IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 2034 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA Sd/-

and
HONOURABLE MR. JUSTICE R. T. VACHHANI Sd/-

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
GAMBHIRBHAI KABABHAI & ANR.

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Appearance:
MR ROHAN RAVAL, APP for the Appellant(s) No. 1
ABATED for the Opponent(s)/Respondent(s) No. 1
NOTICE SERVED for the Opponent(s)/Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 22/10/2026

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Here is the Appeal by the State under Section 378 of the Cr.P.C. against the judgment and order of acquittal.

2. Being dissatisfied by the judgment and order passed by the learned Additional Sessions Judge, Bhavnagar at Mahuva, passed in Sessions Case No.176 of 1992 dated 04.05.2005, acquitting the accused from the offences punishable under Sections 376, 348 and 342 read with Section 114 of the IPC.

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

4. Brief facts giving rise to file the present Appeal are that, the victim about four months prior to 13.06.1992, when she was alone in the house at Village: Sendarda, the accused Gambhir Kababhai Makwana forcibly took her on the cot and committed rape upon her and at that time, the co-accused Saviben Gambhirbhai in order to facilitate the principal accused in commission of rape, closed the door from the outside and ran away. In such circumstances, the FIR by the sister of the deceased (PW.1) came to be filed with respect to the offence of rape, trespass and illegal confinement. Admittedly, the victim at the time of FIR, got pregnant and gave birth to a boy on 03.09.1992. After completion of investigation, both the accused were chargesheeted and case was committed to the Court of Sessions at Mahuva.

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

6. In order to prove the charge, the prosecution has examined as many as 10 witnesses and relied on the documentary evidence as referred in the judgment.

7. On conclusion of oral evidence, the Trial Court recorded further statements of the accused as provided under Section 313 of the Code, wherein, they claimed their innocence and stated that they have been falsely implicated in the offence.

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 they were charged, on the ground that, the victim as well as her family members have not supported to the case of prosecution and as such, there is no evidence connecting the accused herein.

9. In such circumstances, the Trial Court while acquitting the accused, held and observed that the prosecution has miserably failed to prove the charge against the accused by leading cogent and convincing evidence.

10. During the pendency of this appeal, the principal accused against whom charge of rape being framed, has passed away on 22.08.2017. Thus, the appeal qua accused no.1 – Gambhir Kababhai stands abated.

11. Mr. Rohan Raval, learned APP appearing for and on behalf of the 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; that the Trial Court failed to appreciate that, the accused Saviben, in order to facilitate the principal accused, by remaining present at the place, had closed the door from the outside and then ran away. Thus, there is sufficient evidence to prove the charge against her for the act of abatement.

12. In such circumstances, the view taken by the trial Court is unreasonable and findings are perverse, which has resulted into miscarriage of justice and therefore, it has been submitted that this is a fit case to admit the appeal.

13. In the present case, the issue falls for our consideration as to

whether the trial Court was justified in acquitting the accused?

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

15. 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 presumption 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 is possible should be avoided, unless there are reasons for interference.

16. In the facts of the present case, the principal accused, during the pendency of this appeal, has passed away and therefore, the scope of appeal is very limited to examine the role attributed to the accused no.2 – Saviben. In the case on hand, the complainant (PW.1) Vimliben, neighbour Madhuben (PW.2), uncle Jadubhai Sidibhai (PW.3) and victim (PW.4) have not supported to the case of prosecution and after declaring them hostile, they have not admitted the contents of their statements recorded by the police. Even the forensic evidence produced before the trial court does not point out that the accused Gambhirbhai was the biological father of the child. So far as accused no.2 is concerned, there is no iota of evidence on record to prove that she had in any manner, abetted

the principal accused in commission of the crime.

17. Thus, after reanalysis of the evidence, we are of the considered opinion that the prosecution miserably failed to prove the charge against the accused no.2, either by direct evidence or by circumstantial evidence beyond reasonable doubt.

18. In the result, we do not find any perversity in the impugned judgment and in absence of substantial and compelling reason, no ground exists to interfere with the findings of acquittal recorded by the Trial Court and therefore, in our view, the Trial Court was justified in acquitting the accused.

19. Accordingly, the appeal stands dismissed. R&P, if any, be sent back to the concerned court forthwith.

Sd/-
(ILESH J. VORA,J)

Sd/-
(R. T. VACHHANI, J)

TAUSIF SAIYED

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: TAUSIFAHMED SAIYED(HC01401), PRIVATE SECRETARY, at High Court of Gujarat on 23/10/2026 12:03:03