

(2025) 12 GUJ CK 1810
In the Gujarat High Court
Case No : R/Criminal Appeal No. 606 Of 2004

State Of Guajarat

APPELLANT

Vs

Koli Govindbhai Gandabhai

RESPONDENT

Date of Decision : 09-12-2025

Acts Referred:

Indian Penal Code, 1860 — Section 376
Code Of Criminal Procedure, 1973 — Section 378

Citation : (2025) 12 GUJ CK 1810

Hon'ble Judges : Ilesh J. Vora, J;R. T. Vachhani, J

Bench : Division Bench

Advocate : Jyoti Bhatt, Hriday Buch

Final Decision : Dismissed

Judgement

R. T. Vachhani, J

1. Feeling aggrieved and dissatisfied with the judgment and order of acquittal dated 19.01.2004 passed by the learned Sessions Judge, Dhangadhra in Sessions Case No. 86 of 1998, whereby the respondent–accused was acquitted of the offence punishable under Section 376 of the IPC, the appellant–State has preferred the present Criminal Appeal under Section 378 of the Code of Criminal Procedure, 1973.

2. The brief facts leading to the filing of the present appeal are as under:

2.1. The prosecutrix, who along with her husband and other labourers was working in the agricultural field within the village limits of Vegadvav, alleged that on 24.09.1996 at about 2:45 p.m., she was subjected to forcible sexual intercourse by the respondent– accused, Govindbhai Gandabhai Koli. According to the prosecution, the complainant had gone to prepare tea and, thereafter, to deliver the same to the accused who was engaged in weeding operations in the cotton crop. It is alleged that within the tall cotton plantation, the accused pressed her mouth, dragged her to the ground, held her hands and legs, lifted

her garments and committed forcible intercourse.

2.2. After the incident, the complainant is stated to have immediately informed her husband, whereupon an altercation ensued between the parties and other labourers gathered. Thereafter, the complainant and her husband travelled from Vegadvav to Halvad and lodged an FIR being CR No. 160/1996 at Halvad Police Station on 25.09.1996. The investigation thereafter commenced, which included drawing of panchnamas, recording statements of witnesses, medical examination of the complainant, and seizure of her clothes for FSL analysis.

3. Upon completion of investigation, the Investigating Officer filed a chargesheet before the competent Court. As the offence under Section 376 IPC was triable exclusively by the Court of Sessions, the case was committed to the Sessions Court and registered as Sessions Case No. 86/1998. The learned Sessions Court framed charge under Section 376 IPC, to which the accused pleaded not guilty.

4. During the course of trial, the prosecution examined the following oral and documentary evidences:

Sr.

No.

Particulars

Exh. No.

1

PW No. 1, Deposition of Gordhanbhai Kuvarabhai

13

2

Panchnama of the Crime Scene

14

3

PW No. 2, Deposition of Dharmendrasingh Rambha

15

4

Panchnama of the clothes of the Victim

16

5

PW No. 3, Deposition of Chaturbhai Amrabhai

17

6

Panchnama of the Accused's Home

18

7

PW No. 4, Deposition of Jitusingh Jababhai Gadhvi

19

8

PW No. 5, Deposition of Devubha Ramubha

20

9

Panchnama of the Medical body-examination of the accused

21

10

PW No. 6, Deposition of Shubhgiri Hemantgiri

22

11

PW No. 7, Deposition of Dr. Babulal Tribhovandas Malpara

23

12

Police Yadi

24

13

Doctor's certificate of prosecutrix

25

14

Police Yadi

26

15

Medical certificate regarding bodily condition of accused

27

16

PW No. 8, Deposition of prosecutrix

28

17

PW No. 9, Deposition of Punabhai Balabhai

29

18

PW No. 10, Deposition of Kesabhai Balabhai

30

19

PW No. 11, Deposition of Jasubhai Hakabhai

31

20

PW No. 12 Deposition of Jesingbhai Jethabhai Dhangra

35

21

Letter written to the F.S.L Junagadh for Scientific Examination

33

22

Forwarding Letter from the F.S.L Junagadh for Scientific Examination

34

23

PW No. 13, Deposition of Kandas Baldevdas P.S.O.

37

24

Original Complaint

38

25

PW No. 14, Deposition of Mavjibhai Nanjibhai A.S.I

5. After examining the oral and documentary evidence, the learned Sessions Court recorded a finding that the prosecution failed to prove the charge of rape beyond reasonable doubt.

6. The learned Sessions Judge noted that the medical evidence did not support the allegation of forcible intercourse. No injuries, abrasions, bruises, scratches, bite marks, or genital injuries were found either on the complainant or the accused. The Court further observed inconsistencies between the FIR, police statements and depositions of material witnesses, including improvements introduced for the first time during trial.

6.1 The husband of the complainant claimed, for the first time before the Court, to have witnessed the act, although such a material fact did not find place in his police statement. Another prosecution witness similarly introduced omissions which were not recorded earlier. The panch witnesses did not support the prosecution case relating to preparation or delivery of tea. The FSL report detected semen on the clothes of the complainant; however, the semen sample of the accused was reported as "inconclusive/not established". Despite the complainant being a married woman and despite seizure of clothes on the next day, the prosecution failed to conduct semen comparison with the husband, which the Sessions Judge found to be a serious lapse.

7. Learned APP for the State submitted that the Sessions Court erred in placing undue reliance on medical evidence and failing to appreciate the testimony of the complainant. However, on perusal of the record, it is evident that the Sessions Judge had not discarded the evidence lightly but found the complainant's testimony inconsistent, lacking corroboration, and contradicted by medical and forensic material.

8. The failure to conduct the husband's sperm test, despite the complainant being married and despite semen being detected on the clothes, creates a serious gap in the chain of evidence. The learned Sessions Judge had specifically noted the necessity of such scientific comparison, yet the prosecution did not undertake this essential procedure. In absence of complete scientific foundation, the FSL report loses probative value.

9. The testimony of the Investigating Officer and the FSL report is admittedly dependent upon the version of the complainant and is not supported by any independent corroboration. Considering the material omissions and contradictions in the depositions of the complainant and her husband, the learned Sessions Court's appreciation of evidence cannot be faulted. Even upon considering the entire material placed on record, including the deposition of the so called eye witness – the prosecutrix in conjunction with the medical evidence and other material evidence, such as the testimony of the husband and other witnesses, significant contradictions and inconsistencies emerge, which constrain this Court from accepting the prosecution's case. In view of the conclusions

arrived at by the learned Sessions Court, no interference is warranted.

10. It is a well-settled principle that an appellate Court should not interfere with an order of acquittal unless the findings are perverse, unreasonable, or manifestly illegal. In the present case, the learned Sessions Court has assigned cogent reasons for acquittal, which are supported by the material on record. The learned Sessions Court has meticulously examined the evidence, including medical and forensic reports, and has arrived at a plausible and reasonable view. No perversity or misreading of evidence has been demonstrated before this Court. The absence of medical injuries, the inconsistencies and contradictions in witness testimony, the incomplete forensic examination, and failure to conduct the sperm test of the husband cumulatively weaken the prosecution case to such an extent that the charge cannot be said to be proved beyond reasonable doubt.

11. The learned Sessions Judge has rightly held that in a case based largely on the sole testimony of the complainant, when such testimony suffers from contradictions and lacks corroboration from medical or scientific evidence, conviction cannot be sustained. The principles governing appellate interference in matters of acquittal require the Court to examine whether the view taken by the learned sessions Court was a possible and reasonable view. In the present case, the view taken by the learned Sessions Court is certainly a possible one based on the evidence available on record.

12. At this stage, this Court may refer to the decision of the Hon'ble Apex Court in the case of *Rajesh Prasad v. State of Bihar and Another* [(2022) 3 SCC 471] encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order acquittal in the following words: (*Chandrappa case* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415])

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an

appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

13. In the case of H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581] the Hon’ble Apex Court has summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

14. In light of the foregoing discussion and in view of the well-reasoned findings of the Sessions Court, this Court finds no reason to interfere with the judgment of acquittal. The present Criminal Appeal, therefore, fails and is dismissed. Record & Proceedings, if any, be remitted to the concerned Court forthwith.