IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 2717 of 2025

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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NEETABEN W/O. BABUJI SAGTHAJI THAKORE
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MS KIRAN D PANDEY(3337) for the Appellant(s) No. 1
MR ROHAN RAVAL, APP for the Opponent(s)/Respondent(s) No. 1

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

Date : 07/10/2026

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

1. Here is the Appeal by the original complainant under Section 413 of Bharatiya Nagrik Suraksha Sanhita, 2023 (corresponding section 372 of Cr.P.C.) against the judgment and order of acquittal.

2. Being dissatisfied by the judgment and order passed by the learned Sessions Judge, Gandhinagar passed in Sessions Case No.25 of 2022, dated 25.11.2024, acquitting the respondent - accused Ganpatji Sonaji Thakore from the offences punishable under

Sections 376 and 506(2) of the IPC and Section 135 of Gujarat Police Act., the complainant has preferred instant appeal.

3. We have heard Ms. Kiran Pandey, learned counsel for the appellant and Mr. Rohan Raval, learned APP for the respondent - State.

4. Brief facts giving rise to file the present Appeal are as follows:

The appellant-complainant was subjected to sexual assault, by the respondent-accused, at her home when she was alone. According to prosecution case, on 22.11.2019, the accused had knocked the victim's door of the house at about 12 o'clock in night. She woke up and opened the door. The rented house is situated in Chandkheda area of Ahmedabad. The husband of the appellant had gone to his native. She saw the respondent-accused and due to acquaintance with him as he used to purchase Ayurvedic medicines from her husband, she invited him to come inside the house. The accused suddenly took out a knife from his vest, covered her mouth and warned her not to make any hue and cry and thereafter, the accused her took her into the bed and indulged into sexual intercourse twice against her wish and will. Meanwhile, the husband of the appellant-victim, came there as due to rescheduling of his travel plan, he had come early at the house. The husband was informed by the victim that the accused at the knife point, committed rape upon her. According to prosecution case, as and when, the accused and victim came to know of the arrival of the husband, the accused hide under the bed. He was

scolded by the husband of the victim. The accused offered Rs.2 lakhs for settlement. The heated exchange of words being take place between the parties. As a result, the neighbouring persons namely PW.8 and PW.10, came to rescue the complainant and others and thereafter, the accused fled away from the spot. After a week, i.e. on 03.12.2019, the appellant – victim lodged an FIR with Chandkheda Police Station for the alleged act of rape and criminal intimidation against the accused. During the investigation, the accused came to be arrested and after completion of the investigation, the I.O. filed chargesheet 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 16 witnesses and relied upon 23 exhibited documents.

7. On conclusion of oral evidence, the Trial Court recorded further statements of the accused as provided under Section 311 of Cr.P.C., wherein, he claimed his innocence and stated that he has been falsely implicated in the offence. It is further stated by the accused that, he had given Rs.70,000/- to the husband of the victim towards the sale of Ayurvedic medicines and after reminders of payment, the husband of the victim failed to make payment and therefore, this complaint is nothing but a counterblast to the monetary transaction of the parties.

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. The Trial Court, after appreciation of the evidence of PW.1 – Prosecutrix, observed that, the version of the victim is full of contradictions and exaggeration and her evidence is not truthful and credible and the entire episode of the incident seems to be improbable.

9. In such circumstances, the trial Court while acquitting the accused held and observed that the prosecution miserably failed to prove the charge of rape and sexual harassment against the accused beyond reasonable doubt.

10. Being aggrieved by the judgment of acquittal, the appellant-original complainant is before this Court.

11. Ms. Kiran Pandey, learned counsel appearing for and on behalf of the appellant-complainant, 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, the allegation of commission of rape and sexual harassment specifically stated by the victim and there is no reason for her to come up with the false story of being victim sexual assault, that too at the cost of the dignity and affecting her character; the testimony of the victim is sufficient to record conviction as soon after the incident, she had informed to her husband; the so called exaggeration and

contradictions as observed in the judgment, does not in any manner, changes the nature of the case and in that view of the matter, the court has to consider whether the witness was stating truth or not; thus, the solitary evidence of the victim does inspire confidence and appears to be absolutely trustworthy.

12. In such circumstances, it is submitted that the findings of acquittal arrived at by the trial Court are not based on the proper appreciation of the evidence and the court was not justified in arriving the conclusion that the prosecution has failed to prove the charge against the accused beyond reasonable doubt.

13. Thus, it has been prayed that, the appeal may be admitted.

14. Mr. Rohan Raval, learned APP fairly stated that the State has not preferred an appeal against the acquittal of the accused.

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

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

17. 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.

18. In the facts of the present case, the appellant, at relevant time was a married woman aged about 33 years. Admittedly, there was a delay of 12 days in lodging the FIR. In other words, the FIR dated 03.12.2019 was being filed for the offence occurred on 22.11.2019. According to prosecution case, in night hours, when the victim was alone at home, the accused with the knife point, indulged into sexual intercourse for twice with the victim and then, after arrival of the husband of the victim, he fled away from the spot. In such circumstances, in a matter of rape, the law on the appreciation of evidence of the victim is settled by the catena of decisions of the Supreme Court.

19. The sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused. In ***Rai Sandeep Vs. State (NCT of Delhi) [(2012) 8 SCC 21]***, the Supreme Court on the facts found totally conflicting version of the victim, from what was stated in the complaint and what was deposed before the Court, resulting in material inconsistency. Reversing the conviction and holding that, the prosecutrix cannot be held to be a 'sterling witness' , the court

opined as under:

> *"22. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. <u>It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any</u>*

> *missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."*

20. In ***Krishan Kumar Malik Vs State of Haryana***, [(***2011) 7 SCC 130]***, the Supreme Court in the matter related to sexual offence held that, the conviction cannot be sustained if the prosecutrix's testimony found unreliable and insufficient due to identified flows and lacuna. It was held thus :

> *"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have*

already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement. Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellant."

(emphasis added)

21. In light of the settled principle of law and applying to the facts of the present case, upon re-appreciating of the evidence of the victim (PW.1), we found inconsistency and contradictions in the evidence of the victim. According to prosecution case, after the incident, her husband had knocked the door, as a result, the accused hide himself under the bed, whereas, in the statement before the Court, she did not utter a word about hiding of the accused under the bed. It is the specific case that, two neighbours after hearing the hue and cry, came into house. The neighbours namely PW.8 and PW.10, have not supported to the case of prosecution as they were not aware about the incident as well as presence of the accused in the house. There was a delay of 12 days in lodging the FIR and explanation offered is not convincing and acceptable. On the

aspect of presence of husband of the victim, there is contradiction found in her evidence about the time as according to say of the victim, her husband came at 3 o'clock and the husband stated his time of arrival at 1 o'clock. It is relevant to note that, before the doctor, the victim has disclosed another story that, the accused straightaway caught hold her while entering into the house. In the evidence as well as FIR, she had stated that, after some conversation on the whereabouts of her husband, the accused entered into the house. In such circumstances, the aforesaid contradictions found in the evidence of the victim directly impact on the credibility of the evidence of the prosecutrix. We are conscious of the settled law that every small discrepancy or minor contradiction which may erect in the statement of the witness because of lapse of time and other attending circumstances, cannot be treated as a fatal to the prosecution. In the case on hand, having regard to the conduct of the victim, non-explanation of delay of 12 days in lodging the FIR and the manner in which her husband surprisingly came at home in the midnight would certainly raise the doubt in the prosecution story about the alleged rape committed by the accused.

22. Thus, in our opinion, the trial Court on the issue of reliability of victim's evidence and truthfulness of the prosecution case, has assigned sufficient reasons based on the proper appreciation of the evidence and the finding of acquittal arrived at are not contrary to evidence on record and same are not found to be perverse and view taken by the trial Court is reasonable one.

23. In the result, on considering the evidence on record, the trial court was justified in arriving at the correct conclusion that prosecution has failed to prove the charge against the accused beyond reasonable doubt.

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

Sd/-
(ILESH J. VORA,J)

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

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 08/10/2026 17:24:37