IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1625 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No
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STATE OF GUAJRAT
Versus
KAILASHGIRI RAMGIRI GOSWAMI

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Appearance:
MS JYOTI BHATT APP for the Appellant(s) No. 1
MR HEMANT B RAVAL(3491) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Date : 10/06/2026

ORAL JUDGMENT

1. The appellant - State of Gujarat has preferred this appeal under Section 378(1)(3) of the Code of Criminal Procedure, 1973 against the judgment and order dated 30.06.2012 passed by the learned Additional Sessions Judge, Gondal (hereinafter be referred to as “the trial Court”) in Sessions Case No.67 of 2010, whereby the trial Court has acquitted the original accused (respondent herein) from the offences punishable under Sections 363, 366 etc of the Indian Penal Code (hereinafter be referred to as “the IPC”).

2. Short facts of the prosecution case are that the complainant was residing at Darshan Park Society at Shapar Veraval Village wherefrom the accused allured his sister on 03.04.2010 under the pretext of any reason and as such, he kidnapped his sister knowing fully well that the sister of the complainant was minor induced her for any reason. Hence, a complaint was lodged by the complainant before Kotadasangani Police Station and it has been registered as I – C.R. No.33 of 2010 for the aforesaid offences and police started investigation. The police prepared panchnama of scene of offence and the accused was arrested. On completion of investigation, charge sheet was submitted in the Court of learned Judicial Magistrate First Class.

2.2 The charge against the accused came to be framed by the trial Court vide Exhibit 10 for the aforesaid offences. On being explained it to him, the accused has denied having committed any offence. The accused pleaded not guilty to the charge and pleaded for trial and hence, the case was tried by the learned Sessions Judge, Gondal.

3. It appears from the records that to prove the case, the prosecution has examined the following witnesses:-

P.W. No.	Name of Witnesses	Exhibit
1	Ashokbhai Ghanshyambhai Mehta	13
2	Rajeshbhai Baldevbhai Goswami	15
3	Amrutgiri Keshavgiri Goswami	17
4	Rasikpari Keshavgiri Goswami	18
5	Ashokbhai Govindbhai Medpara	20
6	Ghanshyambhai Karshanbhai Mehta	22
7	Pujaben Ashokbhai Mehta	23

8	Prakashbhai Ghanshyambhai Mehta	24
9	Bharatbhai Karshanbhai Mehta	25
10	Victim	26
11	Dr.Sanjaykumar Raghunandanprasad Sinha	27
12	Dr.Narendra Pravinbhai Vekariya	31
13	Nathabhai Polabhai Badvani	36
14	Bhargav Vinodrai Pandya	40
15	Vishnukumar Narotambhai Patel	42

4. In addition to this, the prosecution has also produced the following documentary evidence.

Sr. No.	Particulars	Exhibit
1	Complaint	14
2	Arrest panchnama	16
3	Panchnama of the scene of offence	19
4	Order of investigation	37
5	Birth certificate of the victim	41

5. After closure of the evidence, the statement of the accused under section 313 of the Criminal Procedure Code, 1973 have been recorded wherein he denied of having committed any offence and have stated that he was innocent.

6. After hearing both sides and considering the evidence on records, the trial Court by impugned judgment and order has acquitted the accused from all the charges levelled against him.

7. Being aggrieved by and dissatisfied with the aforesaid judgment and order of acquittal the appellant – State of Gujarat has preferred this Appeal.

8. Heard Ms.Bhatt, learned Additional Public Prosecutor appearing for the appellant – State of Gujarat and Mr.Raval, learned counsel appearing for the respondents – accused at length.

9. Ms.Bhatt, learned Additional Public Prosecutor for the appellant – Sate of Gujarat has submitted the same facts which are narrated in the memo of appeal. She has submitted that though the prosecution has examined as many as 15 witnesses and also produced the documentary evidence, the trial Court has failed to appreciate the evidence of the witnesses and disbelieved the same on the ground that the prosecution has not proved the charge levelled against the accused beyond reasonable doubt. She has submitted that the trial Court has committed an error in holding that the prosecution had not examined material witnesses and thereby suppressed the genesis, which is contrary to the facts of the case.

9.1 Ms.Bhatt, learned Additional Public Prosecutor for the appellant – State of Gujarat has submitted that the judgment and order of acquittal is contrary to law and facts. She has submitted that the trial Court has not properly considered the evidence of the victim examined at Exhibit 26, who gave her version supporting the case of the prosecution and deposed that the accused induced her under the pretext of marriage and kidnapped her and pressurized her to have sexual intercourse and whenever she refused to do so the accused was beating her. She has submitted that during the cross examination of the victim, nothing adverse could be elicited to the prosecution case and on this ground, the trial Court ought to have convicted and sentenced the accused for the alleged offence and even the trial Court has not considered the ossification test conducted upon the

victim, which shows that the age of the victim was between 14 to 16 years and as such she was not major at the time of incident.

9.2 According to submission of Ms.Bhatt, learned Additional Public Prosecutor, the trial Court ought to have convicted the accused and ought to have imposed necessary sentence. She has prayed to allow the present appeal and to quash and set aside the impugned judgment and order of acquittal.

10. Mr.Raval, learned counsel for the respondents has submitted that the reason assigned by the trial Court in acquitting the accused is just and proper and, therefore, this Court may not entertain the appeal. He has submitted that the witnesses have not supported the case of the prosecution and there was no any corroboration in the evidence of the complainant and, hence, the prosecution has miserably failed to prove its case beyond reasonable doubt against the accused for the alleged offences. Lastly, Mr.Raval, learned counsel has submitted that the appeal being meritless deserves to be dismissed and the judgment and order of acquittal deserves to be confirmed.

11. On perusal of the evidence of the witnesses, it appears that there was no allegation that the accused had allured or induced the victim who was aged about 17 years at the time of incident. In fact, from any of the evidence of the witnesses, the fact reveals that originally the complaint was registered as Janvajog entry before the concerned police station by the father of the victim wherein there was no name of the present accused and, thereafter, the said FIR at Exhibit 14 came to be lodged by the brother of the victim. On perusal of the contents of the FIR, it appears that there was no sufficient

material against the accused to satisfy the ingredients of Sections 363 and 366 of the IPC. It is pertinent to refer to Sections 363 and 366 of the IPC which reads thus:-

> *"363. Punishment for kidnapping.—Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*
>
> *[363A. Kidnapping or maiming a minor for purposes of begging.—(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*
>
> *(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.*
>
> *(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.*
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> *(4) In this section,—*
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> *(a) "begging" means—*
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> *(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortunetelling, performing tricks or selling articles or otherwise;*
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> *(ii) entering on any private premises for the purpose of soliciting or receiving alms;*
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> *(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an*

animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) "minor" means—

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.]

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; 1[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid].

[366A. Procuration of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

366B. Importation of girl from foreign country.—Whoever imports into 3[India] from any country outside India 4[or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall shall also be liable to fine.]."

12. So far as the evidence of the victim at Exhibit 24 is concerned, the ingredients of Sections 363 and 366 of the IPC is not satisfied. On the contrary, she has stated in her evidence that she herself left the house and she was having no physical relationship with the accused and since she was having love affair with accused, she herself left the house. On perusal of the evidence of the doctor at Exhibit 27, it appears that this witness has not found any injury mark on the body of the victim nor found that the victim has any physical relationship during the course of the examination of the victim. It reveals that the history given before the doctor, the victim has stated that she was having love affair with accused and, therefore, she herself left the house. Under such circumstances, I am of the opinion that the trial Court has not committed any error of facts and law in passing the impugned judgment and order of acquittal. This Court is of the view that this is acquittal appeal filed by the State, the primary ignorance was established before the trial Court and since the presumption is in favour of the accused, the appeal is filed by the State.

13. On perusal of the judgment and award, it appears that the trial Court has discussed the evidence led by the prosecution, consisting it as not sufficient and not supporting the case of the prosecution and there is no sufficient evidence brought on record by the prosecution to prove the case. On perusal of the evidence, it emerges that there is material contradiction with regard to the commission of crime in question and there is no any illegality and infirmity in the judgment and order of acquittal.

14. It is well settled by catena of decisions that the an Appellate Court has full power to review, re-appreciate and reconsider the

evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

15. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which he is charged.

16. The scope and principles are enunciated by the Hon'ble Apex Court in case of ***Chandrappa and others Vs. State of Karnataka*** reported in ***(2007) 4 SCC 415***, more particularly ***paragraph Nos. 42 and 43***, which was subsequently re-affirmed by the Hon'ble Apex Court ***Rajesh Prasad Vs. State of Bihar and another***, reported in ***[2022] 3 SCC 471***, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in ***paragraph No. 26*** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of ***Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149,*** the Hon'ble Apex Court has dealt with the similar issue, more particularly, in ***paragraph Nos. 37 to 40.*** Hence, we are in complete agreement with the findings recorded by the trial Court.

17. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of ***Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169***, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

> *"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:*
>
> *"42. .... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact*

and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

18. Considering the entire evidence on record and the decisions of the Hon'ble Supreme Court and the decisions relied upon by the learned counsel for the respondents, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record.

19. On perusal of the impugned judgment and order, it clearly transpires that the trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against him. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the trial Court is sustainable and the present appeal is liable to be dismissed.

20. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, the appeal is dismissed. The impugned judgment and order of acquittal passed by the trial Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(HEMANT M. PRACHCHHAK,J)

V.R. PANCHAL

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VIJAYKUMAR RAMESHBHAI PANCHAL(HC00171), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 11/06/2026 09:52:56