IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 2258 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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ARVINDABEN W/O SURESHBHAI RATHVA
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR. MAULIK M SONI(7249) for the Appellant(s) No. 1
DS AFF.NOT FILED (R) for the Opponent(s)/Respondent(s) No. 2
MR LB DABHI, 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 : 09/10/2026

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

1. Here is the Appeal by the complainant victim under Section 413 of the 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, Limkheda at Dahod passed in Sessions Case No.27 of 2022, dated 17.10.2025, acquitting the respondent accused from the offence punishable under Sections 363, 344, 376(N), 506(2)

of the IPC, the original complainant – victim has preferred instant appeal.

3. We have heard Mr.Maulik Soni, learned advocate appearing for and on behalf of the appellant – victim and Mr.L.B. Dabhi, learned APP for the State.

4. Brief facts giving rise to file the present Appeal are that, the appellant victim aged about 31, on 28.05.2021, was forced to sit on the bike of the accused when she was standing along with minor son at the bus-stand of Village Sadra. According to version of the victim, the accused told him that he is interested to keep her as wife and if she was refused to stay with him, he will kill her as well as minor son. The victim, thereafter, sat as a pillion on the bike and then, travelled with the accused from Village Sadra to Barvada. She stayed with the accused for about 12 days in the farm and did labour work with him. The allegation made by her against the accused that during her stay for 12 days, the accused committed a rape upon her repeatedly and did not permit her to talk with anyone. In such circumstances, it is alleged by the victim that she had been kidnapped by the accused and illegally confined at the private farm where she was subjected to forcefully intercourse by the accused. The victim, thereafter, on 08.06.2016, returned back to Village Sadra with the accused. The parties belong to scheduled tribe. The matter was tried to resolve by community leader. However, it could not be resolved because the husband of the victim has refused to accept her as wife, as a result, on 28.05.2021, she lodged an FIR with the Sadtala Police Station. Pursuant to the FIR, the

respondent accused came to be arrested and after completion of the investigation, the police filed chargesheet against him for the offences, as referred above.

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

6. In order to prove the charge, the prosecution has examined as many as 9 witnesses and proved and produced 26 documentary evidence.

7. On conclusion of oral evidence, the Trial Court recorded further statements of the accused as provided under Section 313 of the Code, 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 appellant victim was in relations with the accused and despite of having an opportunity, she did not make hue and cry and file a complaint before anyone. The victim was having a mobile phone with her, but reasons best known to her, she failed to inform to her husband and others about the act of kidnapping at the instance of the accused. Thus, the Trial Court considering the nature of relationship and abnormal conduct of the victim, held that the evidence of the victim does not inspire confidence and based on her evidence, the conviction cannot be sustained and therefore, it is held and observed by the Trial

Court that the charge of kidnapping and rape is not proved by the prosecution, beyond reasonable doubt.

9. Mr.Maulik Soni, learned advocate appearing for the appellant – victim, assailing the judgment and order of acquittal, has submitted that;

(i) 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;

(ii) that the Trial Court failed to appreciate that ordinarily, the evidence of victim should not be suspected and should be believed, more so, as her statement has to be evaluated at par with that of injured witness and it is the accused to substantiate; that there was a consent on the part of the victim; the Trial Court failed to appreciate that there was no consent and it was under threat, coercion or misconception of fact which does not amount a valid consent of eye of law; that the evidence on record clearly demonstrated intimidation and wrongful confinement attracting Sections 366, 344 and 506(2) of IPC, that the victim's evidence supported by her own statement recorded under Section 164 of the Cr.P.C.

10. 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.

11. On the other hand, learned APP Mr.L.B. Dabhi, has fairly stated that the State has not filed acquittal 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. We have carefully examined the evidence of the victim PW:1. Admittedly, there is no dispute about her age and the family background stated by her before the trial Court. The victim being age of 31, along with the minor son, had stayed with the accused at Village

Barvada for about 12 days. The two other minor kids were not accompanied the victim and they stayed at the matrimonial home at Village Sadra. The husband of the victim at the relevant time, when she left the home, had gone to City Surat for livelihood. The distance between Sadra and Barvada is 800 k.m. She had travelled with the accused on bike. The bike was stopped at different places for filling up the petrol, etc. The victim was at the relevant time, having a mobile phone with her. In Village Barvada, she stayed at the private farm where the owner of the farm was used to visit there to look after the agricultural process. In such circumstances, in our opinion, after careful examination of the evidence of the victim, it appears that she had left voluntarily the Village Sadra and remained in the company of the accused for about 12 days without any opposition. Admittedly, the parties belong to the scheduled tribe. As per their custom, the matter was brought to the notice of the community leader, but somehow, it was not resolved and accordingly, the complaint with the delay of around 21 days came to be filed by the victim alleging the act of kidnapping and rape against the accused. It is settled position of law that sole testimony of the victim if found reliable and trustworthy, it can be attracted upon without any corroboration. In the facts of the present case, the evidence of the victim does not inspire confidence on the allegation of rape and kidnapping. We may profitably refer the case of **Rai Sandeep Vs. State (NCT of Delhi), (2012(8) SCC 21)**, wherein the Supreme Court held that the victim cannot be held to be sterling witness. The Supreme 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. 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 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."

16. In ***Krishna 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."*
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> (emphasis added)

17. In light of the settled principles of law, and applying to the facts of the present case, having regard to the conduct of the victim, her age, nature of relations with the accused, her stay with the accused for about 12 days at Village Barvada, the non-explanation of delay in lodging the FIR, we are of the considered opinion that the evidence of the victim is not worthy of credence to hold that the accused kidnapped her and had the sexual intercourse with her against her will and wish and she was confined at the farm illegally by the accused.

18. 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.

19. 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.

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

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Rakesh

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RAKESH MAHESHKUMAR KOSHTI(HC00950), Principal Pvt. Secretary, at High Court of Gujarat on 12/10/2026 15:42:28