IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 651 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE S.V. PINTO Sd/-

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Approved for Reporting	Yes	No
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STATE OF GUJARAT
Versus
HAJIBHAI NURMAMADBHAI AMAD PAUTRA

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Appearance:
MS. C.M. SHAH, APP for the Appellant(s) No. 1
MR MAKBUL I MANSURI(2694) for the Opponent(s)/Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE S.V. PINTO**

Date : 27/10/2026

ORAL JUDGMENT

1. The appeal is filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 against the judgement and order of acquittal passed by the learned Special Judge, POCSO Court, Jamnagar (hereinafter referred to as “the learned Trial Court”) in Special POCSO Case No.16 of 2014 on 30.01.2016, whereby, the learned Trial Court has acquitted the respondent for the offence punishable under

Sections 354, 506 and 506(2) of Indian Penal Code, 1860 and Section 12 of the Protection of Children from Sexual Offences Act, 2012.

1.1 The respondent is hereinafter referred to as “the accused” as he stood in the original case for the sake of convenience, clarity and brevity.

2. The brief facts that emerge from the record of the case are as under:

2.1 It is the case of the prosecution that on 21.01.2014, the complainant was present in her kitchen and was engaged in cooking, while her minor daughter, aged about 10 years, was watching television in the house. At that time, the accused entered the house for the purpose of watching television and, allegedly, indulged in acts amounting to outraging the modesty of the minor victim. It is further alleged that the complainant, upon entering the room, witnessed the accused touching the head and cheeks of the minor daughter. When the complainant questioned the accused about his conduct, he allegedly became enraged and

threatened to kill all the members of the family. Upon being questioned by the complainant, the minor victim is stated to have disclosed that the accused had committed similar acts on two previous occasions as well. Thereafter, when the complainant's husband returned home at about 9:00 p.m., the complainant apprised him of the incident. However, owing to the apprehension of social stigma and the fear of earning a bad name in society, the complainant and her husband did not immediately approach the police. Subsequently, on 25.01.2014 at 16:00 hours, the complainant lodged a complaint before Bhanwad Police Station, District - Devbhoomi Dwarka, alleging commission of offences punishable under Sections 354, 504 and 506(2) of the Indian Penal Code, 1860, and Section 12 of the Protection of Children from Sexual Offences Act, 2012. Pursuant thereto, the complaint came to be registered as I-C.R. No. 7 of 2014.

2.2 The Investigating Officer recorded the statements of the connected witnesses and seized the necessary documents and after completion of investigation, a charge-

sheet came to be filed before the Court of the Sessions Judge, Jamnagar and the case was registered as Special POCSO Case No.16 of 2014

2.3 The accused was duly served with the summons and the accused appeared before the learned Trial Court and it was verified whether the copies of all the police papers were provided to the accused as per the provisions of Section 207 of the Code. A charge at Exh.6 was framed against the accused and the statement of the accused was recorded at Exh.7 wherein, the accused denied the contents of the charge and the entire evidence of the prosecution was taken on record.

2.4 The prosecution examined 7 witnesses and produced 5 documentary evidences on record in support of his case and after the learned Additional Public Prosecutor filed the closing pursis, the further statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded. After the arguments of the learned Additional Public Prosecutor and the learned advocate for the accused were heard, the learned Trial Court by the impugned judgement and order was pleased to acquit the accused from the charges

levelled against him.

3. Being aggrieved and dissatisfied with the said judgment and order of acquittal, the appellant - State has filed the present appeal mainly stating that the impugned judgment and order of acquittal passed by the learned Trial Court is contrary to law and evidence on record and the learned Trial Court has not appreciated the fact that all the witnesses have supported the case of the prosecution and during the cross-examination, nothing adverse has been elicited in favor of the respondent. The case has been proved beyond reasonable doubt and the prosecution has successfully established the case against the respondent and the judgment and order of acquittal is unwarranted, illegal, and without any basis in the eyes of the law and the reasons stated while acquitting the respondent are improper, perverse and bad in law. Hence the impugned judgment and order passed by the learned Trial Court deserves to be quashed and set aside.

4. Heard learned APP Ms. C.M. Shah for the appellant State and learned advocate Mr. Makbul I. Mansuri for the respondent. Perused the impugned judgement and order of acquittal and have reappreciated the entire evidence of the

prosecution on record of the case.

5. Learned APP Ms. C.M. Shah has taken this Court through the entire evidence of the prosecution on record of the case and submitted that the complainant has fully supported the facts of his complaint. The impugned judgement and order is perverse and learned APP has urged this Court to quash and set aside the same and find the respondent guilty for the offences.

6. At the outset, before discussing the facts of the present case, it would be appropriate to refer to the observations of the Apex Court regarding the scope of interference in acquittal appeals in the case of **Chandrappa & Ors. Vs. State of Karnataka** reported in **2007 (4) SCC 415**, wherein, the Apex Court has observed as under:

> *Recently, in Kallu Vs. State of M.P. (2006) 10 SCC 313, this Court stated:*
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> "*While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the Trial Court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the Trial Court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further*

if it decides to interfere, it should assign reasons for differing with the decision of the Trial Court".

From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

> *(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 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.

7. The law with regard to acquittal appeals is well crystallized and in acquittal appeals, there is presumption of innocence in favour of the accused and it has finally culminated when a case ends in an acquittal. The learned Trial Court has appreciated all the evidence and when the learned Trial Court has come to a conclusion that the prosecution has not proved the case beyond reasonable doubts, the presumption of innocence in favour of the accused gets strengthened. There is no inhibition to re appreciate the evidence by the Appellate Court but if after re appreciation, the view taken by the learned Trial Court was a possible view, there is no reason for the Appellate Court to interfere in the same.

8. To prove the offence against the accused, the prosecution has in all examined ten witnesses and produced five documentary evidences in support of their case.

8.1 The complainant, examined as PW-1 at Exhibit 9, has deposed that on the date of the incident, she was in the kitchen of her house between 6:00 p.m. and 7:00 p.m., while

her minor daughter was watching television. According to her testimony, the accused came to her house and committed an act outraging the modesty of her daughter by removing her lower garment. When the complainant entered the room and questioned the accused about his conduct, he allegedly threatened her, stating that if she disclosed the incident to anyone, he would kill her, and thereafter left the room. The complainant has further stated that, upon being questioned, her daughter disclosed that the accused had committed similar acts on two earlier occasions. She has deposed that when her husband returned home at about 9:00 p.m., she informed him about the incident, whereafter they went to the police station and lodged the complaint, which has been produced at Exhibit 10.

In her cross-examination by the learned advocate for the accused, the complainant admitted that the accused was their relative and that they used to visit each other's houses on festivals and other occasions and extend assistance to one another in times of difficulty. She further admitted that

her husband and brother-in-law had purchased a truck from the accused and that the said truck had been seized by the police in connection with some offence. She also stated that the accused had previously served as the Sarpanch of the village and used to facilitate the travel of people for Haj and Umra. According to her, following the incident, the police had seized the accused's passport. Significantly, the complainant admitted that, in the complaint lodged by her, she had not stated that the accused had removed the lower garment of her daughter.

8.2 PW-2, Ibrahimbhai Jumabhai examined at Exhibit 12, is the panch witness to the panchnama of the place of offence, which has been produced at Exhibit 13. The witness has fully supported the case of the prosecution.

8.3 PW-3, examined at Exhibit 14, is the father of the victim and the husband of the complainant. He has deposed that on the date of the incident, he had gone out and, upon returning home between 8:00 p.m. and 9:00 p.m., his wife

informed him that the accused had entered their house and that, when their daughter shouted, the accused had covered her mouth with his hands. He further stated that, upon hearing the victim's cries, his wife, who was in the kitchen, entered the room and witnessed that the accused had removed the lower garment of their daughter. According to this witness, the accused also threatened his wife with death if she disclosed the incident to anyone. The witness has further deposed that, upon making inquiries with his daughter, she disclosed that the accused had, on two earlier occasions, taken her to his house, removed her lower garment and asked her to bend over, although no other act had taken place on those occasions.

In his cross-examination by the learned advocate for the accused, the witness admitted that he had no personal knowledge of the incident. He further admitted that, in his statement before the police, he had not stated that the victim had shouted or that the accused had covered her mouth with his hands. He also admitted that he had not informed the

police that the accused had removed the lower garment of his daughter and asked her to bend over. The witness further admitted that the police had seized the truck purchased by him in connection with some incident and that the accused was his relative and an uncle within the family. He also acknowledged that the accused used to facilitate the travel of people for Umra and that, at the time of the incident, the accused was scheduled to travel for Umra. According to the witness, owing to the seizure of the accused's passport following the incident, the accused could not undertake the said work relating to Umra.

8.4 PW-4, the minor victim, examined at Exhibit 17, has deposed that the accused came to her house at about 6:00 p.m. to watch television. She stated that, while she was watching television, the accused came and sat near the door. She was sitting on the bed when the accused touched her cheeks and chest. Thereafter, he allegedly removed the string of her lower garment and asked her to bend over. At that time, her mother entered the room and became angry with the

accused, whereupon the accused threatened to kill her. Thereafter, the accused left the house, and her mother lodged the complaint. The victim further stated that the accused had visited their house on earlier occasions, but no such incident had occurred previously.

In her cross-examination by the learned advocate for the accused, the victim stated that she used to play with the children at the accused's house and that the members of the accused's family used to give her snacks to eat. She further stated that, at the time of the incident, a police case had been filed against her father. She also stated that the television was switched on and a film was being played when the incident occurred. The victim further acknowledged that her parents maintained good relations with all their neighbours, who belonged to the same community.

8.5 PW-5, Pratapsinh Mansinh Jadeja, examined at Exhibit 22, has deposed that on 25.01.2014, he was serving as a Police Station Officer (PSO) at Bhanwad Police Station. He stated that he had registered the complaint as I-C.R. No. 7 of

2014 and had made the corresponding entry at Entry No. 12 in the Station Diary.

8.6 PW-6, Narendrasinh Anopsinh Jadeja examined at Exhibit 24, is the Assistant Sub-Inspector of Police who had arrested the accused. He has deposed that, in connection with the arrest, he made an entry in the Station Diary bearing Entry No. 16 of 2014.

8.7 PW-7, Kanubhai Bhagwanjibhai Gadhvi, examined at Exhibit 26, is the investigating officer who has deposed regarding the various steps undertaken by him during the course of the investigation. He stated that he had collected the birth certificate of the victim, which has been produced at Exhibit 21.

In his cross-examination, the investigating officer admitted that he had not seized any muddamal during investigation. He further admitted that the statement of the victim had not been recorded under Section 164 of the Code of Criminal Procedure. Significantly, he also stated that,

during the course of the investigation, it had not been found that the accused had removed the lower garment of the victim or had asked her to bend over.

9. Upon an overall appreciation of the evidence on record, this Court finds that the prosecution has failed to establish its case beyond reasonable doubt and that the learned Trial Court has rightly extended the benefit of doubt to the accused. The testimony of the complainant and the father of the victim suffers from material omissions and contradictions when compared with the version set out in the original complaint and the statements attributed to them during the course of investigation. Although the complainant has alleged that she witnessed the accused committing an act outraging the modesty of her minor daughter, several material particulars emerging in the depositions before the learned Trial Court do not find mention in the original complaint. Similarly, the father of the victim has introduced material particulars regarding the alleged covering of the victim’s mouth, removal of her lower garment and the

accused asking her to bend over, which, as admitted by him in his cross-examination, had not been stated before the police. Such omissions assume significance in the facts of the present case, particularly when the prosecution case rests substantially upon the testimonies of the victim and her parents. The testimony of the victim, PW-4, also contains material improvements over the original version. While she has deposed that the accused touched her cheeks and chest, removed the string of her lower garment and asked her to bend over, these specific allegations do not find mention in the original complaint. Furthermore, whereas the complainant and the father of the victim have attributed similar acts to the accused on two earlier occasions, the victim herself has stated in her deposition that, although the accused had visited their house previously, no such incident had occurred earlier. This material inconsistency, coupled with the introduction of additional and more serious particulars in the oral testimony, gives rise to a legitimate doubt as to whether the prosecution witnesses have

embellished the original version by way of subsequent improvements and exaggeration. It is true that every omission or discrepancy cannot, by itself, be a ground to discard the testimony of a child victim; nevertheless, where the omissions and contradictions relate to the very nature and particulars of the alleged act, they assume material significance in assessing the reliability of the prosecution case.

9.1 Another circumstance which cannot be altogether overlooked is that the alleged incident occurred on 21.01.2014, whereas the complaint came to be lodged only on 25.01.2014. The complainant has stated that she informed her husband about the incident when he returned home at approximately 9:00 p.m. on the very same day. However, the evidence does not satisfactorily explain the subsequent course of events or the circumstances which led to the lodging of the complaint after a delay of four days. Although the apprehension of social stigma may, in an appropriate case, furnish a plausible explanation for delayed reporting of an offence of this nature, the explanation must be assessed in

the light of the evidence available on record. In the present case, the delay assumes relevance when considered cumulatively with the material omissions, improvements and inconsistencies in the depositions of the complainant, the father of the victim and the victim herself. It has also emerged in the evidence that the accused was related to the complainant's family and that there had been financial or transactional dealings between the accused and the victim's family, including the purchase of a truck by the husband and brother-in-law of the complainant from the accused, which truck was subsequently seized by the police in connection with another offence. This circumstance, by itself, would not establish any ulterior motive for false implication; however, it constitutes a relevant surrounding circumstance which the Court is required to consider along with the other evidence on record. The investigating officer has further admitted that the statement of the victim was not recorded under Section 164 of the Code of Criminal Procedure. While such non-recording cannot, by itself, be treated as a ground to reject

the prosecution case, it remains a circumstance to be considered in the overall evaluation of the evidence, particularly in view of the other infirmities noticed hereinabove. The investigating officer has also admitted that the investigation did not establish that the accused had removed the lower garment of the victim or had asked her to bend over, thereby lending significance to the material discrepancies concerning these allegations.

9.2 It is also pertinent to note that the learned Trial Court has considered the applicability of the statutory presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012, and has concluded that the said presumption would not apply to the offence punishable under Section 12 of the Act. The question of the applicability and scope of the statutory presumption must, of course, be determined in accordance with the statutory provision and the applicable legal principles. Nevertheless, irrespective of the said aspect, the prosecution evidence in the present case is required to be assessed on its own merits, having regard to

the material contradictions, omissions and improvements brought on record. The statutory presumption, wherever applicable, does not dispense with the requirement of establishing the foundational facts necessary to attract its operation. In the present case, the learned Trial Court has independently examined the evidence and has recorded reasons for finding the prosecution case insufficient to sustain a conviction. Upon reappreciation of the entire evidence, this Court finds that the view adopted by the learned Trial Court is a reasonably possible view arising from the evidence on record. The settled principle governing an appeal against acquittal requires the appellate Court to exercise due caution before disturbing a judgment of acquittal, particularly where the conclusions reached by the Trial Court are supported by a plausible appreciation of the evidence and the prosecution has failed to dispel the reasonable doubts arising from its own case. The mere possibility of another view would not, in the absence of compelling reasons, justify interference with an order of acquittal. In the facts and circumstances of the

present case, no perversity, illegality or material misappreciation of evidence has been demonstrated so as to warrant interference with the impugned judgment.

10. Consequently, this Court finds no cogent ground to disturb the acquittal recorded by the learned Trial Court. The judgment and order of acquittal, therefore, deserve to be affirmed, and the appeal against acquittal is liable to be dismissed.

11. The impugned judgement and order of acquittal passed by the learned Special Judge, POCSO Court, Jamnagar in Special POCSO Case No.16 of 2014 on 30.01.2016, is hereby confirmed.

12. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

Sd/-

(S. V. PINTO,J)

ROHAN SONI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ROHAN SONI(HC02356), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 27/10/2026 16:50:03