

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 2253 of 2022**=====  
MINABEN D/O. PIRABHAI HEMRAJBHAI CHAUHAN (DALIT)

Versus

STATE OF GUJARAT  
=====

Appearance:

MR.KISHORE PRAJAPATI(6305) for the Appellant(s) No. 1

MS. SHIVANGI M RANA(7053) for the

Opponent(s)/Respondent(s) No. 2

MS CHETNA M. SHAH, APP for the Opponent(s)/Respondent(s)

No. 1  
=====CORAM:**HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**

and

**HONOURABLE MRS. JUSTICE M. K. THAKKER****Date : 12/07/2023****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE UMESH A. TRIVEDI)**

1. This appeal under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code") is filed by the first-informant - victim challenging the judgment and order of acquittal rendered by Additional Sessions Judge, Tharad - Banaskantha dated 01.07.2022 passed in Sessions Case No. 21 of 2020, whereby the respondent No. 2 - accused came to be acquitted of the charges for offence under Sections 376(m), 201 and 506(2) of the Indian Penal Code.

2. The appellant - first-informant filed an FIR on 01.03.2020 that, on 23.02.2020 at about 2 p.m., the respondent - accused

entered her house and at the point of knife, committed an offence of rape over her, threatening of dire consequences as also killing her parents. Since she was scared with the behaviour of the accused at knife-point and the respondent - accused was third-generation cousin, she could not muster courage to immediately file the FIR, and therefore, it came to be filed after about 6-7 days. Pursuant to the FIR filed, an investigation was carried out and since sufficient material was collected during the course of investigation, the police authorities filed the charge-sheet and ultimately, a Sessions Case, as aforesaid, came to be registered against the respondent - accused .

3. To prove the case against the accused, the prosecution examined nearly 12 witnesses, including the first informant - victim, produced and proved approximately 22 documents on record of the case. However, on analysis of the evidence led before the Court and examining the documents, the learned Judge acquitted the accused.

3.1 On examining the judgment and hearing the learned advocate for the appellant, we felt need of the Record and Proceedings, which was called for vide order dated 18.04.2023 and it is before the Court today.

3.2 We have heard the learned advocate Mr. Kishore Prajapati for the appellant, learned advocate Ms. Shivangi M. Rana for the respondent - accused as also learned APP Ms. C.M. Shah for the State, and we have perused the Record and Proceedings in detail. Ms CM Shah, learned APP, submitted that State has taken decision not to challenge the order of acquittal recorded by the learned Judge.

3.3 Mr. Kishore Prajapati, learned advocate for the appellant, drawing attention of the Court to the deposition of the victim submitted that since she has supported the case of prosecution and narrated in detail the incident as occurred, which is supported by medical evidence, the learned Judge could not have acquitted the accused.

3.4 He has further submitted that, for filing complaint late by about 6-7 days, a probable explanation is offered, and therefore, case of the prosecution could not have been rejected by the learned Judge for acquitting the accused. Therefore, he has submitted that this appeal be admitted.

3.5 Ms. C.M. Shah, learned APP, submitted that since State has taken conscious decision not to prefer an appeal against the impugned judgment and order pursuant to a written

instruction with her, she requested the Court to pass appropriate order.

3.6 Ms. Shivangi M. Rana, learned advocate for the respondent - accused, vehemently opposes to admit the appeal and requests the Court to dismiss it.

4. Having heard the learned advocates for the respective parties as also considering the evidence led before the Court while perusing the Record and Proceedings of the case, it is clear that the accused of the offence is none else but a close third-generation cousin and there exists dispute with regard to property in between the two families, and before accepting or rejecting the evidence led before the Court, close scrutiny of evidence is required.

4.1 While perusing the deposition of the first-informant herself, though she has deposed to before the Court that, at the point of knife, the accused has committed an offence of rape on the date of incident at 2:00 p.m. However, as she was scared of the accused and he threatened her of killing her parents, she did not disclose it to the Police or anyone else. As such during the course of investigation, no knife, at the point of which alleged offence is committed, either discovered or recovered

from accused or anyone else alleged to have been used at the time of commission of the offence.

4.2 Over and above that, filing of an FIR was a conscious decision after all relatives were informed about the incident and settlement was not possible, it was determined to file an FIR. At the same time, as coming out from the deposition as also from the judgment that the victim admitted strained relations between two families i.e. family of the accused as also the victim, in respect of property and right of way in the field for which frequent quarrels had taken place. Not only that, as per the deposition of the victim, the alleged offence took place on the date of incident at about 10 a.m., which is contrary to her FIR in which it is stated that incident occurred at 2:00 p.m. while she was alone in the house. Not only there is a major discrepancy with regard to the time of the incident, she appears to have not raised any shout if at all incident occurred during the day time, maybe she was afraid of accused when he entered the house with knife, but no witness staying nearby is examined by the prosecution to support her version, at least of the accused, entering into her house at about 10 a.m. or even at 2:00 p.m. with knife.

4.3 There is again major discrepancy with regard to history given before the Doctor by the victim as also in the deposition before the Court. In her deposition, she appears to have referred about incident of rape committed by the accused once, whereas in a history before the Doctor, she stated about rape being committed twice within a span of 15 minutes. Even if it is presumed to be an exaggeration, considering the strained relations between the two families and more particularly, knife having not been either recovered or discovered, belying the story of prosecution that accused committed an offence of rape at knife-point is in material contradiction with the medical evidence. As also that except the date of incident, she has no history of even physical relation with anyone else, whereas medical evidence reflects the contrary.

4.4 Even explanation offered for filing FIR late is also found to be not believable on the ground that if at all the offence is committed at the point of knife, it should have been recovered or discovered, which is missing in this case, establishing or rather creating doubt about use or holding of knife by the accused while committing an offence. If at all offence is committed at a particular time, there cannot be inconsistent time of offence in between the deposition and the

contemporaneous record like First Information Report registered by the first-informant herself.

4.5 Though the statement recorded under Section 164 of the "Code" of the victim is produced and proved by victim herself, having signed the same and identified her signature, unless what is narrated in the statement is not deposed to before the Court and it doesn't corroborate the deposition, it is of no use. However, in the cross-examination, when it is established that since years, there is a dispute between two families and despite the attempts being made by village people, the relations between the two have not improved, it creates doubt in respect of the offence and the manner in which it is committed, as deposed to by the witnesses.

4.6 The victim is major at the time of incident, coupled with the fact that even if the history given by the accused himself before the Court to be treated as an admission, there is no admission at all with regard to the offence of rape as on the date pleaded by the prosecution. If at all it is to be treated as an admission of physical relation with consent of each other, that too, once prior to one month of the incident. Therefore, even that factor also does not help the prosecution to prove the case against the accused. Though relation might appear to be

an immoral one, between distant relatives or third-generation cousin, who is also married, unless and until it becomes an offence, the accused cannot be convicted.

5. However, going through the judgment in detail, considering the depositions of each witnesses before the Court, we find no error in the reasons assigned by the learned Judge holding that prosecution has failed to prove the case against the accused beyond reasonable doubt.

6. We are conscious of the fact that even if two views are possible on re-appreciation of evidence, the appellate Court cannot substitute its own views to that of the view recorded by the learned Judge, and therefore, we find no reason to interfere with well reasoned order of acquittal passed by the learned Judge, that too, when conscious decision is taken by the State not to prefer an appeal against the impugned judgment and order. Hence, we dismiss the appeal.

Record & Proceedings be sent back to the trial Court immediately.

**(UMESH A. TRIVEDI, J.)**

**(M. K. THAKKER, J.)**

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