecution has examined total 12 witnesses and has also led various documentary evidences, the details of which are reproduced in tabular form as under :

| Particulars                                                                     | Exh.No. |
|---------------------------------------------------------------------------------|---------|
| Panchnama of place of offence                                                   | 12      |
| Xerox copy of FIR                                                               | 15      |
| Panchnama of recovery of Muddamal Motorcycle                                    | 22      |
| Examination depute order                                                        | 25      |
| Yadi in station dairy with respect to arrest of accused                         | 27 & 28 |
| Arrest panchanma of accused and police yadi with respect to registration of FIR | 29      |

On other hand the defence has examined their witness DW no.1 who was in charge as Talati cum Mantri at relevant time. The defense has challenged the prosecution case by disputing their involvement or occurrence of alleged incident, mainly by

disputing the genesis of prosecution theory of victims having gone to fetch water at Gaushala. Secondly, their involvement was not proved in absence of the TI parade being conducted, as their identity by name was known to the victims. However, both the Courts have placed reliance upon the evidence of both the victims and have found it reliable and trustworthy and have passed the impugned order of conviction.

11. I have carefully considered the evidence of the witnesses examined by the prosecution. Both the original informant -X and second victim Y of the offense have entered the witness box. The victim X evidence has been recorded by the trial Court at Exh. 14. In her examination-in-chief, she has recognized and identified both the accused persons who are present in the Courtroom. She has categorically deposed that approximately 3 ½ years prior, at around 8:00 AM, she and her cousin sister were walking towards the village Gaushala located on the opposite side of the bank of river to fetch drinking water. At that time, the accused who were present

before the Courts, have arrived on a motorcycle and whistled, winked and made verbal solicitation: "What is your wish? Let's fulfill it". She had objected to the aforesaid remarks made by the accused. The accused had stopped their motorcycle and had grabbed her left arm. She has further narrated that the accused had also stalked her and whistled at her in the public park seven days prior to the said incident. With such an act of the accused, they were terrified and had immediately shouted for help. Resultantly, the accused left in their vehicle into the interior part of the village. Under extreme fear and in absence of any people around, she had rushed back to her home and informed her parents about the incident, which later on led to lodging of the complaint (Exh.15). As against the aforesaid deposition, in her cross-examination she has testified that she resides in Old Harijan Vaas area, which is situated at the eastern-west quadrant of village Thana Galol, which has a domestic water-tap connection and a storage tank. Her father works as a daily laborer. She has explained that she had to

walk half a kilometer to the Gaushala at 8:00 AM because the Municipal tap water supplied to her house was hard, brackish or unpotable. She has also admitted that while the household tank could store water for one to two days, it was unsuitable for drinking, necessitating her to fetch sweet drinking water. She has stated that the Gram Panchayat releases water only once a week. She has also stated in her cross-examination that she has undergone primary school education and her parents have not accompanied her during the assault and they had later on informed the Sarpanch. She has also explained as to why no previous complaint was filed for the incident alleged to have taken place seven days prior to the present incident. She has fairly stated that her father had not permitted her to lodge a complaint about such an incident. She has denied all the defense suggestions regarding fabrication, absence of physical molestation and filing of false cases due to family enmities. It is required to be noted that the primary victim is aged around 17 years at the time of incident. The incident in

question had taken place in the year 2008, whereas her evidence was recorded before the trial Court in the year 2012, when she was reported to be 21 years.

12. I have also considered the evidence of victim Y who has also suffered the trauma of the act of offense committed by the accused. Her evidence has been recorded by the trial Court at Exh.18. In her cross-examination-in-chief, she has confirmed her status of being cousin sister of the victim as paternal cousin sister. She has also identified both the accused in the dock. She has categorically deposed that 4 years prior to her deposition, at around 8:00 AM, she was walking with the victim towards Gaushala to fetch drinking water where both the accused have arrived on a motorcycle. Initially, she has stated that both the accused have caught hold of her arm. She has later on clarified that the accused have caught hold the arm of the victim. They have whistled, winked and made obscene gestures and have stated, "If you have a wish, we will fulfill it." and had further grabbed

victim's hand, thereby attempting to outrage their modesty. She had raised alarm by shouting loudly for help, forcing the accused to release their hold and flee on their motorcycle towards village. They have returned home immediately and have informed about the incident to the parents of the victim. Later on, the FIR was lodged at the instance of the victim. As against her aforesaid deposition, in her cross-examination, she has agreed to the suggestion put forward by the defence counsel that a bridge is located on the river and commercial cabins, bus stop and residential houses are located on their side of river bank whereas the Gaushala is located on the opposite side of the riverbank. She has agreed to the fact that their village is heavily populated and accused persons are residing in the neighbourhood. She has admitted that neither she nor the victim initially knew the formal names of the accused prior to the incident recognizing them only by site as co-villagers. She has agreed to the fact that she had not accompanied the victim to lodge the FIR and had denied

rendering false testimony due to family relationship bias. She has stated that Gaushala is half kilometer away, its employees, cattle labourers and relies on a well operated for panchayat borewell. She has admitted that the water is provided daily by the panchayat. Later on she clarified that water is provided once in a week. She has stated that a facility for water tanks / storage of water is extended to their house. Though the counsel for the defence has been successful in bringing on record her admission that specific term harassment / molestation used during her examination-in-chief was not recorded in her original statement to the police. However, she has flatly denied all the suggestions that they never went to fetch water or their case was a pre-planned fabricated story.

On overall appreciation of the aforesaid witness, she has supported the case of the prosecution. Her version about the occurrence of the incident is found to be consistent and in sync with the version narrated by the primary victim. Again it

is required to be noted that at the stage of examination-in-chief before the trial Court, she is reported to be aged 22 years and therefore must be around 18 years at the time of incident.

13. I have also carefully considered the evidence of Jayantibhai Bhagwanjibhai Bharad, who is the father of the primary victim and his evidence has been recorded by the trial Court at Exh.19. In his examination-in-chief before the trial Court, the said witness has deposed that the primary victim is his daughter. Four years prior, at around 8:00 am, his daughter and his niece have gone to Gaushala to fetch sweet water. It is further deposed that while they were returning home, the accused persons viz. Rajesh Ashokbhai Gohel (Luhar) and Nareshbhai @ Dakubhai Madhavjibhai Solanki, who are resident of their village have followed them on motorcycle, whistled, grabbed his daughter's hand and had made vulgar remarks. Both the girls have screamed, causing the accused to flee from the place. He has further stated that

the accused had been seeing playing loud music on mobile phone and whistling behind the girls before 5 to 6 days prior to the incident. He has stated that he personally knows the accused, who are present before the Court. He has deposed that his daughter had narrated about the occurrence of the incident. The FIR was lodged at the instance of his daughter, which is identified at Exh.15. In his cross-examination, the said witness has admitted that he has not personally witnessed the incident. He has stated that his wife has not accompanied the girls to fetch the water. He has denied that the Grampanchayat water connection was located inside the Gaushala or that the local women did not visit to fetch water. He denied that the complaint was filed over prior enmities or he is giving false testimony as the victim was his daughter. He has admitted to the suggestion that the name of the father of the accused was disclosed by him. However, he has further clarified that he was knowing him. He has also admitted to the fact that he has not lodged an FIR about an earlier incident

before the Police Station nor has complained to the Sarpanch or to the village people. He has admitted to the fact that the storage tank has been facilitated at his home.

Having appreciated the evidence of the aforesaid witness, merely by putting suggestion that the women from the village visits Gaushala to fetch water and the employees of Gaushala works, may not be sufficient material to disbelieve the entire case of the prosecution. On overall appreciation of the said witness, merely because he is the father of the primary victim and related to her cousin sister, would not make his evidence incredible in absence of any specific material about past animosity being brought on record by the defence.

14. I have also gone through the evidence of the witness Sarla Jayantibhai Bharad, who is the mother of the primary victim. She has entered the witness box and her evidence has been recorded at Exh.33. In her examination-in-chief, she has supported the case of the prosecution. She has narrated about

the manner in which the incident had taken place in sync with the evidence given by the primary victim, her cousin sister and the father of the victim. In her cross-examination, she has admitted that she has not personally seen the incident and had learned about the same when the girls in terrified condition had reached back home. She admitted that both the girls initially did not recognize the accused with their exact names, however, she emphasized that being fellow villagers, they could know the accused. She has therefore admitted to the suggestion put by the defense counsel that the husband had narrated the incident at the stage of registration of FIR. She has explained that since her husband provided their formal names, being recognized as fellow villagers, he had drafted the content of the complaint before the Police Officer while she and her daughter were standing outside. She has categorically denied that the case was false or motivated by personal enmities. Having appreciated the aforesaid evidence of the said witness, who is the mother of the primary victim,

though the defense counsel has successfully brought on record the fact that the formal names of the accused were narrated by the father of the victim at the stage of lodging of FIR. However, the same may not be a material to discard the entire case of the prosecution. Considering the age of the victim and the fact about the village being populated, there are chances that the person may be familiar as a village fellow but his name may not be known. Considering the explanation offered by the father, the victim of the mother has rightly explained the surrounding circumstances in this regard. Her evidence seems to be trustworthy and more reliable.

15. I have also carefully considered the evidence of the Investigating Officer - Becharbhai Aalabhai, whose evidence has been recorded by the trial Court at Exh.26. In his examination-in-chief, he has deposed that on 27th December, 2008, while he was discharging his duty as Assistant Sub-Inspector at Jetpur Taluka Police Station, he had received the complaint bearing I-CR no.198 of 2008. He started the

investigation by recording statements of witnesses, drawing panchnama of the place of the incident. He had seized the mudammal motorcycle by recording panchnama (Exh.22). He had also recorded the arrest of the accused persons by endorsing necessary entry in the station diary (Exhs.27-28). The accused persons were arrested and necessary panchnama in this regard was drawn, which is admitted at Exh.29. At the end of the investigation, the charge-sheet was filed against the accused person on 6th April, 2009. As against the aforesaid deposition, the said witness in his cross-examination has admitted that the FIR was registered after seven hours of the alleged incident and both the parents of victim had accompanied her to the police station. He has also explained the circumstances by stating that during the course of investigation, it was confirmed that no other local women or independent witnesses were present at the isolated river bank spot due to dense winter mist and low visibility. He has also stated that the Gaushala area provides soft drinking water,

being the reason why the women of the village prefer to fetch water from Gaushala. He has denied that the investigation was biased or that the charge-sheet was fabricated. Having appreciated the evidence of the aforesaid witness, the said witness has supported the case of the complainant. He has also confirmed the reason as to why the local villagers would prefer to fetch water from the Gaushala. He has also explained the circumstances about the absence of any independent witnesses.

16. This brings me to the remaining witnesses which mainly includes the panch witnesses - one Shamji Makwana (Exh.21) and Iqbalbhai Mushani - (Exh.23) though having stood panchas to the arrest panchnama (Exh.22), however, have resiled from the contents of such panchnama by stating before the Court that their signatures were taken by the Police without witnessing any recoveries. Thus, they have been declared hostile by the prosecution.

17. Similarly, the panch witness viz. Navnitbhai Hirabhai (Exh.31) has though admitted his signature on the formal arrest panchnama of the accused (Exh.29), however, before the Court he has claimed that he was unaware about the facts of the case and no such arrest panchnama has been executed by the Police in his presence.

18. Another witness viz. Bachubhai Arjanbhai Radadiya (Exh.38) is a retired Talati-cum-Mantri of Thana Galol village examined at the behest of the accused persons. In his deposition before the trial Court, he testified that in 2009 the Gram Panchayat used to distribute drinking water directly to individual houses through tap connections across the village. He has claimed that the water at the Gaushala came from a distinct private borewell. As against the aforesaid deposition, in his cross-examination the said witness has stated that the public routinely visits the Gaushala borewell to fetch drinking water and the same is used for their regular domestic consumption. Thus, in my view, the prosecution has

completely brushed aside the theory of the defence that a false story of any incident having taken place at the Gaushala. On the contrary, considering the version of the primary victim and her cousin sister, the defence has miserably failed to bring on record any contradictions.

19. Having appreciated the entire evidence on record, I have further examined the findings and reasons assigned by the trial Court while appreciating the aforesaid evidence on record. The trial Court, while appreciating the intrinsic credibility of the female witnesses, has noted that the deposition of the primary victim (Exh.14) and eyewitness cousin sister (Exh.18) were completely consistent, natural, and free from any material contradictions. The trial Court has appreciated the core narratives which have remained entirely unshaken during their cross-examination. The learned Magistrate has found force in the explanation given by the primary victim and her eyewitness cousin sister that despite having domestic tap connections, they had to approach the

Gaushala to fetch soft drinking water. As noted earlier, even the Talati-cum-Mantri who has been examined as defense witness has fairly admitted to the fact that the village people routinely visited the Gaushala borewell to collect drinking water to be used for regular domestic consumption. Considering the description of the place of the incident as borne-out on record, the Gaushala is found to be situated on the other side of the bank of the river. Though on the opposite side of the river bank there exist residential houses, however, the evidence of the Investigating Officer explaining the surrounding circumstances - more particularly the fact that the incident had taken place in the month of December and the atmosphere in the early morning hours being covered by dense mist, there is substance in the case of the prosecution as well as of the Investigating Officer about the absence of any independent witnesses in the early morning hours who would have otherwise witnessed such an incident. Even otherwise, the legal principle is settled that in such cases, if

the Court finds that the core evidence of the sole prosecutrix remains unshaken, the same itself is sufficient to convict the accused.

20. The trial Court has further relied upon the landmark decision of Hon'ble Supreme Court in the case of *Vidyadharan Vs. State of Kerala*, reported in *2004 Criminal Law Journal 605 (SC)* - Equivalent citation : *(2004) 1 SCC page 215*. The Court has reasoned that absolute criminal intent is not the sole test. The statutory offense is fully complete if the culprits possess clear knowledge that their physical gestures, including winking, whistling, vulgar remarks and grabbing of an arm, are highly likely to outrage a woman's modesty. Thus, the trial Court has appreciated the case of the prosecution in light of the legal principles before holding the accused guilty of the charge of offense punishable under Section 354 of Indian Penal Code.

21. It is also required to be noted that the trial Court has

given reasons that the prosecution has failed to bring on record the use of specific vulgar or abusive words so as to convict the accused for the offence punishable under Section 504 of the IPC. In absence of evidence in this regard, no error can be found with the approach of the trial Court in observing that without evidence of specific vulgar / insulting words intended to cause a public breach of peace, the required ingredients of Section 504 were not fulfilled.

22. Having appreciated the findings and reasons assigned by the trial Court, if one looks at the findings and reasons assigned by the appellate Court, the Court has rejected the defence claim that the charge-sheet was fatally defective for not separating individual actions. The appellate Court has assigned reasons by explaining that merely because the charge clearly laid out common abetment under Section 114 of the IPC and the accused having cross-examined all witnesses without raising such procedural objection at any stage of trial Court, no prejudice is caused to the accused in

this regard.

23. As regards the ground of FIR being lodged belatedly by seven hours, the appellate Court has reason that a seven hour delay is completely natural in the peculiar facts of the case which clearly suggests that the parties were coming from rural background and when a young woman is molested and the family honours are involved, naturally the family would be slow in approaching the procedure by taking initiative of lodging the FIR before the Police Station. In such cases, in the background, various factors like time consumed to deliberate, to avail the remedy available and to consult the elder members of the family and the community leaders play a role. As regards the challenge made to the trial Court's order on the ground of father's roll in lodging the FIR is concerned, the appellate Court has ruled that it was entirely natural for the male head of the family in a rural environment to assist the young girls by writing the complaint on their behalf and identifying the accused with their formal names, who were

otherwise not known to the girls by their actual names. The Court has found the approach of the father to be natural and therefore not a manufactured case of the prosecution. The appellate Court has also cited decisions of Hon'ble Supreme Court in case of Mukesh & others Vs. State of NCT of Delhi, reported in 2017 Criminal Law Journal 4365 (SC), equivalent – citation : (2017) 6 SCC 1 and in case of Upendra Pradhan Vs. State of Orissa, reported in 2015 Criminal Law Journal 2878 (SC), equivalent citation : (2015) 11 SCC 124 to follow the legal principles that testimonies from close relatives carry significant weight if they are intrinsically reliable. The Court noted that in such kinds of offenses involving outraging the modesty of a woman, conservative families rarely use their daughters as pawns to settle personal scores.

24. With regard to the challenge made by the appellant – accused on the ground of lack of independent witnesses, the appellate Court accepted the testimony of the Investigating Officer by observing that the isolated river bank location was

completely empty of the independent witnesses to be present at 8:00 hours in the morning due to dense winter mist. The Court has found the aforesaid explanation tendered by the IO to be logical for the lack of independent witnesses.

25. As regards the omission made by the cousin sister of primary victim having failed to explicitly use the technical word "harassment" in her initial version given before the Police Station, the Court has found such omission to be minor rather than fatal or contradictory to the case of the prosecution, as the core value of the evidence of such witness has remained unshaken.

26. With these observations, the first appellate Court has dismissed the appeal of the accused confirming the conviction and the imposition of sentence passed by the trial Court against the accused.

27. Having appreciated in detail the entire evidence on record and the findings and reasons assigned by the Courts

below, in my view, no error can be found with the approach of both the Courts in convicting the accused for the offence punishable under Section 354 of the Indian Penal Code, I therefore, confirm the conviction of the present applicants for the offence punishable under Section 354 of the Indian Penal Code.

28. This brings me to the alternative prayer made by the learned advocate for the applicants for probation. Learned advocate for the applicants has harped on the fact about the number of years which has lapsed since the occurrence of the incident, which took place way back in the year 2008 and the present revision application being finally taken-up for hearing in the year 2026. He has also emphasized on the fact that no untoward incident has thereafter taken place and the parties are settled in their respective lives. In order to verify the aforesaid submissions made by the learned advocate for the applicants, this Court had sought appropriate report with regard to antecedents of the applicants, if any. As recorded

earlier, the applicants are not found involved in any other offences.

29. Learned advocate for the applicants has placed reliance upon the recent order of the co-ordinate Bench extending the benefit of probation in a similar case involving offence of Section 354 of IPC. I have carefully gone through the aforesaid decision as relied upon. The learned Single Judge of this Court has considered the observations made by the Allahabad High Court in case of Sonelal Pasi (supra), wherein the accused persons were convicted under Sections 323, 324 and 354 of the IPC on the aspect of probation sought for under Section 4 of the Probation of Offenders Act, the Allahabad High Court has placed reliance upon the observations made by the Hon'ble Supreme Court in the case of Subhash Chand (supra) and Hargovind (supra). In addition, the Allahabad High Court has also considered the judgment of Hon'ble Supreme Court in the case of State of Maharashtra Vs. Jagmohan Singh Kuldeep Singh Anand, reported in (2004) 7

SCC 659, as well as in the case of Jagpalsingh and ors. (supra). The learned advocate has also placed reliance upon the decision of the Bombay High Court in case of Milind s/o. Ashruba Dhanve Vs. State of Maharashtra, reported in 2026 (0) AIJEL-SC 76829, wherein the applicant - accused was convicted for the offence under Section 354A of the IPC along with other offences, the Court has referred to section 4 of the Probation of Offenders Act, as well as Section 360 of the Code of Criminal Procedure. It is required to be noted that the decisions of the Hon'ble Supreme Court relied upon by the respective High Court, did not involve the offenses related to moral turpitude.

30. At this stage, it would be appropriate to consider the decision of Hon'ble Supreme Court in the case of Ajagar Ali Vs. State of West Bengal, reported in 2013 (10) SCC 31. In the case of accused convicted of offense punishable under Section 354 of the Code, the Court held that benefits of probation are not available to persons convicted of offense under crimes

against women and children. It would be appropriate to quote the relevant observations made by the Hon'ble Supreme Court in the aforesaid decision in para 12, which reads as under:-

*"12. In the instant case, as the appellant has committed a heinous crime and with the social condition prevailing in the society, the modesty of a woman has to be strongly guarded and as the appellant behaved like a road side Romeo, we do not think it is a fit case where the benefit of the Act 1958 should be given to the appellant."*

31. Again, the Hon'ble Supreme Court in the case of State of Uttar Pradesh Vs. Shri Kishan, reported in 2005 (10) SCC 420, observed as under, para 8 and 9.

*"8. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system."*

*9. The Court will be failing in its duty if appropriate*

*punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal."*

32. Having noted the aforesaid observations made by the Hon'ble Supreme Court bearing in mind the fact that the present applicants are found convicted for the offense punishable under Section 354 of Indian Penal Code, which is in fact, a crime against the woman, considering the nature of offence against victims who were hardly in their early teenage years, barely 17 and 18 years respectively, no relief of probation can be granted to the accused. As rightly explained by the Investigating Officer, on very few occasions the father of the victim would support lodging an FIR as it would always be looked upon as a trivial incident and to report such incidents would bring bad fame to girls and their family. In fact, the reports suggest that the perpetrators with such

criminal mentality specifically targets minors because children are easily intimidated and lack the words to understand what is happening. They are terrified to fight back or to even share their ordeal with the parents. This is not a case to be considered for the benefit of probation.

33. Resultantly, the revision application fails and is hereby **dismissed**. The impugned judgment and order dated 23rd July, 2014 passed by the learned Magistrate First Class, Jetpur in Criminal Case no.360 of 2009 as modified by the impugned judgment and order dated 17th January, 2019 passed by the learned Addl. Sessions Judge, Jetpur in Criminal Appeal no.11 of 2014, is hereby upheld and confirmed.

34. The order of suspension dated 24th January, 2019 passed by this Court at the initial stage of admission of the present application stands **vacated**. The applicants are hereby directed to surrender before the concerned jail authority.

35. At this stage, Mr. Rutvij S. Oza, learned advocate

appearing for the applicant, prays for reasonable time to surrender. Considering his request, the applicants are directed to surrender before the jail authority within a period of ***eight weeks from today***, failing which the concerned Court shall be at liberty to issue non-bailable warrants to secure the presence of the accused.

36. With these observations, the revision application stands ***disposed*** of. *The R. & P. are directed to be sent back to the concerned Courts.*

**Sd/-**  
**(NISHA M. THAKORE, J.)**

AMAR RATHOD.../dic.7,9,13.07/sfs/15.07