



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 25 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH ROY
and
HONOURABLE MR.JUSTICE D. M. VYAS

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
VIRENDRASINH AJITSINH MAKWANA

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Appearance:

MR BHARGAV PANDYA, APP for the Appellant(s) No. 1
BAILABLE WARRANT SERVED for the Opponent(s)/Respondent(s) No. 1
SHRIKAR H BHATT(2573) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE CHEEKATI
MANAVENDRANATH ROY**
and
HONOURABLE MR.JUSTICE D. M. VYAS

Date : 02/07/2025

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH
ROY)

1. The respondent herein is the sole accused in Sessions Case No.41 of 2009 on the file of 4th Additional Sessions Judge, Bharuch. He was prosecuted for the offences punishable under Sections 376 and 506(2) of the Indian Penal Code and under Section 67 of the Information Technology Act.

Eventually after trial, the respondent was acquitted of the said charges as he was found not guilty for the said offences.

2. Aggrieved by the said judgment of acquittal, the State has preferred the instant appeal questioning the legality and validity of the impugned judgment of acquittal.

3. When the appeal came up for hearing, we have heard learned APP Mr. Bhargav Pandya and learned advocate Mr.Nirmal C. Shekhavat appearing on behalf of learned advocate Mr. Shrikar H. Bhatt for the respondent-accused.

4. We have perused the record and the evidence and considered the same.

5. Briefly stated, it is the case of the prosecution that the victim girl is aged about 20 years. The accused is aged about 21 years. Both of them are residents of the same locality and living in the same vicinity. It is stated that in the month of October, 2008, on an unknown date, at about 9:30 a.m. in the morning, the accused has taken the victim on to the terrace of Mayka Institute of Millennium Complex market which is



opposite to MK College and on the terrace, he had forcible sexual intercourse with her against her consent and thereby raped her. He has stripped off her clothes and has taken her nude video in his mobile and thereafter he has threatened the victim girl with a dire consequences if she discloses about the incident to anyone and also threatened to make the said video viral.

6. Thereafter she did not inform about the incident to anyone including her parents. But she lodged a report with the police after three months from the date of incident on 09/01/2009. The police registered a case for the offences punishable under Sections 376 and 506(2) of the Indian Penal Code and under Section 67 of the Information Technology Act. The case was investigated. The victim was sent for medical examination. Initially she was examined in the hospital at Bharuch and thereafter she was referred to SSG Hospital, Vadodara for an expert examination to find out whether there is any rape on her or not. The doctors who examined her found that her hymen was torn and one or two fingers are admitting into her vagina. They did not find that there are any signs or evidence of forcible sexual intercourse or rape in

their examination as can be seen from the medical certificate issued to that effect.

7. After completion of the investigation, the police filed charge sheet against the accused for the aforesaid offences. The committal court has committed the said case to the court of sessions division. Thereafter, it was made over to learned 4th Additional Sessions Judge, Bharuch for trial and charges for the offences punishable under Section 376 and 506(2) and under Section 67 of the Information Technology Act were framed. He denied the said charges and claimed to be tried.

8. During the course of trial, PW-1 to PW-18 witnesses were examined and 23 exhibits were marked to prove the case of the prosecution against the accused.

9. At the end of the trial, after considering the oral and documentary evidences and on appreciation of the same, the trial court found the accused not guilty of the said charges and acquitted the accused.

10. Feeling aggrieved by the said judgment of acquittal, the

State has preferred the present appeal assailing the legality and validity of the impugned judgment of trial court.

11. The defense that was taken by the accused is that there was a love affair between him and the victim girl and she has voluntarily participated in the sexual intercourse that was taken between both of them with her consent and that it was not a case of rape. He has also produced about 36 photographs showing the intimacy between him and the victim girl examined as PW-14 to prove that there was a love affair between both of them and intimacy between both of them.

12. Admittedly, the victim girl is a major girl aged about 20 years at the time of incident which allegedly took place in the month of October, 2008. As per the version of the prosecution, the offence took place in a broad day light during day time at about 9:30 a.m. on the terrace of Mayka Institue of Millennium Complex market opposite to MK College. It is the version of the victim that the accused has taken her on to the top of terrace of the said Millennium Complex market and committed rape on her on the terrace. Though is stated by

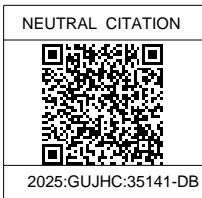
her in her examination-in-chief that she was taken by the accused to the terrace, it is significant to note that in the cross examination she stated that the accused did not take her to the terrace. Thus, she has prevaricated from her statement given in her examination-in-chief in her cross examination. This inconsistency in her evidence regarding the allegation that she was taken by the accused on to the terrace proves that the said allegation made by her in the FIR and her examination-in-chief that the accused took her to the terrace is absolutely false. A careful perusal of her evidence shows that she has voluntarily accompanied the accused on to the terrace. The Mayka Institute of Millenium Complex market is a public place which is situated opposite to MK College in a busy locality. It is unbelievable to state that the accused has forcibly took her on the terrace of said complex which is in a market place and that too during day time at 9:30 a.m. in the morning. So, it clearly indicates and proves that she has voluntarily accompanied the accused on to the terrace of the said complex during the day time.

13. As can be seen from the medical evidence i.e. from the medical reports and the evidence of the doctor, no injuries are



found on her body. We do not find any signs of rape mentioned in the said medical reports and also in the evidence of the doctor. The doctor opined that her vagina was torn and one or two fingers are being admitted into her vagina. When it stated that her clothes were stripped off by the accused, she is expected to resist him and in the said resistance or struggle definitely some injury should be caused to her on her body. No such injuries are found on her body in the medical examination. It indicates that there was no resistance from her even when her clothes were stripped off. This circumstance clearly and clinchingly proves that she has voluntarily accompanied the accused and if at all there is any sexual intercourse between both of them that it was a consensual sexual intercourse between both of them and it is a clear case of consent. We have already noticed that she is a major girl aged about 20 years.

14. The evidence on record shows that both of them are known to each other as they are residing in the same vicinity. One glaring fact that is required to be noticed in this case is that, according the prosecution, the alleged incident took place in the month of October, 2008 on an unknown date at



9:30 a.m. in the morning. She did not disclose about the incident to anyone including to her parents or family members. Three months thereafter, in the month of January, i.e. on 09/01/2009, she lodged a report with the police. There is an inordinate delay in lodging the FIR. Though every delay in lodging the FIR is not fatal to the case of the prosecution, the court expects some explanation from the prosecutrix in lodging the report with such an inordinate delay of three months. No explanation is forthcoming to explain the said delay. Therefore, her silence for a period of three months, absence of injury on her body, absence of resistance from her, absence of any medical evidence relating to forcible sexual intercourse or rape clearly proves that there was no offence of rape committed on the victim PW-14.

15. The photographs which are available on record absolutely leave no room to entertain any doubt that both of them had a love affair with each other and they are moving very closely. The intimate relationship between both of them is very much apparent and evident from the said photographs. So, as both of them are in relationship with each other on account of their love affair and as they are moving together

closely, it cannot be said under any stretch of reasoning or imagination that the accused had forcibly took her on to the top of the terrace and committed rape on her. It is a deliberate false case filed by her against the accused for the reasons best known to her subsequently.

16. The trial court after considering the evidence on record and particularly the medical evidence and the aforesaid photographs and on appreciation of the said evidence arrived at a conclusion that there was no offence of rape committed by the accused and thereby recorded a finding of acquittal in favour of the accused and against the prosecution.

17. We absolutely do not find any manifest error or patent illegality in the said judgment of acquittal. Upon considering said evidence on record and on reappraisal of the same, we are also of the firm view that both the accused and the victim had an affair with each other which is evident from the photographs and if at all there is any sexual intercourse between both of them that it is consensual sexual intercourse that took place with a clear consent of the victim and no offence of any rape or the offence of criminal intimidation was

committed by the accused. As the video said to have been recorded by the accused is not seized and available on record, the offence under Section 67 of the Information and Technology Act is also not proved. So the impugned judgment of acquittal of the trial court is perfectly sustainable in law and it calls for no interference in this appeal.

18. In fine, the appeal is dismissed affirming the impugned judgment of the trial court. Bail bond of the accused, if any, shall stand discharged.

19. Record and proceedings be sent back forthwith to the concerned court.

(CHEEKATI MANAVENDRANATH ROY, J)

(D. M. VYAS, J)

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