

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1038 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  
ANILBHAI BABUBHAI DUDHAT

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Appearance:

MS KRINA CALLA, APP for the Appellant(s) No. 1

RULE SERVED for the Opponent(s)/Respondent(s) No. 1

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

Date : 30/06/2025

## ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH  
ROY)

1. Challenge in this appeal is to the judgment dated 15/04/2013 in Sessions Case No.34 of 2011 on the file of the Sessions Judge, Amreli whereby the sole accused in the case was acquitted of the charges under Sections 452, 376 and 506(2) of the Indian Penal Code as well as Section 135 of the

Gujarat Police Act.

2. Facts of the prosecution case germane to dispose of this appeal may briefly be stated as follows:

2.1. The victim in the case is aged about 18 years on the date of lodging report with the police on 15/08/2010. The accused is the resident of the same street where she is residing. It is stated that prior to lodging of the report on 15/08/2010 when the victim was alone in her house as her parents who are labourers went to attend their labour work that the accused trespassed into their house and forcibly committed rape on the victim who is examined as PW-8 and he has threatened her with dire consequences if she discloses about said incident to anyone. Thereafter also the accused repeatedly used to visit the house of PW-8 when she was alone in the house and commit rape on her and consequently she became pregnant. But she did not inform about the incident to anyone or even about her pregnancy till she became 7<sup>th</sup> or 8<sup>th</sup> month pregnant. So when she was in advanced stage of pregnancy she informed to her parents that the accused had sexual

intercourse with her and that she became pregnant.

2.2. At that time, she lodged a report with the police on 15/08/2010. The police registered a crime against the accused for the offences punishable under Sections 452, 376 and 506(2) of the Indian Penal Code and under Section 135 of the Gujarat Police Act. She was examined by the doctor and the doctor who examined her opined that she is habituated to sexual intercourse.

3. After completion of the investigation, the police filed charge sheet against the accused for the aforesaid offences.

4. The trial court framed charges against the accused for the offences punishable under Sections 452, 376 and 506(2) of the Indian Penal Code and under Section 135 of the Gujarat Police Act. The accused denied the said charges and claimed to be tried.

5. During the course of the trial, the prosecution got

examined PW-1 to PW-13 witnesses and got marked 21 exhibits to prove its case against the accused.

6. At the end of the trial, after considering the oral and documentary evidence on record, the trial court acquitted the accused of the said charges as it did not find him guilty for the aforesaid offences. Aggrieved by the impugned judgment, the State has preferred the present appeal.

7. In Section 313 examination of the Criminal Procedure Code, the accused has come up with a version that both he and PW-8 were in love with each other and they had consensual sexual intercourse with each other and he has also produced their joint photographs in support of his defense version.

8. When the appeal came up for hearing before this Court, we have heard learned Additional Public Prosecutor, Ms.Krina Calla for the State. Despite service of notice, respondent did not turn up for hearing, for the reasons best known to him. As it is an old appeal of the year 2013, listed under the caption

“critically old matters” for final hearing, we are not inclined to adjourn the hearing of the appeal. Therefore, we have decided to go through the record and dispose of the appeal on merits and the material available on record.

9. Admittedly, the victim who is examined as PW-8 is a major aged about 18 years. Though it is stated by her at the first instance that while she was alone in the house that the accused has trespassed into her house and had forcible sexual intercourse with her, there is absolutely no medical evidence on record to prove that any forcible sexual intercourse was performed on her by the accused against her consent. It is relevant to note here that even according to her own version, there are repeated incidents of both of them involving in sexual intercourse spreading over for a period of time. Either at the first instance or at any subsequent instances, she never informed either to her parents or to her elder brother or elder sister or any of her family members that the accused trespassed into her house while she was alone and raped her and threatened her with dire consequences and thereafter he had repeatedly committed rape on her. Even

after she become pregnant also, she did not disclose about the incident to any of her family members. After she reached to the advanced stage of pregnancy she was admitted in the hospital and at that time it was informed that she became pregnant through the accused. Thus, the conduct of PW-8 in remaining silent throughout for a considerable period of time till she became pregnant and till she reached the advanced stage of pregnancy clearly proves that it is a clear case of consent and not at all a case of rape or having any forcible sexual intercourse on her without her consent. As admittedly she is a major girl aged about 18 years and as it is a case of consent where she indulged in consensual sexual intercourse willingly with her own consent with the accused, no offence under Section 376 of the Indian Penal Code is made out from the facts and circumstances of the case. Therefore, no offence of criminal trespass of the house under Section 452 of the Indian Penal Code or criminal intimidation under Section 506(2) of the Indian Penal Code is also made out from the facts of the case. It is pertinent to note here that the doctor who examined her had clearly testified to that fact that she is habituated to sexual intercourse. So, it clearly proves that she has indulged in the act of promiscuity and it is not at all a

case of rape punishable under Section 376 of the Indian Penal Code.

10. According to the submissions made by learned APP, it has come in evidences that at the time of trial she was already married to some other person and she is leading her marital life with him.

11. Therefore, considering the evidence on record and the facts and circumstances of the case and said subsequent events and on appreciation of the same, the trial court has rightly recorded a finding that the accused is not found guilty for the said charges levelled against him and accordingly acquitted him. After considering the said evidence on record, we are also of the considered view that no case of Section 376 of the Indian Penal Code or Sections 452 and 506(2) of the Indian Penal Code or under Section Section 135 of the Gujarat Police Act is made out from the facts and circumstances of the case. So, the impugned judgment warrants no interference of this Court in this appeal.

12. Ergo, the appeal is dismissed affirming the impugned judgment of the trial court. Bail bond, if any, shall stand cancelled.

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

**(CHEEKATI MANAVENDRANATH ROY, J)**

**(D. M. VYAS, J)**

ILA