(2025) 12 SC CK 0020

Supreme Court

Case No: Criminal Appeal No. 890-891 Of 2017

Jayantibhai Chaturbhai Patel	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision: Dec. 16, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 313
- Indian Penal Code, 1860- Section 376, 376(2)(d)

Hon'ble Judges: Sanjay Karol, J; Vipul M. Pancholi, J

Bench: Division Bench

Advocate: Siddharth Agrawal, Nikhil Goel, Ashutosh Ghade, Saloni Meshram, Deepanwita Priyanka, Swati Ghildiyal

Final Decision: Allowed

Judgement

Vipul M. Pancholi, J

1. The appellant has filed the present appeals challenging the common Judgment and Final Order dated 28/29.11.2016 (hereinafter referred to as the impugned order) passed by the Gujarat High Court in Criminal Appeal No. 151 of 2003 (filed by the appellant-accused) and Criminal Appeal No. 501 of 2003 (filed by the State).

2. The High Court vide the impugned order dismissed the appeal preferred by the appellant-accused whereas the appeal preferred by the State for enhancement of the sentence awarded to the appellant-accused was allowed.

3. The factual matrix of the present case is as under:

i. It is a case of the prosecution that the appellant-accused was a doctor having medical practice at Himmatnagar, Gujarat. The informant, i.e. the victim, used to go to the appellant-accused for her treatment for pain in her stomach. On 08.05.2001, the victim, along with her husband, had gone to the appellant-accused at his dispensary in the morning hours. The victim was taken in the chamber by the

appellant-accused for examination, wherein at first she was taken inside for screening and thereafter to an operation room, where after fondling with her in the guise of examination, the appellant-accused forcibly committed intercourse with her, which left scratches and bruises on her neck since she had resisted. The victim came out of the room and immediately narrated the incident to her husband weeping.

ii. On the basis of the aforesaid allegations, First Information Report (hereinafter referred to as FIR) came to be lodged against the appellant-accused. The Investigating Officer carried out the investigation and thereafter filed the charge-sheet against the appellant-accused. The case was committed to the Sessions Court. During the trial, the prosecution examined nine witnesses and produced various documentary evidence. Further statement of the appellant-accused under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Cr.P.C.) came to be recorded.

iii. After conclusion of the trial, the Trial Court convicted the appellant-accused for committing offence punishable under Section 376(2)(d) of the Indian Penal Code, 1860 (hereinafter referred to as the IPC) and sentenced him to rigorous imprisonment for six years.

iv. Thereafter, the appellant-accused preferred an appeal against the order of conviction recorded by the Trial Court whereas the State preferred an appeal seeking enhancement of the sentence of the appellant-accused, as the Trial Court has awarded the sentence less than the minimum prescribed sentence for the offence under Section 376 of the IPC.

v. Vide the impugned order, the High Court dismissed the appeal preferred by the appellant-accused whereas allowed the appeal preferred by the State, thereby sentence awarded by the Trial Court has been enhanced to rigorous imprisonment for ten years.

4. The appellant-accused has, therefore, preferred the present appeals against the impugned common order passed by the High Court.

5. Heard learned Counsels appearing for the parties.

6. Learned Counsel for the appellant-accused mainly contended that:

i. PW-1/victim/informant had not supported the case of the prosecution. Similarly, PW-2, husband of the victim, had also not supported the case of the prosecution. Therefore, both were declared hostile, despite which the Trial Court as well as the High Court have placed reliance upon the FIR given by the informant-victim. In fact, the High Court has convicted the appellant-accused by converting a case of eye-witness account (direct evidence) into a case of circumstantial evidence. The High Court has further committed an error by holding that the victim and her husband have been won over by the appellant-accused. It is further contented that

during the proceedings before the Trial Court it was not the case of the prosecution that the victim and her husband have been won over by the appellant-accused.

ii. Learned counsel at this stage submits that in fact, after the recess, the request was made on behalf of the victim that the matter be adjourned because of the ill health of the victim. Therefore, the matter was adjourned. Further, when the examination-in-chief of the victim was thereafter recorded, she did not support the case of the prosecution. Thus, it is contended that the High Court has wrongly presumed that the victim and her husband have been won over.

iii. It is a settled law that conviction can never be based on FIR or statement of witnesses recorded during the course of investigation. The Investigating Officer cannot indirectly prove what the witnesses have failed to prove. In support of the said contention, learned Counsel for the appellant-accused has placed reliance upon the following decisions:

a. **Lalita Vs. Vishwanath and Ors. [2025 SCC Online SC 370];**

b. **Renuka Prasad Vs. State [2025 SCC Online SC 1074];** and

c. **Pandurang Chandrakant Mhatre and Ors. Vs. State of Maharashtra [(2009) 10 SCC 773].**

iv. When the victim has not supported the case of the prosecution and has denied the allegations in the case, her evidence becomes wholly unreliable. However, the High Court has held that when the prosecutions case hinges on the sole testimony of victim and victim herself becomes unreliable, conviction can be made looking at the oral evidence laid by the prosecution. It is contended that the High Court has presumed that the victim and her husband (PW-1 & PW-2) have been won over. Learned counsel has, at this stage, placed reliance upon the following decisions:

a. **Tameezuddin vs. State [(2009) 15 SCC 566];**

b. **Nirmal Premkumar and Anr. Vs. State [2024 SCC Online SC 260]; and**

c. **Sadashiv Hadbe Vs. State of Maharashtra [2006) 10 SCC 92].**

v. Even medical evidence does not support the case of the prosecution. Learned Counsel has referred to the deposition given by doctor (PW-7).

vi. All the independent witnesses, including the witnesses of recovery panchnama, have turned hostile. Learned Counsel referred to the deposition given by PW-3 & PW-5. The said witnesses have stated that their signatures were taken on written papers only at the instance of the police and they do not know the contents of Panchnama and also denied production of clothes before them.

vii. Three independent witnesses were present in the clinic as per the case of prosecution and were in fact material witnesses in the chargesheet, the prosecution has failed to examine the said independent witnesses. Learned Counsel, therefore,

urged that though the prosecution has miserably failed to prove the case against the appellant-accused beyond reasonable doubt, the Trial Court as well as the High Court committed an error while recording the order of conviction against the appellant-accused herein. Learned Counsel, therefore urged that the impugned judgment and order of conviction be quashed and set aside and thereby the appellant-accused be acquitted.

7. On the other hand, learned ASG appearing on behalf of the respondent-State has vehemently opposed the present appeals. He would mainly submit that:

i. Serious allegations are levelled against the appellant-accused of committing rape on the victim and in fact the victim had deposed in her examination-in-chief with regard to visiting the clinic of the appellant-accused and initial treatment given by the appellant-accused to her. However, thereafter the witnesses were won over and therefore, the compromise agreement was placed before the Trial Court.

ii. The High Court has rightly discussed the evidence against the present appellant-accused in para 22 of the impugned order.

iii. The victim has given a history of being raped by the appellant-accused when she was first examined by doctor-Vinod Kavjibhai Varsat (PW-7). This doctor had also noticed scratch marks on the neck of the victim and opined that the same could be due to the resistance that the victim might have put up during the intercourse.

iv. The petticoat of the victim had multiple stains of Semen. The pants and undergarments of the appellant-accused also had similar stains. It is further contended that the group of stains found from the petticoat of the victim and clothes of the appellant-accused were of group B. The blood group of the appellant-accused was also B.

v. Learned ASG, therefore, contended that though victim and her husband have not supported the case of the prosecution and they have turned hostile, looking to the other evidence laid by the prosecution it can be said that the prosecution has proved the case against the appellant-accused beyond reasonable doubt and therefore, the Trial Court as well as the High Court have rightly recorded the impugned judgment and order of conviction of the appellant-accused and therefore no interference is required.

8. Having heard learned Counsels for the parties and having gone through the evidence laid by the prosecution before the Trial Court, it would emerge that the victim-informant filed the FIR against the appellant-accused alleging that the appellant-accused committed rape on her. The manner in which the incident took place has been narrated by the victim-informant in the FIR. After the registration of the FIR, the Investigating Officer collected the evidence, prepared panchnamas and also recorded the statements of the witnesses, including the victims husband and other independent witnesses who were present in the clinic of the

appellant-accused. Thereafter, the chargesheet came to be filed against the appellant-accused.

9. During the course of the trial, the prosecution examined the victim-informant as PW-1. In her examination-in-chief, she has deposed that she visited the hospital of the appellant-accused on 08.02.2001 with her husband. Thereafter at about 9.00 a.m., she was called inside. She and her husband therefore went inside the room of the appellant-accused. At that time, appellant-accused told that he will have to examine the victim by screening. Therefore, the victim went into a room for screening test. The husband of the victim was waiting outside the said room and thereafter her husband went out to get the medicines. She was taken to operation room by the appellant-accused for checking. She was told to lie down on the table and after examining, forceps were inserted in the private part. Therefore, she jerked up and the appellant-accused caught her and threw her down from the stretcher. It is relevant to note that after this much deposition of PW-1 was recorded, the witness examination-in-chief was adjourned because of the recess and after recess, request was made on behalf of PW-1 that she was not feeling well and therefore, she requested for adjournment. The case was therefore adjourned for the next day and thereafter, the matter was adjourned from time to time. It is further relevant to observe that PW-1, thereafter, did not support the case of the prosecution and she has turned hostile. Similarly, PW-2, husband of the victim, did not support the case of the prosecution and he was also declared hostile.

10. This Court, in the case of **State of Rajasthan v. Bhawani**, **(2003) 7 SCC 291,** has held that where the witness has been declared hostile, the court should be slow to act on the testimony of such a witness. Similar stance was reiterated by this Court in the case of **Paramjeet Singh v. State of Uttarakhand**, **(2010) 10 SCC 439**. The relevant paragraph of **Bhawani (Supra)** reads as under:

10. The fact that the witness was declared hostile by the Court at the request of the prosecuting counsel and he was allowed to cross-examine the witness, no doubt furnishes no justification for rejecting en bloc the evidence of the witness. But the court has at least to be aware that prima facie, a witness who makes different statements at different times has no regard for truth. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to the same. The court should be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence ..

11. Keeping in view the aforesaid decisions rendered by this Court, if the evidence laid by the prosecution is once again examined, it transpires that PW-1 & PW-2, the victim and her husband, have not supported the case of the prosecution, and therefore, they were declared hostile. Thus, deposition of such witnesses cannot be relied upon. As the victim and her husband did not support the case of prosecution, the other evidence laid by the prosecution are required to be scrutinized closely. It is

relevant to note, at this stage, that the High Court has placed reliance upon the deposition given by the Investigating Officer and the recovery of clothes of the appellant-accused as well as the victim. Further, the High Court has also placed reliance upon the report of the FSL and relying upon the said evidence, the impugned order has been passed.

12. It transpires that the High Court has mainly placed reliance upon stains of semen found on the clothes of the victim as well as the appellant-accused and the observation has been made by the High Court that blood group of the appellant-accused was B and the group of stains found from the clothes of the victim and clothes of the appellant-accused were also of group B and as such, the High Court has placed reliance upon the panchnamas of the recovery of the clothes as well as the FSL report.

13. Therefore, at this stage, we have gone through the deposition given by PW-3, i.e., panch witness of recovery of clothes of the appellant-accused. The said witness deposed that his signatures were obtained on the written paper and he signed at the instance of the police. He has also stated that it is not written that appellant-accused is present in the police station and clothes are produced before him and a panchnama has been drawn in this regard and they have made signatures regarding the same.

14. Similarly, PW-4, another panch witness, has also deposed that police took signature in an already prepared panchnama and he made signatures at the instance of the police. He further deposed that he does not know what the write up was about.

15. Thus, from the deposition given by panch witnesses of recovery of clothes of the appellant-accused as well as the victim, it transpires that their signatures were obtained on the written paper at the instance of the police. The said witnesses had no occasion to go through the contents of the said panchnama. Thus, the High Court has committed an error while placing reliance upon the stains of semen found on the clothes of the victim as well as the appellant-accused while passing the impugned judgment and order.

16. PW-6, Dr. Rita Sinha had examined the appellant-accused when he was brought before her by the police for medical examination. The said doctor in paragraph 2 has specifically stated that the patient was told to give samples of semen, but he could not give it even though he had tried for the same and hence, it could not be obtained. The said doctor in paragraph 3 further stated that a certain opinion cannot be given in respect of physical intercourse.

17. PW-7, Dr. Vinod Kavjibhai Varsat, the doctor who had examined the victim, has also stated that the victim did not have any marks of injury on her breast and hands. However, she had an abrasion of size of 1cm x 3cm on the left side of her neck, caused by a nail. Another abrasion of the size of 1x1.3 cm was also found at a

distance of 2 cm from the main line of neck. The said doctor, further, stated that there were no injuries on her private part or in her inner portion. On performing medical examination no sign of pubic hair, semen or blood were found. Presence of semen was not found on the part of her vagina. He further deposed that there appeared to be no injury around her private parts internal portion or external portion. During cross examination, the said witness stated that it is true that on examining the patient, no sign of having physical intercourse in the recent time has appeared. At the same time, the said witness also stated that no sign except marks of abrasion on the neck have appeared.

18. Keeping in mind the depositions of the prosecution witnesses and the law with regard to the testimony of hostile witness, the reasoning recorded by the Trial Court as well as the High Court is examined, it would emerge that the High Court in paragraph 22 of the impugned judgment and order presume certain aspects. We are of the view that when the main witness of the prosecution, i.e. the victim herself, has not supported the case of the prosecution, it is not open for the Court to presume that she did not support the case of the prosecution because the appellant-accused has won over the said witness. Moreso, PW-2, i.e., the husband of the victim, also did not support the case of the prosecution. Further, as observed hereinabove the medical evidence also does not support the case of the prosecution.

19. Furthermore, it is also relevant to observe that three independent witnesses who were present at the place of occurrence, i.e. in the hospital/clinic of the appellant-accused, though cited as prosecution witnesses in the chargesheet, were not examined by the prosecution. Furthermore, the medical evidence also does not support the version of the prosecution. Merely because the victim has levelled allegations against the appellant-accused in the FIR and the investigating officer has deposed before the Court with regard to the contents of the said FIR, it cannot be presumed that the allegations levelled in the FIR are true and correct unless the same is proved during the course of trial by leading cogent evidence.

20. Looking at the overall facts and circumstances of the present case, we are of the view that the Trial Court as well as the High Court have committed an error by recording the order of conviction of the appellant-accused and therefore, the said orders are required to be quashed and set aside.

21. Accordingly, the present appeals are allowed and the judgment and order dated 03.02.2003 rendered by the Trial Court in Sessions Case No. 68 of 2001 is set aside. Similarly, the common impugned judgment and order dated 28/29.11.2016 passed by the High Court in Criminal Appeal No. 151 of 2003 and Criminal Appeal No.501 of 2003 is set aside.

22. As the appellant-accused was released on bail, his bail bonds, if any, shall stand discharged.