

(2025) 12 GUJ CK 0002

Gujarat High Court

Case No: R/Criminal Appeal No. 1212, 1213 Of 2005

State Of Gujarat

APPELLANT

Vs

Himmatsinh Bhavansinh
Chauhan & Anr.

RESPONDENT

Date of Decision: Dec. 12, 2025

Acts Referred:

- Indian Penal Code, 1860-Section 114, 363, 366, 376
- Code Of Criminal Procedure, 1973-Section 378

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

Bench: Division Bench

Advocate: JK Shah, Hemal A Dave, JD Chakravarti

Final Decision: Dismissed

Judgement

Ilesh J. Vora, J

1. Here are the Appeals by the State against the judgment and order of acquittal.
2. Since the facts of the case and issue involved in the above appeals are identical and arise out of the same common judgment, both the appeals are taken up together and are being disposed of by this common judgment.
3. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Fast Track Court No.2, Godhra, in Sessions Case No.424 of 2003 and 41 of 2004, dated 01.02.2005, acquitting the respondents-accused from the offence under Sections 363, 366 and 376 read with Section 114 of the IPC, the State has preferred instant appeals under Section 378 of the Cr.P.C.
4. This Court has heard Mr. J. K. Shah, learned Additional Public Prosecutor and Mr.Chintan Gandhi, Mr.Hemal Dave and Mr.J.K.Charkravarti,, learned advocates, for the respective parties.

5. It is reported that Himmatsinh Chauhan-accused no.1 and Mahendrasinh @ Kalio Himmatsinh Chauhan-accused no.3, during the pendency of these appeals, have passed away. The appeals qua respondent-accused nos.1 and 3 stands abated.
6. Brief facts giving rise to file the present appeals are that, the accused accused no.3-Mahendrasinh Chauhan was in relation with the victim aged about 17 years, as a result, on 3.7.2003, according to prosecution case, the victim was kidnapped by the accused no.3 and taking her at different places and stayed together for about four months as husband and wife. The relations of the victim and the accused was not acceptable to the complainant party. Prior to the incident, heated exchange of words had taken place between two families. In such circumstances, the FIR came to be filed against four accused, inter alia, alleging that the accused no.1, 2 and 4 being family members of accused no.3 have abated in the act of kidnapping and abduction and the accused, in all, have committed the offence alleged. Upon the arrest of the accused at different dates, two charge-sheets came to be filed and the cases were committed to the Sessions Court. In the joint trial of two sessions cases, the accused were tried for the offences with whom they were charged and at the conclusion of the trial, they were acquitted of all the charges.
7. In view of the aforesaid facts and circumstances, these acquittal appeals have been preferred by the State.
8. So far as charge of rape is concerned, the principal accused Mahendrasinh Chauhan has already died and the appeal qua him stands abated and, therefore, there is no need to determine the complicity of the accused on the charge of rape. So far respondents-accused are concerned, there is a charge against them that they have abated the principal accused in the act of kidnapping and abduction.
9. We have carefully examined the oral evidence, more particularly, the evidence of complainant, PW-1 and the victim, PW-5. Upon careful examination of the oral evidence, no any direct allegation being made against the abettors of the offence that on the day of the incident, they accompanied the principal accused and facilitated him in commission of the crime. The only allegation was being made that prior to the incident, the father Himmatsinh threatened the complainant that they will abduct her daughter at any time. In such circumstances, there is no need to refer the entire oral evidence adduced by the prosecution.
10. Mr.J.K.Shah, learned Additional Public Prosecutor appearing for the appellant-State, assailing the judgment and order of acquittal, has submitted that the findings of acquittal are contrary to law and evidence on record and the findings recorded are palpably erroneous and based on the irrelevant material. The victim and her mother have categorically stated that the respondents-accused had facilitated the principal accused in commission of the crime and having regard to the age of the victim, ingredients of offence punishable under Section 363 and 366 are attracted and, therefore, it is submitted that the conclusion of acquittal recorded

by the Trial Court is contrary to the evidence on record and upon erroneous understanding of law. Thus, it is prayed that the prosecution has succeeded in proving the charge against the respondents accused and the judgment and order of acquittal be set aside and accused may be convicted and sentenced for the offence as referred above.

11. Mr.Chintan Gandhi, Mr.Hemal Dave and Mr.J.K.Charkravarti, learned advocate appearing for the respondents-accused have submitted that the High Court in a case of Appeal against the acquittal, can interfere only when there are compelling substantial reasons for doing so and more particularly, the findings are without reasons and unreasonable and contrary to the evidence. In the facts of the present case, the allegations of abatement in commission of the crime seems to be afterthought and being alleged with a view to pressurize the principal accused as well as harass the entire family and, therefore, in absence of acceptable and admissible evidence on the aspect of abatement in commission of crime, the trial Court has rightly acquitted the respondents-accused.

12. In such circumstances, referred to above, learned counsels appearing for the respondents accused, have submitted that the Trial Court while acquitting the accused assigned cogent and sufficient reasons and therefore, the judgment of acquittal passed is well reasoned, legally sustainable and does not suffer any infirmity warranting interference by this Court.

13. Before proceeding to address the rival submissions, we would like to place on record the scope of interference in an appeal against the acquittal and when the same is justified. In exceptional cases, where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the judgment of acquittal. The Appellate Court should bare in mind the presence of innocence of the accused and further that, the trial Courts acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view of possible should be avoided, unless there are reasons for interference.

14. In the present case the issue falls for our consideration as to whether the trial Court was justified in acquitting the accused?

15. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the Trial Court. In the facts of the present case, the witnesses have not stated against the accused family members that they had abated and aided the principal accused-Mahendra in commission of the crime. The trial Court has rightly come to a conclusion that the family members being implicated because of the act of accused Mahendra, who had kidnapped the daughter of the PW-1. In such circumstances, we do not find any iota of evidence against the accused for the abatement and aiding the principal accused in the act of kidnapping and abduction. We are in agreement with the view taken by the Trial

Court on the aspect of involvement of the accused herein.

16. In such circumstances, in absence of any independent evidence, the prosecution failed to prove the charge of abatement in commission of offence of kidnapping against the accused beyond reasonable doubt. Thus, therefore, the view of the Trial Court as to the credibility of the witnesses is possible and plausible view and the Trial Court while analyzing the evidence has assigned cogent and sound reasons and therefore, findings of acquittal are reasonable and based on the evidence on record and we do not find any perversity in the findings of acquittal so as to interfere. Thus, in our considered opinion, the Trial Court was justified in acquitting the accused and we are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the Court below and hence finds no reason to interfere with the same.

17. With the observations as aforesaid, the appeals are accordingly **dismissed**. The Registry is directed to send back the R & P to the Trial Court. Bail bonds are cancelled, if any, and surety is discharged.