

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 1150 of 2026**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

**and
HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No

STATE OF GUJARAT
Versus
VIPULSINH S/O DEEPSINH AGRUSINH

Appearance:
MR ROHAN RAVAL, APP the Appellant(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI
Date : 07/10/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)**

1. Here is the Appeal filed under Section 419 of BNSS (corresponding Section 378 of the Cr.P.C.), by the State against the judgment and order of acquittal.

2. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Idar, passed in Special (POCSO) Case No.31 of 2022, dated 29.11.2025, acquitting the accused respondent for the offences punishable under Sections 302, 376(2)(n)(3) of the IPC, and Sections 4, 5(L) and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO), the State has preferred instant appeal.

3. We have heard Mr.Rohan Raval, learned APP for the State.

4. The factual matrix of the case is as under:

4.1 That the respondent accused Vipulsinh Dipsinh was tried and prosecuted for the offence of rape and murder, allegedly committed upon his minor fiancée. On 09.07.2022, the dead body of the deceased found in the farm of Hareishbhai, at Village Chadap, Idar, Himmatnagar. According to the prosecution case, on 09.07.2022, the deceased was called upon by the accused at the place of offence and committed rape upon her and harboring suspicion, strangled her with his hand until she lost consciousness and again, to kill her, strangled her using scarf, thereby, he committed a murder and then, fled away from the spot. The dead body was initially seen by the sister of the deceased. The family of the deceased gathered at the place and then, police was informed accordingly. The offence of murder against unknown person being registered with Idar Police Station as C.R.No.878 of 2022. The police took visit the place of the incident and collected the necessary samples after drawing the panchnama of scene of occurrence. The dead body of the deceased was sent for postmortem and during the postmortem, the necessary samples from the vagina taken by the doctor and sent to FSL for forensic science analysis. The accused, thereafter, came to be arrested. When he was under the police custody, he saw the place of incident, confessing that he has killed the deceased. The sample of spermatozoa of the accused being matched with the vaginal swab of the deceased. The accused before the doctor gave a history that *“the victim’s throat was being pressed by him, as a result, her foot slipped accidentally and due to fear and panic, he tightened the scarf around her neck and tide the note.”* The I.O., during the investigation, obtained the call details from the mobile phone of the accused. In such circumstances, the chargesheet for the charge of rape and murder along with the offences punishable under

the POCSO Act came to be filed before the Magistralial Court and the case was committed to the Court of Sessions.

5. The learned Sessions Judge framed charge to which the accused pleaded not guilty and claimed trial.

6. In order to prove the charge, the prosecution has examined as many as 28 witnesses and relied upon 54 exhibited documents.

7. On conclusion of oral evidence, the Trial Court recorded further statements of the accused as provided under Section 313 of the Code, wherein, he claimed his innocence and stated that he has been falsely implicated in the offence. The accused had further stated that he was in love with the deceased and used to talk with her on mobile.

8. The learned Sessions Judge, after appreciating and examining the oral as well as documentary evidence, acquitted the accused herein for the offences with which he was charged. The Trial Court while acquitting the accused, has observed that the prosecution miserably failed to prove that the deceased was minor at the time of incident. The Trial Court has further held that the prosecution miserably proved the charge of rape and murder against the accused beyond reasonable doubt. While acquitting the accused, the Trial Court observed that the prosecution case entirely based on circumstantial evidence. The circumstances relied upon by the prosecution like; motive, conduct of the accused, showing the place by the accused in terms of discovery panchnama under Section 27 of the Evidence Act, forensic evidence pointing towards the guilt of the accused, having not been proved by way of reliable clinching evidence and various link as referred in the chain of circumstances are inconclusive

and does not cogently and firmly establish to draw a conclusion that within all human probabilities, the crime in question being committed by the accused and non-else.

9. In such circumstances, the Trial Court while acquitting the accused, held and observed that the prosecution has not been able to prove the charge against the accused by reliable and cogent evidence beyond reasonable doubt.

10. Mr.Rohan Raval, learned counsel appearing for the appellant - State, while assailing the impugned judgment and order of acquittal, made the following submissions:

(A) 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;

(B) That the Trial Court failed to appreciate that the school records produced by the prosecution proves that at the relevant time, the deceased was minor. The Trial Court discarded the substantial and admissible evidence with respect to the date of birth and therefore, the findings on the aspect of age is contrary to the evidence on record and settled principle of law.

(C) That the motive for murder is clearly established, however, the Trial Court has ignored the material circumstance, as the accused was used to talk with the deceased on mobile phone and the evidence of call details shows that the deceased was called upon at the place by the accused.

(D) That after arrest of the accused, he had given an information to the police leading to the discovery of place of incident in terms of discovery panchnama under Section 27 of the Evidence Act.

(E) That the forensic evidence proves that the spermatozoa of the accused matched with the samples obtained from the body of the deceased.

(F) That the accused after the arrest was brought before the doctor for medical examination where he made voluntarily disclosure about how he had killed the deceased.

11. In such circumstances, Mr.Rohan Raval, learned APP submitted that the prosecution succeeded in proving the charge against the accused beyond reasonable doubt and chain of incriminating circumstances required to bring home the guilt of the accused is complete in all aspects, and therefore, when the complete chain of events leading to the involvement of the crime in question is proved and established, the Trial Court, in that view of the matter, while acquitting the accused committed a serious error in appreciating the evidence. Therefore, the findings of acquittal are not based on the evidence, suffers from legal infirmity, perverse and fundamentally erroneous and thus, it is prayed that the impugned judgment is not sustainable in law.

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

13. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the Trial Court.

14. 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 bear in mind the presence of innocence of the accused and further that, the trial Court's 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.

15. Undoubtedly, the prosecution case rests on the circumstantial evidence. The law with regard to the conviction on the basis of circumstantial evidence has been laid down in the judgment of **Sharad Bardhichand Sharda Vs. State of Maharashtra (1984 (4) SCC 116)**. The Supreme Court in the said judgment has observed "panchsutra" for dealing with the cases of circumstantial evidence. These are as follows:

"(1) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established;

(2) all the facts so established should be consistent only with the hypothesis of guilt of the accused;

(3) Again, the circumstances should be of a conclusive nature and tendency;

(4) they should be such as to exclude every hypothesis but the one

proposed to be proved;

(5) there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

16. It is also well settled that each and every individual circumstances should establish and suspicion howsoever strong, cannot take place of proof beyond reasonable doubt. In this regard, the Supreme Court in **Kamal Vs. State (NCT of Delhi), 2023 SCC Online 933**, held thus,

"18. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned "must or should" and not "may be" established. It has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

19. *It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the*

light of these guiding principles, we will have to consider the present case."

17. In light of the aforesaid guiding principles, we will have to determine the following circumstances relied by the prosecution.

(i) That the accused was having suspicion on the deceased and that is why, she was called upon by him at the place of offence and therefore, the suspicion on the deceased was the motive to kill her.

(ii) That on 09.07.2022, the accused committed a rape on her.

(iii) That after commission of the rape, the deceased was strangled until she lost consciousness by the accused and thereafter, using scarf, she was strangled to death.

18. Having regard to the evidence on record, the issue falls for our consideration as to whether the circumstances as referred above forms chain of events pointing only to the guilt of the accused and non-else.

19. It is not in dispute that the death of the deceased is homicidal in nature and therefore, there is no need to further discussion on this issue.

20. Now let us examine the circumstances relied upon by the prosecution.

(1) Motive – In the facts of the present case, none of the witnesses including the parents and relatives of the deceased have deposed against the respondent accused. On the contrary, they stated that the relation of the deceased and the accused were cordial

and due to their relation, they have no doubt or suspicion that the accused would kill the deceased. Therefore, there is no iota of evidence to prove that accused was having suspicion on the character of the deceased. Thus, the motive behind the murder is not proved and established.

(2) The act of rape and murder – It is alleged that the accused after calling the deceased committed rape upon her and then, by strangulation, caused her death. In this regard, the prosecution mainly relied on the call details, forensic science evidence and during the custody, the accused pointed out the place of incident as well as the history before the doctor. In the present case, the call details would show that the accused and the deceased were in contact each other and that facts have been admitted by the accused as well as the witnesses. However, the facts remain that the no any transcript of the call details being produced to prove the motive behind the murder. Therefore, the circumstances of the call details cannot be said to be incriminating circumstances to prove the involvement of the accused herein. So far as forensic science evidence is concerned, the I.O. did not have obtained the samples for DNA analysis report. Therefore, the matching of blood-A group with the result of vaginal swab of the deceased cannot be accepted as incriminating evidence against the accused because in absence of DNA analysis report, it is difficult to arrive at the conclusion on the basis of forensic evidence that the accused had intercourse before the death of the deceased. The other circumstance evidence relied upon by the prosecution is the pointing out the place of incident by

the accused on the basis of his disclosure statement in terms of Section 27 of the Evidence Act. In this regard, we have examined the evidence of Sumit Patel who is the witness of discovery panchnama. He failed to depose that the accused was asked in his presence to make an appropriate statement as he made desire with regard to pointing out the place where the incident occurred. Even I.O. who had prepared the panchnama failed to depose that the accused while in custody on his own free will and volition made a statement that he would lead to the place where the incident occurred. It is also relevant to note that before the discovery panchnama of pointing out the place by the accused, the I.O. already took visit of place of occurrence and therefore, it cannot be said that on the basis of the statement, the facts about the place of offence have been discovered in consequential information. Therefore, the evidence of pointing out the place of the incident by the accused cannot be taken into consideration. The last circumstance is the history before the doctor allegedly disclosed in the form of guilt of the offence by the accused. Admittedly, the accused was escorted by the police at the hospital and in the presence of the police, the doctor had noted the history. In the police yadi, the factum of role attributed to the accused in the crime having been mentioned by the I.O. Thus, therefore, the statement before the doctor cannot be said to be the voluntary statement and it is barred under Sections 25 and 26 of the Evidence Act as no confession made by the accused whilst he was in custody of the police officer shall be proved against him.

21. In view of the discussions aforementioned made hereinabove, we are of the considered opinion that the prosecution failed to prove all incriminating necessary circumstances by reliable and clinching evidence which would constitute a complete chain without any gap, pointing to the guilt of the accused. We are conscious about the seriousness of the offence but the circumstances howsoever strong cannot take place of proof and conviction is not permissible on the basis of suspicion. It is in this context, we may profitably refer the observations made by the Supreme Court in the case of **Surendra Koli Vs. State of U.P. (2025 LawSuit S.C. 1479)**, wherein while acquitting the accused, it was observed that when the proof fails, the only lawful outcome is to set aside the conviction even in a case of involving horrific crime.

22. In light of what has been noted above, the view taken by the Trial Court for acquitting the accused is plausible view and the findings of the acquittal being considered after proper appreciation of the evidence and thus, we do not find any perversity in the findings 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 before the Court below. Accordingly, the appeal stands **dismissed** at the admission stage.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

Rakesh

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: RAKESH MAHESHKUMAR KOSHTI(HC00950), Principal Pvt. Secretary, at High Court of Gujarat on 09/10/2026 16:44:31