

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1231 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
RASIKBHAI @ KAUSHIKBHAI HAVSINGBHAI GARASIYA

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Appearance:
MR L B DABHI, APP for the Appellant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 24/09/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Here is the Appeal by the State under Section 419 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (corresponding section 378 of Cr.P.C.) against the judgment and order of acquittal.

2. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Dahod passed in Special (POCSO) Case No.34 of 2025, dated 30.12.2025, acquitting the respondent - accused from the offences punishable under Sections 64(2)(m) and 89 of Bharatiya Nyaya Sanhita, 2023 and Sections 4 and 6 of POCSO Act, the

State has preferred instant appeal.

3. We have heard learned APP Mr. L. B. Dabhi appearing for the appellant State.

4. Brief facts giving rise to file the present Appeal are that, the minor victim aged about 17 years and 10 months, was allegedly subjected to sexual abuse by the respondent-accused as both belong to same village. It is alleged that, the relationship was continued for about 2 years and during the said period, the accused commits rape repeatedly on the victim, as a result, she impregnated and to abort the **fetus**, the accused gave a medicine to her which had caused miscarriage. On 24.03.2025, due to profuse bleeding, the parents took the victim at local C.H.C. Centre, where she revealed about the alleged relationship with the accused. In such circumstances, on 26.03.2025, the father of the victim (PW.2) lodged an FIR with Limdi Police Station. Upon registration of the offence, the I.O. (PW.8) proceeded to investigate the case. During the investigation, the I.O. had arrested the accused, sent both the accused and victim for medical examination, obtained necessary samples for DNA Analysis Report, recorded the statements of the witnesses, sent the victim before the Judicial Magistrate for recording her statement under Section 183 B.N.S.S. (Section 164 Cr.P.C.). At the end, the accused came to be chargesheeted for the offences as referred above.

5. The learned Sessions Judge framed charge to which the accused pleaded not guilty and claimed trial.

6. Before the Trial Court, the prosecution has examined as many as 8 witnesses, including the prosecutrix (PW:2). The prosecution has relied

upon 36 exhibited documents.

7. On conclusion of oral evidence, the Trial Court recorded further statements of the accused as provided under Section 351 of B.N.S.S., wherein, he claimed his innocence and stated that he has been falsely implicated in the offence.

8. The learned Sessions Judge, after appreciating and examining the oral as well as documentary evidence, acquitted the accused herein for the offences with which he was charged, on the ground that, the victim (PW.1) has not supported to the case of the prosecution and as such, there is no acceptable and admissible evidence led by the prosecution to prove the charges against the accused beyond reasonable doubt.

9. In such circumstances, the State is before us with the present acquittal appeal.

10. Mr. L.B. Dabhi, learned APP for the appellant, while assailing the judgment and order of acquittal, has submitted that the findings of acquittal are contrary to law and evidence on record and the findings recorded are palpably erroneous and based on the irrelevant material; that the Trial Court failed to appreciate that, merely victim has turned hostile, does not efface evidence with regard to sexual assault upon the victim, as the medical evidence would clearly demonstrate that, the victim was subjected to sexual intercourse; the victim was minor and having regard to the attending circumstances of the case, it is proved and established that, the accused maintained physical relationship with the victim and therefore, the consent of the minor is no consent in eye of law; that, the trial court has ignored and/or discarded the DNA Analysis Report which

unerringly pointing towards the guilt of the accused; that, the trial court failed to appreciate that, even if the victim has turned hostile, it is the duty of the court to independently scrutinize scientific evidence and other circumstances involving the accused in the crime.

11. In such circumstances, as referred above, it has been submitted that while acquitting the respondent accused, the trial Court has discarded and ignored the truthful, reliable and acceptable evidence and as such, no cogent reasons being assigned while discarding such evidence. Therefore, it is submitted that the conclusion of acquittal recorded by the Trial Court is contrary to the evidence on record and upon erroneous understanding of law. Thus, it is prayed that it is a fit case to admit the appeal.

12. In the present case the issue falls for our consideration as to whether the trial Court was justified in acquitting the accused?

13. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the Trial Court.

14. Before proceeding to address the rival submissions, we would like to place on record the scope of interference in an appeal against the acquittal and when the same is justified. In exceptional cases, where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the judgment of acquittal. The Appellate Court should bear in mind the presence of innocence of the accused and further that, the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view of possible should be avoided, unless there

are reasons for interference.

15. In the facts of the present case, the age of the victim is not in dispute and therefore, on the date of incident, she was below 18 years of age. The issue require to be determined as to whether the prosecution has established that the accused-respondent committed penetrative sexual assault during two years of their relationship, as a result, she got pregnant and thereafter, at the instance of the accused, the act of miscarriage was done?

16. Upon close scrutiny of the evidence of the victim (PW.2), it transpires that, she has studied up to 11th Standard and was in relationship with the accused since last two years from the date of offence i.e. 24.03.2025. She has narrated the factum of relationship with the accused, but, she has denied that the accused maintained physical relations with her and also denied that she impregnated by the accused and at his instance, the act of miscarriage was done. The victim has been declared hostile and during her cross-examination, she did not have supported to the case of prosecution. Admittedly, the prosecution has not examined the person who has done the DNA Profiling Test. The report of DNA has been exhibited in the deposition of the I.O. It is settled position of law that DNA Profiling Report is inadmissible in evidence if the Scientific Expert who conducted the examination is not produced and examined by the prosecution in court. Mere exhibition of the report through the Investigating Officer is insufficient, as the reliability of the technics applied and the integrity of the findings must be established through expert testimony (*Rahul vs. State of Dehli [(2023) 1 SCC 83]*). Thus, therefore, if the prosecution case is examined on the principle of

circumstantial evidence, then, the relevant and important scientific evidence has not been proved in accordance with law. Except DNA Analysis Report, nothing on record to prove the involvement of the accused in the crime. The victim did not have admitted the contents of her statement recorded by the Magistrate under Section 183 of B.N.S.S. Thus, merely the accused and victim had an affair, does not further prove that the victim got pregnant on account of repeated sexual intercourse committed upon the victim by the accused. Thus, therefore, the trial court has rightly held and observed that, the prosecution is failed to establish that the accused committed repeated penetrative sexual assault and the act of miscarriage as alleged. The findings of acquittal arrived at by the trial court are based on the evidence on record and the view taken by the trial court is reasonable and possible view.

17. In the result, we do not find any perversity in the impugned judgment and in absence of substantial and compelling reasons, no ground exists to interfere with the findings of acquittal recorded by the Trial Court and therefore, the Trial Court was justified in acquitting the accused.

18. With the observations as aforesaid, the present appeal, at the admission stage, is dismissed.

Sd/-
(ILESH J. VORA,J)

Sd/-
(R. T. VACHHANI, J)

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