

(2022) 01 GUJ CK 0098
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 18292 Of 2021 In R/Criminal Appeal
No. 1491 Of 2021

State Of Gujarat

APPELLANT

Vs

Nareshbhai Kalsingbhai Baria

RESPONDENT

Date of Decision : 25-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 363, 366, 376(N)
Protection Of Children From Sexual Offences Act, 2012 — Section 3, 4
Code Of Criminal Procedure, 1973 — Section 164, 313, 378, 378(1)(3), 379

Citation : (2022) 01 GUJ CK 0098

Hon'ble Judges : S.H.Vora, J;Sandeep N. Bhatt, J

Bench : Division Bench

Advocate : CM Shah

Final Decision : ?Dismissed

Judgement

PW,Name of witness,Exh,Evidence

1,"Rameshbhai Pratapbhai

Baria - Complainant",10,"He has produced Complaint Exh.11 and identified his
signature. He has also produced School Leave Certificate of

prosecutrix at Exh.12.

2,"Shardaben Rameshbhai

Baria - witness",13,

3,Victim,14,She has proved her statement u/s. 164 of Cr.P.C. at Exh.15.

4,"Kulsingbhai

Chhaganbhai Patel -

Panch witness",18,"He has produced the Muddamal Panchanama at Exh.19 and

identified his signature. He has also produced the
Receipt of the Muddamal Panchanama at Exh.20 and identified his signature.

5,"Navratbhai Punabhai

Baria - Panch witness",21,"He has produced the Muddamal Panchanama at
Exh.22 and identified his signature. He has also produced the

Receipt of the Muddamal Panchanama at Exh.23 and identified his signature

6,"Nileshbhai Rameshbhai

Baria â?" Witness",34,

7,"Dr. Shri Dhruvkumar

Jitendrakumar Parmar",25,"He has produced the Police Yadi at Exh. 26. He has
also produced Refer memo for Gynecologist at Exh.27. He

has also produced the case papers at Exh.28. He has also produced the opinion
of radiologist at Exh.29. He has

produced police yaadi at Exh.30. He has produced certificate at Exh.31. He has
produced the case papers at

Exh.32. He has produced the Refer memo for Gynecologist at Exh.33

8,"Ranjitsinh Laxmansinh

Parmar â?" P.S.O",37,He has produced the page no. 74 and 75 of the station
diary at Exh.38

9,"Rakeshkumar Havanji

Solanki â?" I.O.",39,

10,"Jagdip Sheshgiri Nayak

â?" I.O.",40,"He has produced the certificate at Exh.41 and identified his
signature. He has produced the F.S.L. report at

Exh.42.

11,"Arjunsinh Somabhai

Malivad - Principal",45,"He has produced the the page of School Leaving
Certificate Book at Exh.46. He has produced the page no. 13 of

the general register at Exh.47. He has produced Form No. 2192 at Exh.48. He
has also produced certificate at

Exh.49.

12,"Mansingbhai Galjibhai

Damor -I.O",53,He has produced the report to add the sections at Exh.51.

13,"Dr. Rahulkumar

Melapsinh Padval â?

Gynecologist",55,He has produced the Yaadi at Exh.56.

offences, for which he was tried, as the prosecution failed to prove the case beyond reasonable doubt.",,,

6. We have heard submissions made by learned APP Ms. Shah appearing for the applicant State and we have minutely examined the papers supplied,,,

to us by learned APP during the course of hearing.,,,,

7. The thrust of submission of learned APP is that the prosecution has proved age of the prosecutrix being below 18 years and commission of crime,,,

by the accused. According to the prosecution case, age of the prosecutrix was 17 years and she studied upto 8th Standard and for that reliance has",,,,

been placed on School Leaving Certificate at Exh.12. Date of birth of prosecutrix is shown as 09.06.1997, whereas, Radiologist opined her age to be",,,,

between 16 to 18 years.,,,,

8. Undisputedly, one fact is such that prosecutrix at the time of incident was close to 18 years. Though it is case of the prosecution that respondent",,,,

accused abducted / kidnapped prosecutrix when she had gone to attend fair along with her brother on account of Holi festival, it is a matter of fact",,,,

that brother viz. Shri Nileshbhai who is examined at Exh.34 deposed that in his police statement he disclosed that one Shri Vinod Baria abducted his,,,

sister, whereas, in the deposition before the Court, he blamed both viz. Shri Vinodbhai and present respondent accused for the act of abduction. Apart",,,,

from it, we have carefully examined the statement of the victim recorded under section 164 of Cr.P.C. The victim in terms disclosed before the",,,,

learned Magistrate that she went to Limkheda from the place of fair and from Limkheda she along with respondent accused went to Golden,,,

Chowkadi, Vadodara. She has further stated before the learned Magistrate that she stayed with respondent accused for two to four months and",,,,

nothing has happened during such period. It is reported by the Magistrate that at the time of statement of victim being recorded with her parents, she",,,,

refused to join company of her parents and expressed her wish to go with respondent accused and wanted to stay with him till she lives. In other,,,

words, the prosecutrix has not disclosed anything, more particularly, any act of intercourse or rape forcefully or with the consent of minor, though",,,

irrelevant, done by the respondent accused. Thus, two important ingredients are lacking in the present case viz. abduction and any act of intercourse",,,

on the part of the respondent accused. It seems that the victim left the place of fair where Holi festival was celebrated on her own and went to the",,,

place of respondent accused and lived with him for two to four months. Thus, looking to the inconsistency in the evidence of the prosecutrix and",,,

improvement made by the witness in the deposition viz-a-viz police statement, the learned Trial Judge has rightly disbelieved the prosecution case.",,,

Learned APP could not point out any evidence even remotely suggesting that the respondent accused has committed act of rape upon the victim",,,

against her wish and will nor there is any such allegation in her statement under section 164 of the Code.,,,

9. Under the circumstances, the learned trial Judge has rightly acquitted the respondent accused for the elaborate reasons stated in the impugned",,,

judgment and we also endorse the view/finding of the learned trial Judge leading to the acquittal, as on re-assessment and re-appreciation of evidence",,,

we have not found any compelling reason to interfere with the finding of fact recorded by the learned Trial Judge in the impugned judgment.,,,

10. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible, then also, the appellate Court cannot substitute",,,

its own view by reversing the acquittal into conviction, unless the findings of the trial Court are perverse, contrary to the material on record, palpably",,,

wrong, manifestly erroneous or demonstrably unsustainable. (Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the",,,

learned APP has not been able to point out to us as to how the findings recorded by the learned trial Court are perverse, contrary to material on",,,

record, palpably wrong, manifestly erroneous or demonstrably unsustainable.",,,

11. In the case of Ram Kumar v. State of Haryana, reported in AIR 1995 SC 280, Supreme Court has held as under:",,,

â??The powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under",,,

Sections 378 and 379, Cr.P.C. are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable",,,

that the High Court should give proper weight and consideration to the view of the Trial Court with regard to the credibility of the witness,",,

the presumption of innocence in favour of the accused, the right of the accused to the benefit of any doubt and the slowness of appellate",,,

Court in justifying a finding of fact arrived at by a Judge who had the advantage of seeing the witness. It is settled law that if the main,,,

grounds on which the lower Court has based its order acquitting the accused are reasonable and plausible, and the same cannot entirely",,,

and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal."""",,,

12. As observed by the Hon'ble Supreme Court in the case of Rajesh Singh & Others vs. State of Uttar Pradesh reported in (2011) 11 SCC 444 and,,,

in the case of Bhaiyamiyan Alias Jardar Khan and Another vs. State of Madhya Pradesh reported in (2011) 6 SCC 394, while dealing with the",,,

judgment of acquittal, unless reasoning by the learned trial Court is found to be perverse, the acquittal cannot be upset. It is further observed that High",,,

Court's interference in such appeal in somewhat circumscribed and if the view taken by the learned trial Court is possible on the evidence, the High",,,

Court should stay its hands and not interfere in the matter in the belief that if it had been the trial Court, it might have taken a different view."",,,

13. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of,,,

appeal under Section 378 of the Code of Criminal Procedure, no case is made out to interfere with the impugned judgment and order of acquittal."",,,

14. In view of the above and for the reasons stated above, present application for leave to appeal fails and same deserves to be dismissed and is",,,

accordingly dismissed. In view of dismissal of the application for leave to appeal, captioned Criminal Appeal also deserves to be dismissed and is",,,

accordingly dismissed.,,,