

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 958 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

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Approved for Reporting	Yes	No
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RAJESHKUMAR RAMESHBHAI @ RAMNIKBHAI VARSANI

Versus

STATE OF GUJARAT

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Appearance:

MR J M PANCHAL(529) for the Appellant(s) No. 1

MS POONAM M MAHETA(11265) for the Appellant(s) No. 1

MR ROHANKUMAR RAVAL, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

Date : 26/06/2025

ORAL JUDGMENT

1. Mr. J.M. Panchal, learned Senior Advocate has handed over the matter to learned advocate Ms. Poonam Maheta and he has no objection to her appearance, who has instructions to appear for the appellant.
2. Challenge in this appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") is against the judgment and order of conviction

and sentence dated 2.2.2008 passed by the learned Additional Sessions Judge and Presiding Officer, Fast Track Court no.7, Gondal at Dhoraji in Sessions Case no.27 of 2007 for the offence punishable under Sections 354, 506(2), 376 read with Section 511 of the IPC. The accused was ordered to undergo the sentence of one year rigorous imprisonment for the offence punishable under Section 354 and fine of Rs.500/-, in default of payment of fine, one month simple imprisonment and for the offence under Section 506(2), one year rigorous imprisonment and fine of Rs.500/- in default of payment of fine, six months simple imprisonment and for the offence punishable under Section 376 read with 511 of IPC, the sentence of three years and six months rigorous imprisonment with fine of Rs.5,000/- and in default of payment of fine, simple imprisonment of six months. All the punishments were ordered to run concurrently.

3. The complaint was given by the victim PW1 who at the time of the incident was 21 years of age and according to her, the incident occurred on 9.1.2004. She was doing household work and was residing along with the parents

and brother. On that day, her elder brother Vimal had gone to the field and she was on her way to give him rice. It is alleged by the complainant that at that time, the accused chased her. She felt that the accused might be going to his field. As per the complainant at about 12:15 hrs. near the field of Vastaramji, the accused caught victim by her shoulder and snatched bag containing rice and dragged her in the cotton field. It is alleged that the accused pressed her mouth by a handkerchief and when she tried to raise alarm, the accused threatened her to keep silence or else would kill her. She alleged about the forceful act of the accused and also stated that her gown and undergarments were removed upto knee. At that time, she pushed the accused by kicking him and when the complainant victim started shouting, at that time, her aunt Pooja rushed there and on seeing the aunt, the accused ran away.

4. Ms. Poonam Maheta, learned advocate for the appellant has submitted that the charge as framed below Exh.12 in Sessions Case no.27 of 2007 does not get proved by the evidence of the victim herself. Advocate Ms. Maheta

submitted that there is no medical evidence to prove the allegation and further submitted that the evidence before the learned Trial Court suggest that the complainant and the accused were in love relation and since the aunt saw them in the intimate condition, just to save her name, the victim has filed the complaint. Though she was taken to the hospital at Jamkandorna, but the medical evidence does not show any forceful act, which could be considered as an attempt to commit rape. Advocate Ms. Maheta has submitted that even if the medical certificate Exh.26 is to be believed, all the injuries which are minor abrasion on the right side of the shoulder or the injuries on the breast, but such evidence has not been given by the complainant herself. Ms. Maheta further stated that actually, no such incident had taken place and whatever had transpired was a consensual relation and since the aunt saw them, it was a compulsive complaint which gets supported by the evidence of the victim herself. Ms. Maheta further stated that the aunt examined as PW2 is also not supporting the case of the prosecution and she has not referred to any injury as alleged to have been sustained by the complainant.

5. Countering the arguments, Mr. Rohankumar Raval, learned APP has submitted that the evidence has to be read in whole and she has not denied of the act of the accused as alleged. The victim was kept under threat, which can be seen by the subsequent FIR under Sections 504, 506(2) and 114 of the IPC, where within ten days of the incident, she had filed another complaint against the accused alleging that the accused was threatening her to withdraw the complaint.
6. The charge against the accused is under Sections 354, 506(2), 376 read with Section 511 of the IPC. Section 511 of the IPC is for punishment for attempting to commit the offence punishable by imprisonment of life or other imprisonment. The allegation is of attempt to commit rape. Perusal of the evidence of the victim at PW1 affirms that she on that day was going to give rice to her brother. She affirmed that the accused had caught hold at the shoulder and her nighty was torn. She was made to sleep, at that time, her aunt came there and therefore, she stood up and thereafter, the accused ran away from the place and thereafter, she started to meet her brother to give the rice.

After two days, she has informed about the incident to her sister-in-law and also to the mother and father. According to her, to avoid any difficulty in the marriage and family, she had given the complaint late. Thereafter, she was sent for treatment at Jamkandorna hospital. Her clothes were seized. She referred to the document at Exh.16, wherein she in the affidavit affirmed about registration of the name of the school in different name, but she stated that both the names is her identity. She stated that at the time of the incident, the accused had torned her gown and had also open her undergarments. He had kissed her and had placed handkerchief on her mouth and had threatened her. She was also threatened by asking that if she has informed about the incident, then, he would kill her. She also stated that the accused had touched her breast.

7. Advocate Ms. Maheta has referred to the cross-examination to submit that it was a case of love affair and since the family had forced her to file a complaint after a delay of two days, the FIR has been filed. Advocate Ms. Maheta has submitted that the delay itself suggests that the facts have been embroiled to suit her convenience, since it was a

matter of her dignity before the family members as well as aunt who had seen both of them. Ms. Maheta stated that the victim had admitted the love relation and has affirmed of giving the complaint under the pressure of the family.

8. In the cross-examination, PW1 victim has admitted of love relation with the accused. She has also admitted of the complaint filed under the apprehension that the name of her family would get maligned. She also stated that since the aunt had seen both together, she got frightened and after two days, on the instructions of the family, she had given the complaint. In the cross-examination, she has denied the suggestion that the accused has not harassed her and he had not given any threat. She has affirmed that the family of the accused and her family has good relation. She also stated that since the accused had threatened her to settle the matter, she had given the police complaint and also affirmed that on the instructions of the father, she had given the complaint.
9. The complainant victim has admitted of love relation herself and the accused. She also affirmed that under the instructions of the family members, she had given the

complaint. She has denied the suggestion of no harassment from the accused. She herself has stated that since she was fearing of her defamation, she had given the complaint.

10. In the case of **Jai Prakash v. State of Bihar, (2012) 4 SCC 379**, it has been observed as under:-

“12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye- witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

11. The delay of two days in lodging the complaint can be considered since the matter involves dignity of a woman and name of a family, however, the fact remains that the

delay may cause the loss of value of FIR, where it gets bereft of advantage of spontaneity and danger also creeps in by introduction of a coloured version or exaggerated story.

12. The complainant herself has not stated of the injury in her deposition. Exh.26 is of the Community Health Center, Jamkandorna certificate, where the victim was examined on 16.1.2004, while the incident is alleged to have taken place on 9.1.2004. The delay of medically examining the complainant has not been explained. The certificate does not show the time period of the injury. The incident alleged to have taken place on 9.1.2004. The history was so given of assault. However, the Doctor who had examined the victim has not referred the age of the injuries. The history of assault has been given but Exh.26 does not reflect the assaulter's name. This certificate Exh.26 has not been proved by the medical officer. The report was called by Police Sub-Inspector, Jamkandorna Police Station on 16.1.2004, but the same has not been proved by the examination of the medical officer. In absence of the direct evidence of the medical officer, Exh.26 could not be

believed, in absence of any evidence of the victim herself of any such injury sustained by her. It appears that she was with the accused on 9.1.2004. The complainant victim has not given the specific date of the incident in her deposition. However, the complaint suggests the date as 9.1.2004 and the FIR was lodged on 11.1.2004.

13. The victim's age on that day was 21 years. It is not the case that she was minor. The delay of two days would not support the case of the prosecution since it appears that as the aunt has seen both of them and the relation got disclosed, under the fear, she was constrained to file the FIR. The subsequent FIR on 29.1.2004 by the victim against the accused under Sections 504, 506(2) and 114 of the IPC also suggests that the accused wanted her to withdraw the complaint and she under the fear of the family members probably may have given the complaint. Since the FIR has been drawn, the accused have been facing the trial in context to that complaint. She stated in the cross-examination that since the accused were threatening her to settle the matter, she had given a police complaint. However, the overall reading of the evidence

suggest that the relation was consensual, but she has not approved of harassment by the accused. PW2 – Pooja Rasikbhai stated that the complainant victim is the niece. She refers to the incident at the outskirts of Village. She denied of hearing of any noise. She has also denied of any incident being informed to her by the complainant. PW2 was declared hostile. In the cross-examination, she denied of her own statement before police. This PW2 has not supported the complainant. PW3 is Nanjibhai Rathod who as per his statement stated that on 17.1.2006, he had taken the charge of investigation of Criminal Registration no.4 of 2004 and the investigation of the complaint was by V.J. Gadhavi. PW4 is Vishnu Gadhavi who on 11.1.2004 was Police Sub-Inspector at Jamkandorna Police Station, has referred to the complaint Exh.15 and the investigation. The investigating officer has affirmed the complaint subsequently given on 19.1.2004 produced at Exh.21.

14. The overall analysis of evidence suggest that the victim and the accused were in consensual relation. The age of the victim complainant was 21 years at the time of the offence. The case of assault or criminal force to woman with an

intent to outrage her modesty under Section 354 of the IPC could not be said to be proved as the victim had admitted that she was in love relation with the accused. She has not referred to the injuries sustained by her. The medical evidence has not been proved by any of the witnesses. There would not be any case of Section 354 of IPC against the accused. She has referred in the evidence of her torned nighty, but in the same set of facts, she states that thereafter, she had continued on her road to give rice to the brother. This act would not be normal and natural. If that had been so, she would have rather returned back home instead of going in such a condition to meet her brother to give the rice. The FIR, thus, becomes very relevant. Had the assault been with the criminal force to outrage the modesty and when the aunt had seen the incident, the first act of the complainant who being a major would be to go to the Police Station or immediately inform the father who could have rushed to the Police Station against such criminal force of the accused. Delay has become fatal in the matter. The learned Trial Court Judge has not analyzed the evidence from this point of view, where the victim lady being a major was in love relation

with the accused. This admitted fact was required to be analyzed to observe whether there was any criminal force or an assault by the accused. The medical certificate on record does not name the accused as assaulter. The aunt who had seen them is not supporting the case of the complainant. The physical injury is not proved. The delay in medical examination is also not explained. The defence was given no opportunity to challenge Exh.26 since the medical officer of Community Health Center, Jamkandorna has not been examined and when the evidence comes on record that the complaint has been filed to save her name and when the said complainant has not proved the alleged injuries by the actual cogent evidence coupled with the fact that they were in love relation, this Court is of the view that the prosecution has failed to prove the case beyond reasonable doubt and the accused was required to give benefit of doubt. However, seeing the fact that the complainant was threatened on the date of the incident by the accused, the offence under Section 506(1) of the IPC could be believed and since the record suggest that the accused had already undergone the period of 18 days of imprisonment, the sentence is modified by giving benefit of

set off.

15. The appeal is partly allowed and the conviction and sentence is modified as detention already undergone. Hence, the sentence stands modified to that of imprisonment of 18 days undergone. Registry is directed to send the record and proceedings back to the Trial Court forthwith.

Maulik

(GITA GOPI,J)