

Gujarat High Court

State Of Gujarat vs Pratap Kanabhai Nadoda on 7 July, 2023

Bench: Umesh A. Trivedi

R/CR.A/101/1995

JUDGMENT DATED: 07/07/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 101 of 1995

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE UMESH A. TRIVEDI

and

HONOURABLE MRS. JUSTICE M. K. THAKKER

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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STATE OF GUJARAT  
Versus  
PRATAP KANABHAI NADODA & 7 other(s)

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Appearance:

MS CM SHAH APP for the Appellant(s) No. 1

ABATED for the Opponent(s)/Respondent(s) No. 5

MR KB ANANDJIWALA(134) for the Opponent(s)/Respondent(s) No.  
1,2,3,4,6,7,8

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CORAM:HONOURABLE MR. JUSTICE UMESH A. TRIVEDI  
and  
HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 07/07/2023

ORAL JUDGMENT

(PER : HONOURABLE MRS. JUSTICE M. K. THAKKER) R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023

1. At the outset, it is required to be noted that Criminal Revision Application No.20 of 1995 filed by the husband of the complainant-victim Bhupat Dayashankar Bhatt came to be withdrawn vide an order dated 22.02.2022.
2. The appellant- State of Gujarat has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal passed by the learned Additional Sessions Judge, Surendranagar dated 17 th October, 1994 in Sessions Case No.63 of 1992 whereby respondents-accused were acquitted from the charges under Sections 330, 354, 376(2)(e)(g), 323, 504, 506(2), 450 read with Section 114 and 509 of Indian Penal Code (IPC).
3. It is the case of prosecution that one First Information Report (FIR) came to be lodged by the complainant, namely, Bhavnaben wife of Bhupatbhai Bhatt on 11 th May, 1992 around 20.14 hours with Joravarnagar Police Station being I-C.R.No.42 of 1992 mentioning the period of offence from 20 th April, 1992 around 22.00 hours to 21st April, 1992 upto night hours.

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4. The FIR came to be filed against 8 accused persons for this offence punishable under Sections 376(2)(e)(g), 450, 350, 335, 506(2), 509, 34 of the IPC. The First Information Report dated 11.5.92, reads as under:-

(1) Some headstrong persons of Rampara village of Wadhwan taluka of Surendranagar district have committed brutality and atrocities on us and five persons have committed rape on Bhavna and one Police Head Constable Raimal has attempted to outrage her modesty. We are stating the facts of the same and request you to take a strict penal action against the accused so as to set an example.

(2) We - the applicants are husband and wife.

When we were living in Dadva village, we were in love relationship with each other and therefore, we left home and village and got married legally. But, since the families of the both of us are residing in Dadva village and they were displeased, we felt it difficult to live in Dadva and went to the house of my friend Varsangbhai Kanabhai residing in Surat. But, upon enquiring in Surat, we came to know that he had gone to his native village Rampara. Therefore, we immediately left for Rampara and after reaching R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Rampara, we stayed at the house of Varsinghbhai and Bhupatbhai started and working in his diamond factory. After three months, we rented a house of Mohanbhai Kanabhai. After some time, Pratapbhai, the owner of the diamond factory where I was working made arrangement for us to live in his own house and we shifted there. During that time, when I

- Bhavnaben was going for buying any things or for defecation, the headstrong persons of the village would abuse and molest me. Therefore, to avoid such difficulty, both of us - husband and wife used to go out together.

(3) In the last month, a theft took place in the house of Narsibhai, residing in our neighbourhood in Rampara village and according to hearsay, a member of his own family was involved in this act. But, since we - the husband and wife had come to the village after love marriage, many persons were displeased with us and having evil eye on Bhavnaben and therefore, false allegation was made against us that we were involved in the theft and following such false allegation, we were harassed, abused and assaulted by some of the persons from the village under the pretext of enquiry.

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(4)

On 20/04/1992 Monday, Police Constable

Rameshbhai, Head Constable Raimalbhai and one Pratapbhai Kanabhai @ Khuman from the village came and told us that, both of us - the husband and wife were being called at the house of Narsibhai, where the theft had taken place and therefore, we went with them at the house of Narsibhai at about 10 o'clock to 10:30 PM. When we reached near the house of Narsibhai, about 1000 persons of the village were present there. As soon as we reached his house, Savdas @ Ravan of Rampara village molested Bhavnaben in public by putting his hand on her chest in presence of all the persons. But, no one raised voice against it at that time. We clarified in the public that we are not involved in the incident of theft. Even if any incident of theft has occurred, we informed Narsibhai to lodge complaint before police and to take legal action. After long discussion, we returned to our house at about 11 o'clock in the night.

(5) There was movement of lots of people near our house in connection with the aforesaid incident till late night on 20/04/1992. When we were sitting at our house out of fear, seven persons (1) Pratapbhai Kanabhai @ Khuman, (2) Ghanshyam Kher, (3) Savdas @ Ravan, (4) Ramji Mala Mori, (5) Lalji Rickshawwala @ Badelo and two unknown persons R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 came to our house at about half past one or two o'clock in the night and after people got dispersed, they started abusing saying that, "Our inquiry is to be conducted in connection with the incident of theft." They created an atmosphere of fear by shouting. The two unknown persons forcibly took me i.e. Bhupatbhai to the house of Laljibhai despite our objection saying that, "He will be brought back after inquiry." The aforesaid five persons stayed in my house though I, Bhavnaben, being alone, objected to their stay in my house. After five minutes since my husband left our house,

aforesaid five persons started abusing asking as to what you know in connection with theft, but I, Bhavnaben, asked them to leave the house and to come back when my husband returns. After hearing the said facts, these five persons abused me more. Laljibhai Badelo and Ramjibhai Mori caught hold of my forearms, whereas Ghanshyambhai Kher gagged mouth with his hands. These five persons dragged me to the room next to the kitchen and made me lie down and threatened to kill and slapped me. My both hands were held and mouth was gagged. Thereafter, first of all, Pratap Kanabhai @ Khuman forcibly put off my saree and petticoat against my wish and raped me against my wish and consent. One by one, Ghanshyam Kher, Ramji, Lalji @ Balelo, Savdas @ Ravan, etc. forcibly R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 raped me against my wish even though I was pregnant. At the time of raping me, I could not face them as they were beating me and threatening. I could not raise hue and cry because my mouth was gagged. In addition to this, they threatened to kill me and my husband. After committing rape, these five persons threatened to kill if I informed about this incident to anyone or lodged the complaint in this regard. After these five persons had left, I had been groaning due to pain at the place where I was raped. Meantime my husband had not returned, police head constable Raymalbhai, who is the relative of Narsibhai at whose house theft was committed, came into the house and sat beside me saying that, "I want to inquire in connection with theft." At that time, I was not in position to speak. Raymalbhai also forcibly started molesting. Though I told him to sit out of the room, he did not go there. Meantime, my husband Bhupatbhai came. Therefore, aforesaid police head constable Raymalbhai moved away and started consulting. The aforesaid head constable informed me not to worry and went away. Thereafter, while crying, I narrated the incident of rape to my husband. We decided to leave the village, and aforesaid head strong persons, who committed atrocity on me, also wished that we would leave the village.

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(6)

On the next day of the incident i.e. on

21/04/1992, two persons, namely Ghanshyam Kher and Khuman, took me with them saying that, "I am being called at police station." On the way to the police station, aforesaid both persons dragged my hair and mercilessly beat me and threatened me not to speak anything before the police. As I informed in the police station that, "We want to leave the village. We are not safe in this village. We need protection.", two police constables Kedarsinh and Ranjitsinh came to our house. Out of fear, we left our house with two pair of clothes keeping all the household articles in the house. The aforesaid two police constables dropped us at Fulgram-Limbadi Road. As we both were hungry for three days, we were made to have meals and we got into the truck for Chotila.

Thereafter, we stayed at the house of relatives.

(7) If I lodged complaint in connection with aforesaid atrocity committed on me, they threatened to kill me. Therefore, out of fear, we did not inform our relatives about the aforesaid incident.

Bhupatbhai, met my friend Kanubhai Pandya at Dadva village two-three days back, and informed him about aforesaid incident first time.

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(8) The persons, who committed offence on

us, are head-strong persons and are involved in many illegal and anti-social activities and commit petty and grave offences. Therefore, we did not muster courage to lodge complaint against them. The people of Rampara and its adjoining areas are afraid of these persons.

Under aforesaid circumstances, when we lodged offence committed on me before it gets very late, it is requested to arrange for bandobast so as to protect our lives and property. We are not safe in Rampara village or at Surendranagar District Headquarter due to movement of aforesaid persons. It is requested to see that legal actions are taken in connection with aforesaid incident and to take strict action against the culprits and to arrange for our protection and shelter so as to enable us to earn livelihood with dignity.

5. On setting criminal law in motion, investigation was carried out, statement of witnesses were recorded and after following due procedure and gathering the material against the accused persons, charge-sheet came to be submitted before the Competent Court. As the offence is triable by R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 learned Court of Sessions, therefore, same was committed to the learned Sessions Court and numbered as Sessions Case No.63 of 1992.

6. Learned Judge framed the charge below Exh.2 against the 8 accused persons for the offence punishable under Sections 330, 354, 376(2)(e)(g), 323, 504, 114, 345, 506(2) read with Section 450 and 509 of the IPC. The charge was read over and explained to the respondents - accused, who pleaded not guilty to the offence and claimed to be tried. In order to bring home the guilt of the accused, prosecution examined 19 witnesses and produced list of documentary evidence, which is mentioned herein below:-

PW	Exh	Name of	Particulars & Remarks
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No.	Witness
1	16 Victim Complainant Exh.75 complaint page No.877 to 905 (written with in the form of FIR)
2	20 Bhupatray Dayashanker Bhatt Witness : Husband of the victim
3	26 Kedarsinh Ratansinh Police Witness : Head Constable Rawpura out post page No.545-547

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		Vaghela	with Ranjitsinh (PW 15) Para 4 about provided protection on request of the husband of the victim for providing protection up to fulgram village, as they wanted to left the Rampara village Witness: Reporter / Social worker
4	27	Kanubhai Mansukhlal Pandya	
5	28	Ranjanben Narsangbhai	Child witness : Daughter of the Narsanbhai (PW 6) evidence regarding theft
6	29	Narsangbhai Haribhai	Witness : Theft incident had taken place in the house of this witness
7	30	Manharlal	Executive Magistrate : Test

Amrutlal Kothari Identification Parade before him Exh.34 Pg. 637- Panchnama 8 35 Pushakarabhai  
Panch Witness of TIP Exh.34 Pg.

9	36	Bhavanishakar Savdas Ajmalbhai	637 TIP Panchnama Panch Witness - Knife and cloths recovered from A no 3 Sadas @ Ravan Exh.37 Pg. 667 panchnama
10	53	Dr. Vinod Ganpati Prabhu	Gynecologist Exh.54 Pg. 727 certificate
11	55	Kashiben Lavjibhai	Witness
12	56	Malu Govindbhai	Panch Witness : Place of offence Exh.57 page 742
13	58	Dr.G.R. Swaminarayan	Medical Officer : Exh. Suptt. CHC Wadhwan

Exh.59 Pg.751 Medical certificate

Exh.60 pg. 753 Exh.61 pg. 757

14 64 Rameshchandra Police Witness : Constable  
Labhubhai Rawpura out post - duty with  
Head constable Kedarsinh

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			Ratansinh PW 3 & constable Rameshchandra
15	65	Ranjitsinh Ajitsinh	Police Witness : Police constable out post Rawpura (with PW 3) about provided protection on request of the husband of the victim for providing protection up to fulgram village, as they wanted to left the Rampura village
16	67	Jubedaben Kasambhai	Witness : Mother of the victim
17	69	Lilaben Haribhai Desai	Witness Chairman of Nari Suraksha
18	72	Amirali Babubhai	Witness relative of the victim - declared hostile
19	74	Arvindsinh Sajubha	Police witness : Investigation officer (IO)

7. Prosecution has also produced documents, namely, complaint and various panchnamas, which were proved through the aforesaid witnesses.

8. That on completion of examination of the witnesses, the closing pursis came to be filed and thereafter, the learned Judge has explained the circumstances and incriminating material put by the prosecution against the respondents-accused and recorded further statement under section 313 of the Code of Criminal Procedure, 1973 where the accused had denied the R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 charges levelled against them and pleaded false implication in the offence. Accused had also examined 2 witnesses in order to prove the defence witnesses, which are mentioned herein below: Defence Witness :

DW	Exh.	Name of witness	Particulars & Remarks	Pg.N o.
1	84	Varsang Kana	Witness	1039
2	87	Devsai Mavji	Witness	1059

9. Thereafter, learned advocate for the parties were heard by the learned Additional Sessions Court, Surendranagar and dealt with documentary evidences as well as oral evidence in the form of depositions and after discussing the same with reasoning, has come to the conclusion that prosecution failed to establish the case beyond reasonable doubt against the respondent-accused. That after appreciating evidence on record, the learned trial Judge has observed that evidence produced by the prosecution does not inspire confidence, and therefore, respondents-accused are entitled to be acquitted from the charges levelled against them. In view of the above referred conclusion, learned Court below acquitted the respondents-accused for the offence R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 punishable under Sections 330, 354, 376(2)(e)(g), 323, 504, 506(2), 450 read with Section 114 and 509 of IPC giving rise to the above numbered appeal.

10. Heard the learned advocates for the respective parties.

11. Learned APP, Ms.C.M.Shah, has relied upon the oral evidence and assailed the judgment of the learned Additional Sessions Court, Surendranagar in Sessions Case No.63 of 1992. Ms.Shah, learned APP has submitted that despite ample evidence produced by the prosecution, the learned Court below has committed grave error in acquitting the respondents- accused from the charges levelled against them. Ms.Shah, learned APP submitted that complainant, who was examined at PW-1 below Exh.10, who was the victim, had deposed before the Court below that all the accused had committed inhuman act where on the day when she was having pregnancy of 26 weeks. Ms.Shah, learned APP further submitted that in order to admit the guilt of offence of theft, she was taken in between thousands of people where she was interrogated by various persons and R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 ultimately, when she denied to admit, 5 accused persons named in the FIR had committed rape in the night hours after knowing her husband was outside of house and she was alone in the house.

11.1 Ms.Shah, learned APP further submitted that the husband of the victim was taken away from the house by two of the accused under the pretext of interrogation and taking advantage of the situation where wife remained alone in the house, all the 5 accused had committed rape on the pregnant victim. Learned APP, Ms.Shah, further submitted that as they married in inter caste, which was not likely by the village people, the false allegations of theft of the ornaments was made on the prosecutrix and on her husband. Ms.Shah, learned APP further pointed out that even after commission of crime, they were under the constant threat of life and therefore, they could not register the FIR immediately. Ms.Shah, learned APP further drawn the attention of the Court with regard to the observations made by the learned trial Court with regard to the delay in lodging the FIR and submitted that each and every case would not fatal R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 merely on the ground of delay, specifically, the case under Section 376 of IPC where number of things have affected the mind of the prosecutrix like image, future, social stigma, marriage life etc. and when prosecutrix was having pregnancy of 26 weeks, the delay aspect ought to have been ignored by the learned trial Court. However, much weightage was given by the learned trial Court on the delay and judgment and order of acquittal was passed. Ms.Shah, learned APP



further submitted that prosecutrix was cross examined in detail by learned advocates appearing for the accused, however, there was no any material discrepancies in her evidence then also, the learned trial Court had not believed the case of the prosecution and acquitted the respondents-accused.

11.2 Ms.Shah, learned APP further submitted that evidence of the victim was corroborated with the FIR below Exh.75 as well as the complaint, which was forwarded to the higher officials wherein also, the consistent version was there. However, ignoring the aforesaid aspect, learned trial Court had acquitted the respondents-accused. Learned APP, Ms.Shah, further pointed R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 out that victim evidence was corroborated with the evidence of the Bhuptasinh, was examined at Exh.20. Mr.Kanubhai Mansukhbhai Pandya, was examined at Exh.27 and Mr.Manharlal Amrutlal Kothari before whom Test Identification Parade was held, who deposed before the trial Court at Exh.30. Ms.Shah, learned APP further relied on the evidence of Kedarsinh Ratansinh Vaghela, who was examined at Exh.26, by Head Constable of Rampura Police Station who provided protection on the request of the husband of the victim while leaving the Rampura village. Ms. Shah, learned APP further relied on the evidence of Kashiben who gave the shelter to the victim and husband as well as the evidence of mother, namely, Zubedaben, who was examined at Exh.67. Ms.Shah, learned APP further relied on the independent witness of Lilaben Haribhai Desai, who was examined at Exh.69, what was the Social Worker, Women Protection Department where ultimately the victim had taken shelter.

11.3 Ms.Shah, learned APP has taken this Court to the evidence of Medical Officers, namely, Dr.Vinod Ganpati Prabhu R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Exh.53 and Dr.G.R.Swaminaryan, at Exh.58 who in their depositions have confirmed with regard to the pregnancy of the lady and history before them. Ms.Shah, learned APP further submits that evidence of Ranjanben Narsangbhai was examined at Exh.28 and Narsangbhai Haribhai at Exh.29, who supported the case of the prosecution with regard to the theft of ornament articles, which took place in the house of the present witnesses. Ms.Shah, learned APP at the end relied on the decision rendered by Apex Court in the case of Bharwada Bhoginbhai Hirjibhai V/s. State of Gujarat reported in, AIR (1983) SC 753 and submitted that in the case of rape, corroboration with the evidence is not must and delay is not to be given much weightage when prosecutrix life is at task and submitted that though prosecution had proved the case beyond reasonable doubt, learned trial Judge had not appreciated the evidence in proper perspective, and therefore, the judgment and order of the acquittal is required to be reversed and the respondents-accused are required to be convicted for the charges levelled against them.

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12. This Court has passed the order on 29 th November, 2022 where the appeal against respondent No.5 was ordered to be abated as he expired on 7.9.2012.

13. For the remaining accused, learned senior advocate, Mr.K.B.Anandjiwala appeared and strongly supported the findings of the learned Judge and submitted that prosecution had not produced any evidence which inspired confidence, and presumption of innocence in favour of the accused which is further strengthened by the order of acquittal. Learned senior advocate, Mr.Anandjiwala appearing

for the respondents - accused has submitted that after appreciating the entire oral as also the documentary evidences on record, learned trial Court rightly came to the conclusion that there is no direct evidence, which supports the case of the prosecution, and therefore, learned trial Court has rightly acquitted the respondents-accused from the charges levelled against them.

13.1 Learned senior advocate, Mr.Anandjiwala, has submitted that as is known to the Hon'ble Court it is a first and R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 foremost as well as preliminary duty on the prosecution to bring home the guilt of the accused beyond shadow and doubt and it is also the duty of the prosecution to prove the involvement and complicity of the accused in alleged offence beyond reasonable doubt.

14. Learned senior advocate, Mr.Anandjiwala has further submitted that prosecutrix was staying at Davda, however, both prosecutrix and her husband, were in love, and therefore, they moved to the Rampura village where their behavior was not proper, and therefore, village people had objected with regard to the same and also to Varsangbhai, who gave them shelter. Learned senior advocate, Mr.Anandjiwala has further submitted that the case of the prosecutrix is highly doubtful as there were number of opportunities to disclose the offence to various people like Kedarsinh, who was serving as Head Constable, who took the prosecutrix and her husband on the next day of morning and they had travelled in the truck to leave the village with his help. R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023

15. Learned senior advocate, Mr.Anandjiwala has further submitted that the offence could have been disclosed to the Sarpanch and the advocates, who were present at the time of registration of marriage. However, prosecutrix has never discussed this offence with any of the person. The case of prosecution is also doubtful as this offence was not disclosed to Varsangbhai, who was most trustable person as per the evidence of the prosecutrix and her husband. Learned senior advocate, Mr.Anandjiwala, has further submitted that after 4 days, the husband, namely, Bhupat went to Davda village to contact Kanubhai, who was the Reporter. However, he is not contacting to family members and is not disclosing with regard to the offence, which is most unnatural behavior. On disclosing the offence to Kanubhai, who was PW-4, he gave address of one Jitubhai, advocate who drafted the complaint. However, prosecution fails to examine said Jitubhai, advocate at Bhavnagar and in that event, real offence could not come on the surface as drafted in the complaint which was further forwarded to various person.

R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 15.1 Learned senior advocate, Mr.Anandjiwala, submitted that unexplained delay would create doubt on the prosecution stories and also submitted that the prosecutrix is not merely rustic lady and appears to be forwarded mind lady, who had performed the marriage in inter caste in those days. It cannot be accepted that on commission of such inhuman crime, she would keep mum. Learned senior advocate, Mr.Anandjiwala further submitted that from the cross examination of the prosecutrix it is coming out that the offence of rape was registered only with a view to take revenge of the alleged theft, which was committed by the prosecutrix and her husband. Learned senior advocate, Mr.Anandjiwala further submitted that there was a common wall as coming out from the evidence of Narsangbhai from the house of the complainant, however, she did not scream while 5 persons

were committing rape one after another, which is unbelievable and undigestable.

15.2 Learned senior advocate, Mr.Anandjiwala further took this Court to the contradiction and omission in the evidence of witness Kanubhai where date and time of visit by Bhupat is R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 coming out. Learned senior advocate, Mr.Anandjiwala further submitted that though Varsangbhai Kanabhai was named in the charge-sheet as witness but prosecution had thought it fit to drop him to examine as a prosecution witness and he was examined before the trial Court as a defence witness and from the evidence of the said Varsangbhai Kana, it is coming out that he had stuck to his version recorded by the police in the statement, therefore also, learned senior advocate, Mr.Anandjiwala submitted that learned trial Court had rightly acquitted the respondents -accused from the charges. Learned senior advocate, Mr.Anandjiwala submitted that evidence of all witnesses show that on the day of the incident, Zubedaben the mother of the prosecutrix was present. However, prosecutrix and her husband as well as the evidence of the Kedarsinh Ratansinh, are hiding the presence of Zubedaben for the reasons best known to them. Learned senior advocate, Mr.Anandjiwala further submitted that on examining the evidence of Zubedaben, the case of the prosecution falsifies where it is specifically admitted in cross examination that if she was present at the time of offence, this offence might have not been committed and in the R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 evidence of witnesses it is coming out that, at the time of leaving for Rampura village, she was very well present along with prosecutrix and her husband Bhupat.

15.3 Learned senior advocate, Mr.Anandjiwala, lastly submitted that instead of reporting the case to the police officers, the husband had thought it fit to meet the advocate and took a draft of the complaint, which was ultimately registered as an FIR. In above view, the real picture could not come on the record, and therefore, case of the prosecution was remained under the cloud of doubt. Therefore, learned trial Court rightly acquitted the respondents - accused.

15.4. Learned senior advocate, Mr.Anandjiwala, submitted at last that the view arrived by the trial Court and the reasoning assigned by the learned Judge cannot be said to be perverse, not in conformity with evidence on record, palpably wrong and demonstrably unsustainable. It being only possible view, the judgment and order of acquittal as recorded by the learned Judge may kindly be confirmed and appeal filed against the R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 judgment and order is required to be dismissed.

16. This Court has taken the complete and comprehensive appreciation of all vital views of the case and entire evidence on record with reference to broad and reasonable probabilities of the case. It is evident that the prosecutrix, who is PW-1 was examined below Exh.16 and supported the case of the prosecution and stuck to the version mentioned in the FIR. In addition to the version of FIR, she further deposed before the learned trial Court that after registration of FIR, Vishwa Hindu Parishad gave the shelter and after due formalities completed by the Investigating Officer with regard to the medical examination, they stayed for about 2 to 3 months at Vishwa Hindu Parishads's office, and thereafter, they found suitable house and she gave birth to baby girl in August, 1992.

17. The cross-examination, which was conducted by the advocate of the accused, admitted before the Court that prior to the deposition, she collected the copies to R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 read the police papers and thereafter, she came into the box. At the time when she deposed before the Court, she was having custody of the papers. She further admits in the cross examination that on 21st April, 1992 when they reached Paddhari at 9 to 10 p.m. in the night hours and thereafter, after 5th day, husband - Bhupat went to meet Kanubhai at Dalva. He returned after 4 to 5 days and on the next day, when he returned to Paddhari, both had left for the Bhavnagar. During the time, when they stayed at the house of Ramaben, she treated them well her husband was having good terms with Ramaben and both of them trusted on her. She further admits that she was having pain in abdomen for 4 to 5 days post the incident of rape took place but she did not inform to Ramaben with regard to the pain in abdomen and she did not consult any Doctor for check-up. The witness admitted in her cross examination that during the stay at Paddhari, she administers herself for traditional medicines for stomach abdomen pain for 4 to 5 days but she did not inform about the same or with regard to the offence to the Ramaben. R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 She further admitted that she suggested to her husband with regard to lodging of FIR to ensure that no any other daughters may face similar incident. With regard to not informing to Ramaben, she gave reasons that she may be deprived from the shelter on discloser of the incident. She further admits that in fact after discloser, they had not deprived them from shelter. She admits that Kedarsinh and Ranjitsinh, two police officers, behaved with them like a gentlemen. She started trusting on them. She had not disclosed nor neither requested to take them to the DSP, Surendranagar. She did not think that she would be given protection, if she would lodge a complaint. She specifically admits that as the incident took place, she thought in the mind that these persons should be taught a lesson and she should get justice by executing a complaint. She admits in her cross examination that mother was not happy with the love marriage but gradually relationship was accepted by her. She admitting that mother used to visit her frequently to inquire about her well being at Rampara. She admits that she had never gone to Dadva R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 till the time the complaint was instituted neither she went to any relatives' house at Bhavnagar. She admits that they went to meet twice to an advocate at Bhavnagar. It is admitted by him that advocate, after hearing them, conveyed that complaint can be instituted directly on the basis of the facts but she had insisted to give his services for this purpose. She admits that she could have narrated the same facts before the Bhavnagar Police, which she narrated before an advocate. She further admits that on the first day when advocate said that they don't have time, they did not consult any other advocate and when the advocate asked to come after 2 to 3 days, they had not approached Police Station for lodging of FIR, they did not consult any other advocate. It is admitted by her the fact that the advocate asked to come after 2 to 3 days, when they met him, it was not disclosed to Lilaben, neither to Shri Zala, who is Investigating Officer nor to anyone even after identification parade was held on 17 th day of month. They had come to Bhavnagar with preparation of giving complaint but that complaint was R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 given after 3 days. She further states that she had not given any explanation to anyone. She stated that it is not true that there was delay because of economic constraints. She admits that she knows how to write and read upto some extent. She admits that in the statement before Shri Zala, she disclosed the fact that when she met an advocate at Bhavnagar for the first time, it appeared to him that the case would demand for more time, therefore, she asked to come after 2 to 3 days. However, she said that fact must be missed out by the Investigating Officer. She states that there is no

explanation offered in the complaint with regard to the delay. She is denying to the fact that on the day and night of the incident i.e. 20 th April, 1992, mother was present at Rampura. She stated that she was at her house only. She stated that she did not have any knowledge that whether on 22.05.1992, any application was given by her or not. She stated that when she was at shelter home, her mother met her on 22.04.1992. She states that her statement before the police was dictated by maternal aunt and uncle. She R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 states that her mother met her when she was at shelter home of Ms.Lilaben and she got admitted to the shelter home after meeting Ms.Lilaben when her aunt expelled her from house. At that time, her mother had conveyed that her statement before the police has been recorded as per which it is mentioned that she was staying at Rampura at the time of offence with them. She states that on 22.4.1992, an application was sent to the police but did not tell anything with regard to the signature in the application. She states that she is not knowing at to on which date she met her mother at Ahmedabad. She stated that if someone asked something to her mother, she would not comprehend him and she would state different facts in her reply. She said that she did not know if anyone else knows about my mother's physical conditions or not. She said that she did not know whether her mother is at shelter home at Ms.Lilaben place or not. She admitted that she does not know as to whether it was demanded vide Chit of Exhibit-18 with the police to record the statement of mother in their presence or not. She admitted that her mother was R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 alone when she and Bhupat reached to the Vikas Gruh on 22.5.1992. She admits that statement of mother at Exh.18 was given by her to the Investigating Officer in person, when police came to take the same. She admits that police asked them when they reached at Ahmedabad on 12.5.92 wherein mother told to the police that they do not know as to where she is. She said that at the time of incident, mother was not present. She further admits in her cross examination that at the time when she went for nature's call, she was not molested in the presence of any other women. She further admits that she had not disclosed this fact to any other person except her husband. Prior to few months' of the incident, Bhupat was sent to Rampara outpost and he met Kedarsinh and Kedarsinh informed that he would warn persons who molested his wife verbally and if complaint is filed, there shall be harassment from the people. She admits that after informing Kedarsinh, they did not stop molesting her but that was increased and they did not feel the need to file a compliant.

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18. She admits that house of the Narsang is back side of her house, therefore, it can be reached via narrow passage. Narsangbhai is old aged person having one daughter, namely, Ranjan. However, she had not disclosed the fact of molesting to Narsangbhai. She said that she got shelter and necessary facilities from Varsang Kana and is having the full trust on him. However, the complaint with regard to molesting is also not disclosed. The explanation offered is that his brother was one of the person, who is molesting. She admits that she did not disclose the fact in the compliant that Varsangbhai Kana alongwith the brother teased her because the witness himself states that they were hurt because of change of occupation. She admits that house in which Varsang Kana resides and they had been staying was having two rooms, one courtyard and verandah. She said that Varsang Kana and his wife were not sleeping in the same room but they used to live in separate room. She admits that she and Bhupat used to sleep together in the same room. She said R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 that it is not true that we were married when

we used to sleep in that room. She clarifies that they had decided to marry each other and they used to sleep together before marriage. She states that before she and Bhupat went to Surat together, Bhupat met to Varsang Kana in Surat and disclosed with regard to the relationship and thereafter they eloped from the village: Dadva and went to Surat. However, Varsang Kana was not there at that time. She admits that it is not correct that after solemnizing the marriage, they had come to Rampara. She admits that it was not known in the village that we were living together freely without getting married. She states that after love marriage, harassment was increased by the villagers.

19. She admits that at the time of interrogation at the house of Narsangbhai, mob of many people were present upto 12 O'clock. They reached the house at 11 O'clock while mob was there upto 12 O'clock and after they reached, some of the people among the mob were roaming near the house. She admits that people of mob R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 were roaming near her house till late night, and therefore, they were afraid and remained in the house due to the fear. She admits that they do not have any animosity with Narsangbhai. She started fasting and did not eat for three days after the incident. She admits that Varsangbhai was like family member and they trusted him completely. She admits that she and her husband were afraid that these people will kill them but they never thought they will rape her. She said that she was having faith on god. She said that after all these happened, they did not disclose their employer about harassment and threaten. She admits that upon asking to compare the handwriting of Exh.18, both hand writings are not of the same person and she did not know whose handwriting in paragraph at page No.5 was before her signature is there. She admits that on 20/4/1992, after reaching home, she was shivering out of the fear because of the false allegations made on them. She admits that if there is uproar in her house, then same can be heard in the house of Moti Harbam whose house was on back side of the house. She admits that Moti R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Harbam had no animosity with them. However, she did not disclose to Motibhai while returning from the house of Narsangbhai with regard to the harassment. She admits that she had not disclosed anything about night during the incident in the complaint. She admits that she had disclosed in the statement that accused persons are kissing her on different parts of the body, however, Lilaben's statement shows that they have bitten her on different parts of the body. She admits that when she put signatures for reading the statement, she did not tell to Lilaben about false statement, however, Lilaben told that it would be corrected afterwards.

20. She stated that Rampara Gamtal is not far from Navapura, however, it is less than 1 km. She studied upto 4th Standard and she admits that there is a way near small gate where they are staying and a house of Patel is situated in front of her gate. Chhagan Zaver's house is located adjacent to it. Mill of Ranchhod Arjan is situated towards the right direction and is having residential house R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 in the same premises.

21. She further admits in her cross examination that after the news was published in the Gujarat Samachar, Kashiben came to know about the said incident from the said news. She further admits that she did not let Kashiben know that complaint had been lodged with regard to the incident. She further admits that some persons from advocate's office sent complaint at the office of Gujarat Samachar. She further admits that application was posted from Bhavnagar and she went to the office of Gujarat Samachar at Ahmedabad on the next day. She further admits that before meeting

Lilaben, availability was inquired on telephone of Lilaben. She further admits that copy of complaint, which was sent to the Ahmedabad Gujarat Samachar Office, the same copy was sent to the DSP Surendranagar also. She admits that first of all Ghanshyam Kher and Ramji Mala Muli spread the talk implicating the names of the complainant with the theft, which was taken place at the Narsingbhai's house and then all the persons who were present in the Court, propagated the said talk. She further admits that there are diamond polishing R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 machine both at Dadva and Bhavnagar. There are also diamond polishing machine at Ahmedabad but work could not be obtained due to acquaintance. She further states that Surat is also famous for diamond polishing work.

22. She admits that her husband went to outpost chowki on 21.4.92 and told Kedarsinh to give her protection as they want to leave the village due to the harassment caused by these people i.e. accused persons. She admits that she stood for 10 to 15 min. at Fulgram Patia to take meal but did not disclose to Kedarsinh or Ranjitsinh regarding the incident occurred at night. She further admits that she did not dictate any such fact when Kedarsinh and Ranjitsinh came to the house, the accused persons were present and Lalji Badelo came to drop at Fulgram in his rickshaw.

23. She admits that she is having talking terms with daughter of Narsingbhai, but it was not much. She admits that on occasion of Akhatrij in the year 1992, her in-laws were coming to offer her Chundadi and ornaments and in order to save his R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 daughter from the allegation of stealing, she was alleged for the said stealing. She further admits that she did not tell Kedar and Ranjit that Savdas @ Ravan molested her in presence of Ramesh. However, Ramesh neither took any action nor replied anything in this regard. She stated that it is not true that her husband, her mother Zubedaben and myself were called at the house of Narsangbhai, but only my husband and I went there.

24. At the time of rape, she admits that they had kept both hands wide and straight. She admits that mouth was kept pressed on all the 5 occasions when they had committed rape and intercourse against the wish and willingness. She received injury on lips due to pressing of mouth, there might be something like ring on the hand and due to that the swelling was visible but it was not large and the said fact had not been written in the statement in her own handwriting dated 11.5.1992. She further states that she did not sustain any injury on the back of the body due to the floor made of rough mixture cow dung. At night, when accused persons had come and door was knocked, she was standing on the corner R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 of the room and it has not happened that while she was standing on the edge of the room and from there, they had dragged her and took her to the room near kitchen, but she proactively stated that she was standing on the edge of the kitchen and from there, they had taken her to the next room and that fact has been disclosed first time in the Court. She admits that the door of main gate is made up of roof sheet, but the accused had not entered making noise but they had merely knocked the door. They were using bad words in lower voice tone. She admits that when she was called for inquiry on 20 th, she and her husband had not been subjected to any slapping or beating and they had been using abusive words for us and was giving threats that one Zala Saheb from Surendranagar would come. She admits that there was such environment amongst them that they had fear that these people, i.e. the accused persons would kill them. Narsangbhai put money in cash and ornaments in the cupboard and

brought key with him. She admits that sister in-law, Ramaben stayed for 2 to 3 days. However, they did not disclose during the time when some persons and accused were harassing and molesting them. After the incident, they had reached to R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Ramaben's house and informed that as she was having pain in abdomen and she had fear about miscarriage. She admits that they had not taken any advice from Doctor. She denied to the fact that Doctor of Wadhwan made physical check up on 12.5.92 and at that time the husband had stated that they had made physical relationships twice after the commission of offence. She admits that her mother had separated and left her father and thereafter, they came from Kardej village and stayed at Dadva village. She said that there might be a 20 residential house within area of 400 to 500 feet surrounding place where they live. There were family consisting of women and kids in their houses. She admits that when she left village Rampara, she handed over articles of house and its keys to owner namely, Mala Govind on 21st January at 9 to 10 hours. It was not informed to Mala Govind with regard to the incident. She admits that mother visited Rampara twice or thrice and returned within a day but she had not informed regarding molestation committed by the accused. She states that police had told them to inform if they face any problem. At the time of pregnancy, Ramaben had invited her to stay but during such period also, she did not visit. She admits R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 that when we left Paddhari, we did not inform Ramaben that delivery has to be done at the place indicated by mother in-law.

25. She admits that she was called at Mamlatdar's office in Wadhwan for identification parade of the accused. She admits that 7 accused persons is to be identified in the identification parade. She admits that it is true that firstly there is a gate to enter Mamalatdar Office, thereafter there is veranda and from there one can enter Mamalatdar Office. She said that she did not know one has to pass only from the middle room to the last room wherein identification parade was held. They were made to sit for 45 minutes and thereafter they were called for identification parade. She denied to the fact that all the accused persons were shown on 12.5.92 and 16.5.92 at Wadhwan. Nitaben Goswami resides at Dadva village and she got to know her after the incident. She never used to read newspaper at that time when we left from Dadva for the first time. When it was reported in the newspaper regarding similar incident of Nitaben Goswami, we had already left from Dadva and she did not know that her incident occurred at Dadva on 6th R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 July, 1991. She did not know that her Nanand, sister in-law was involved in the incident and police had interrogated her. When they came to Wadhwan for registration of marriage, she was accompanied by Bhupat and Lalji, former Sarpanch of Rampara. She further states that she does not remember as to whether ritual was performed at any other place other than the Mamlatdar Office. She lastly admits that when Ramaben also accompanied her, she denied to the fact that at that time, her mother was at Rampara. She also denied that during the said period of 10 months, her mother resided for about 8 months at Rampara.

26. The husband was examined and his evidence was recorded at Exh.20. He narrated the incident mentioned in the FIR and supported the case of prosecution. In cross examination conducted by the learned advocates for the accused, mainly he admits that after they were taken to the residence of the DSP, recording was done there and cassette was prepared. At that time, DSP told Parin that even the husband i.e. witness can also tear the clothes. Upon informing this to Lilaben, Parin cried and R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Lilaben went to D.S.P. and told him that you



should not behave in such a manner with a woman who is harassed. At that time, advocate, Bhavnaben Dave was also present there. He admits that he met a person, named, Satishbhai who practices with Girishbhai, advocate in the High Court and Satishbhai had prepared a writing and Parin and witness had signed on the same. On the date of proceedings, before the Hon'ble High Court, on 22.5.92, they had reached to the High Court around 12 to 12.30 p.m. but prior to that they met the mother in-law at Vikas Gruh around 10 to 10.30. He denied that signatures of visitors was obtained in Vikas Gruh. Statement of mother in-law was recorded by Mr. Zala under the Neem tree at Vikas Gruh. They had insisted that statement of mother in-law is recorded in our presence. She states that she does not believe that first statement of her mother in-law caused damage to the merits of the case while the second statement which was recorded in our presence, supported the merits of the case. She denied to the fact that Parin and mother in-law were with her when we reached Fulgram from Rampara in rickshaw. He met Kanubhai and conveyed that he wants to marry with Parin. Kanubhai told that R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 the witness belongs to Brahmin community, and Parin belongs to the Muslim community and therefore, it is not proper. He admits that he and Parin came to the Rampara and they got married after 3 months. He admits that no persons from the village or so called notorious persons or the said head-strong persons had molested or made obscene gestures to Parin until they stayed with Varsangbhai i.e. for approximately three months and it started after they changed house and factory. He stayed in the house of Malubhai Govindbhai for six to seven months but did not give complaint to Malubhai or Pratapbhai with regard to incident of molesting to Parin.

27. He admits that there was no any circumstances which would have refrained them from giving a complaint due to any economic hardship. Further she admits that the decision as to giving a complaint was taken after about four to five days after we reached Paddhari and not after two to three days. We did ask other villagers name of persons, who were shown by Parin as the persons who molested her, as we did not know their names except two to three such persons. As we were not R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 knowing their names and we learned their names from other villagers we informed the same to Parin. The persons whose names were not known to me had come to the factory on relevant occasions and we came to know that they were the persons who molested Parin as they were shown to me by Parin and therefore, I learned their names from other persons in the factory. At that time, he did not tell anyone in the factory that these persons used to molest his wife and they should be given understanding not to do so. He states it voluntarily that the whole village is made of persons of Nadoda community and they are related to each other, therefore, he did not take such a step. He states that he had gone to the Police Station to inform these facts to the police and stated to Kedarsinh that, these persons used to molest his wife. After Kedarsinh was told such facts, he observed that there was no impact on these persons and they continued to behave in such a vulgar manner and molest her.

28. He admits that he did not meet any superior to request him for doing the needful. He admits that he did not have any dispute or enmity with Pratap Govind and Mala Govind. R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 He denies the fact that house of Narsang Hari is located behind the house where he and Parin used to live and it was located at such a distance that if we throw anything from their house, it may fall in the house of Narsang Hari. He admits that he was not in any bitter terms with them, which may encourage Narsang, his wife, his daughter Ranjan to level

false allegations against them at the instance of someone else. It was Ranjan who committed the wrongful act of theft and he presumes that they might have thought to implicate them as they were outsiders in the village. Two persons came to the factory and told that the accused have been caught and everyone was of the opinion that it was he and Parin who committed the theft. They told that, no one else, but only the witness and wife were the persons who would commit theft. He admits that he does not know whether they had dictated such facts in the statements when they had an opportunity. He admits that his wife might have gone to house of Narsangbhai. It was summer and the month of April and, there was no fan in the house. He admits that on being implicated, he spoke to Malubhai that they were wrongfully implicating them and he did not go to the house of Narsangbhai with him. Neither R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 his wife nor he thought of stating the fact to Narsangbhai personally that we were not involved in committing the theft.

29. He admits that sister Ramaben came to the house at Rampara from Padghari about a week before the incident. She came in the evening and left in the morning of next day and regarding this matter though she had stayed at this house for night but they did not tell anything to Ramaben about Parin's rape and torture, she went through.

30. He admits that they did not have a conversation with Ramaben wherein they had stated to her that, pursuant to the allegations of committing theft, they had come to Padghari, neither they had mentioned to Ramaben that they are the head- strong men in the village nor they informed Ramaben that they were going for giving complaint even when they went to give complaint. They also did not state such fact to Ramaben that there was an issue involving a girl from Nadoda community at Rampara, and therefore, they had come for a rest. During the time, when he and Parin went to Bhavnagar and they were told R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 to come again, they did not consult any doctor regarding Parin's abdomen pain and her pregnancy. During the time, when they stayed at Padghari, Parin was feeling extreme pain in abdomen and she was pregnant but he did not take her to a doctor. He admits that on 12/05/1992, the doctor at Wadhvan had conducted medical examination of wife and the witness. He denied the fact that doctor had asked them during the medical examination that whether they had any intercourse post the incident or not and both of them replied that, they had an intercourse twice.

31. That from time to time, he came to know that they had been implicated in the theft till they were taken to Virsangbhai's house for questioning, no one else had questioned them or beaten them. But, many persons used to gather outside the house and they used to behave in an abusive manner and used to speak abusive words and they used to say that, "these are the persons, who have committed the theft." On basis of the voices speaking abusive words outside the house, he presumes that they were about ten to twelve in number. He did not see R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 the persons who used to behave in such a manner and he admitted that the mohalla of Navapara village where they used to live was a big mohalla and having many residential houses there. Two or three incidents of mob gathering outside of the house in the manner and using abuses had taken place and during the period, they were taken for inquiring and two-three days after the rumors of implicating them in the theft. During these two-three days, they did not go to the Rampura Police Station and asked for any protection bandobast. When the complaint at Mark 16/1

was dictated to the Advocate, he and Parin told the facts to the Advocate and thereafter, advocate has drafted the same. After the complaint was written, he read the same and it was as per their dictation. He read the police statement, which was recorded. He admits that there is a house of Ranchhodbhai adjacent to the house. He admits that the corner of the road lies near the flour mill of Ranchhod Arjan. He also admits that the house of Narsinhbhai is situated adjacent to the spot where the flour mill building of Ranchhodbhai ends. He denied to the fact that the corner of the house of Narsangbhai and corner of his house is adjacent to each other in the back R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 side but he explaining that according to him, there is a house between both.

32. He admitted that the residential building of Narsangbhai comes after the flour mill building of Ranchhodbhai ends and towards south of the same. The courtyard would have been about 8 x 10' in area. The factory of Ramji Maharaj is not there in the courtyard but a residential building is there. His factory is in the same building at some distance. He admits that if one exits from the gate of his house and turns head on one side, the flour mill building of Ranchhodbhai and factory of Ramjibhai can be seen from there. The flour mill owner Ranchhodbhai who is accused No.7, whom he knows is present in the Court. He used to see him often, but it is not true that, he knows him by the name.

33. He admits that he was having dues of Rs.2,000/- to be received from Pratap Mala and Govind Mala for the work of twenty to twenty five days but he had not tried to recover the dues nor he has sent any notice regarding the same through R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Advocate. Kanubhai knew through the correspondence that, he was in Rampara but Ramaben was not having knowledge with regard to the same. He did not write to Kanubhai about the harassment they were facing from the eve teasing of Parin by the people after they came to Rampara. He also did not sought advise from Kanubhai through letter with regard to the legal action or police procedure in this regard. He approached Kedarsinh at outpost police station. He consoled the witness, however, the harassment continued but he did not have any idea at that time to meet Kanubhai personally or get his advice in this regard by writing a letter. He admits that Parin knows reading and writing and had written some facts in her handwriting in the statement dated 11.5.1992. He admits that statement of Bhavnaaben was written in his handwriting, wherein, he asked Parin to write the facts of the incident occurred after she was taken out by two persons in her handwriting and at that time, Parin told to write as she states that thus it is written in his handwriting that 5 persons raped her in his absence. Thereafter, Parin dictated him facts occurred in room and he wrote accordingly, but he does not know as to whether he wrote R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 the same facts or not. He admits that Lilaben asked him and Parin regarding the incident and they described entire incident in detail, which is recorded on 11.5.1992 Exh.23. He produced the entire statement except Exh.23, which is produced at Exh.24, part of Exh.23 is mentioned with red ball pen whereas Exh.24 is mentioned in blue ball pen. He was shown the original statement dated 11.5.1992 and after looking to the entire document, he states that said statement is in his handwriting. He also admits that it is written between 3 rd and 4th line at page

- 2 in the statement that "He also told you that you lodge the complaint.", but according to him, as he remembered such fact he added and wrote the said facts therein. He states in the cross examination that as accused Nos.7 and 8 detained him at the house of Laljibhai for about one hour

to one hour fifteen minutes where he was not beaten but was slapped. Attention was drawn to the facts written in his statement that both of them abused him for about an hour and slapped him, which is truly written therein. He also states that he had written such facts in the statement that he was beaten and thereafter, he was allowed to go around 2-30 to 3-00 hours and at that time, all the five R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 persons arrived at the door of Lalji's house. He admits that when he stayed at the house of Kanubhai for 4 days, after the commission of offence, he was to meet many people in the village and met his sister Kanakben but he neither sought any advice whether to lodge complaint of the incident who have met there nor informed anyone regarding the incident. He admits that after meeting the advocate, he was asked to come with Parin after three days and no fact is not written in the complaint regarding requirement of more time in the matter. It is true that this fact has not been mentioned in any of his statement. As Parin told him to lodge the complaint at once, the idea to lodge complaint at once was significant and the police personnel were also involved in offence of this case. Thus, they were afraid while lodging any police complaint. He does not remember exactly as to whether he talked about the role played by Raimal at the time of meeting advocate for the first time and asked to prepare complaint to lodge the same before the police as he wanted to lodge the complaint immediately, but advocates were busy. Upon being asked, he states that he was slapped on 20/04/1992 and while at the house of Narsangbhai, he states that no one R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 slapped him at that time. He admits that while he was being interrogated at the house of Narsangbhai on 20/04/1992, he had apprehension that these people will kill him. He admits that the complaint was registered against him and Parin and that they had assaulted and fractured the bone of a 70 years old elderly lady at Ahmedabad; however, it was a false case. That criminal case is pending at present. Thus, at the time of performing marriage, Mamlatdar was not present. Brahmin was present and Parin and Bhupat, her mother in-law were present and Advocate was present. Parin had not sustained any injuries on back part of her body upto calf muscles and at shoulders. When they came to the police station on the next day, the rickshaw was driven by Lalji Badelo, who is an accused. They had not lodged any compliant regarding the night incident before Kedarsinh or Ranjitsinh. He had only talked to Kedarsinh at Outpost that they are not safe and they want to leave the village and therefore, he must come with them and drop them. He said that it should not happen that despite the fact that Ramaben asked repeatedly that they did not inform about anything. It is true that they are in good terms with Ramaben and presently he was doing the R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 work of polishing diamonds in Padaghari and is staying in the office of her husband. He admitted that when they left home on 21st, they had handed over the keys to Malabhai. The house articles were also handed over to him. He denied the fact that on the set-off amount of Rs.5000/- due to him, they kept household articles and keys to Malubhai while leaving the house. Complaint was prepared at Bhavnagar and they reached Ahmedabad to Bhavnagar on 8.5.1992. They met Devendrabhai Patel, Gujarat Samachar. However, the said fact was not stated in the police statement. After meeting Devendrabhai Patel of Gujarat Samachar they would not meet for around four days. They do not know as to by which postal service the other copies were sent. When they met Devendrabhai Patel of Gujarat Samachar, he received the compliant. The copy of the complaint was not received by Leelaben Desai before we gave statements before the organization for safety of women on 11/05/92. Leelaben was not going to meet and when they met, they did not produce the copy of the complaint in the office of the organization and informed there that they want to meet Leelaben with respect to the said fact. When they met Leelaben R/CR.A/101/1995 JUDGMENT

DATED: 07/07/2023 for the first time, she saw the complaint and thereafter, she took the first step of recording their statements. Copy of the complaint was not submitted to the DSP, Surendranagar in person. They met DSP, Surendranagar on 12.5.1992.

34. They stayed at the Vishwa Hindu Parishad, Ahmedabad for around one and half to two months. At that time, he used to do the work of diamond polishing in Ahmedabad. He does not remember as to when and where Satishbhai, who was working in the office of Girishbhai Patel, had met him and when he went to the High Court. He admits in the examination in-chief that he went to the High Court to inquire about an application submitted in the Hon'ble High Court and at that time he could not meet Girishbhai Patel, but Satishbhai met him. Thereafter, he states that he does not remember any such fact at present. On 17/05/92, police dropped them at Kashiben's place but they did not give any address to the police to meet them later on. He admits that marriage with Parin was performed in presence of her mother Zubedaben and with her consent. Before the complaint was lodged, they did not meet or call Zubedaben for R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 her advice with respect to the incident.

35. He admits that the incumbent or the former Sarpanch is considered as a prominent person among the villagers. It is admitted that former Sarpanch Laljibhai, who arranged the marriage, was with us, but he did not take advice from Laljibhai after informing him about the harassment being caused to them before the said incident took place.

36. When he came to village Dadva to meet Kanubhai and when he was not at home, he stayed for 4 days but he did not take advice from his family members.

37. Next evidence, which was recorded was of Kedarsinh Ratansinh Vaghela, PW-3, Exh.26, serving at Village: Rampara outpost. He also supported the case of the prosecution and admitted that mob was shouting with regard to the theft, which was committed in which suspicion was raised against Bhupat and his wife Parin- complainant. However, he admits that he was serving as Head Constable since 1989 and theft is a crime, R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 which is to be investigated by the police. The villagers were suspecting the complainant and her husband, however, nobody had filed the complaint. He also admits that he can also lodge a complaint as a complainant, however, that is also not done. No any Janva Jog is also registered with regard to the allegations of molestation made by the complainant against the villagers. He also admits that he did not inform to PSI Zala, who came on 11.5.1992 from Joravarnagar outpost about the complaint of molestation made by the husband previously. He admitted that Bhupat had not informed about the commission of rape, however, he had sought as they wanted to leave the village and transfer to the another village. He states that mother of the Parin was not present. He also admits that he and Ranjitsinh went to the house of Bhupat where wife-Parin @ Bhavnaben was present. He admits that in the statement recorded by the police, it is mentioned that two persons were present i.e. Parin and her mother. He admits that the statement, which was recorded i.e. on 11.5.1992 when they went to the house of Bhupat, wife and mother in-law were present. The house was locked and the household articles were handed over to Mala Govind. They had R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 traveled in the Rickshaw of Laljibhai upto the Fulgram Patia. He admits that when they went to the house of Narsangbhai, it came to his knowledge that daughter of Narsangbhai,

namely, Ranjan and Parin were friends and the needle of suspicion was raised against Parin, therefore, Ramesh was sent to house of the complainant to call him, however, along with the complainant and her husband, the mother in-law was there. He states that he did not remember that whether mother in-law was there or not. He admits that when Bhupat had informed to provide protection to leave village, he asked him why you want to leave the village with the protection, if you have fear of someone, convey immediately but he informed that nothing is there of such type. But at previous night, the interrogation was made with regard to the theft and he was having fear that today also, village people will harass him. He admits before the police that when they were made to sit in the tanker, Bhupat had informed that he and Parin would go to the Padghari and his mother in-law would go to the Chittal village, however, on the next breath, he depose that mother in-law is staying in Chittal.

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38. Next evidence of Kanubhai Mansukhlal Pandya, PW-4, Exh.27 was recorded. He also supports the case of the prosecution and admitted in cross examination that earlier he was a Reporter and Social Worker, at present also, he is doing the said activity. He studied upto 7th Standard. With regard to the commission of offence, Bhupat had informed on 4.5.1992 when Bhupat had come to the house at 4 O'Clock and stayed during the night, however, name was not disclosed by the Bhupat. He had not stated before the Police that Bhupat had informed that Police Officers are also involved in the offence. He admits that one Nitaben Goswami of the village: Dadva had also lodged a complaint of rape but he did not help her in any manner.

39. The next witness, which was examined by the prosecution i.e. Ranjanben Narsangbhai, PW-5, Exh.28, is aged 16 years. She admits in chief examination that offence of theft was committed before 1.5 years to 2 years and theft of ornaments and Rs.5,000/- cash was made, which was lying in the cupboard and cupboard was bolted with lock. When in the house, R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 no one is present, keys are remaining with her. When cupboard was opened with key, no ornaments and money were found. When inquiry was made by the family member, she said that she was not having any knowledge with regard to the same. Thereafter, the needle of suspicion was raised on Parinben because she was the only person who used to come frequently. On the same night, 8 to 9 O'Clock, Parin, Bhupat and mother of Parin was also called, all came to the house and were interrogated by the village people and was conveyed that if you have committed theft of articles as well as money, then accept it. Around two hours, the interrogation was made. The assurance was given that the money and ornaments would be got by morning and they left for their house. When Raimal asked with regard to the theft to this witness, she informed that she had not committed theft but as Parin used to come to the house, therefore, she had suspicion on the Parin. She further states that Parin was having knowledge with regard to the ornaments, money and keys of the cupboard in the house.

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40. In the cross examination, she admits that Parin, Bhupat and her mother in-law were staying in the house since last 7 months in the adjoining premises. There is no any other house in between

Parin and this witness. She admits that her engagement was done at Barod village and during the time of offence, there was a ceremony of 'Chundadi' at her house and due to that ceremony, the ornaments were lying in the cupboard. She admits in the cross examination that inquiry with regard to the theft was done about 6 to 7 days but no any ornaments and money was found as there was no any whereabouts of the ornaments, Raimalbhai, who is uncle (Fuva) serving as a Horse Rider (Ghode Savar) was called as there was a needle of suspicion on the mother of Parin and Parin and the mob gathered on the day of incident. The mob was shouting that if you will not handover ornaments, leave the house or else they would be beaten. She admits that bundle of ornaments (i.e. Potali) was thrown from the side of complainant's house which fell in the courtyard in the early morning of 5 O'Clock. On opening, the ornaments were found, however, there was no money. In the night hour, Varsang Kana, Moti Harbam, Malu R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Govind were also present as also Shardul Pagi and Ranchhod were also there. It was informed by the father that as the ornaments were received, let all persons go at their house but the mob said that Parin and her husband would not be allowed to stay in the house. She admits that Parin and Bhupat were moving in the house in indiscipline manner. They were singing songs in front of village people. She further admits that Parin's used to come in the house when no one was present in the house. When this witness wanted to go outside the house to fetch water or any other work, mother of the Parin and Parin used to stay in the house. She further admits that from the day when Bhupat came to the house, mother in-law also stayed with him and upto the day when they left the house, they all were together.

41. Next witness, which was examined by the prosecution is Narsangbhai Haribhai, PW-6, Exh.29. He admits that theft was occurred of ornaments & money in the house, however, he did not lodge any complaint in this regard. He was having suspicion over Parin and her mother and on the Raimalbhai who is brother R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 in-law, who is at Surendrangar. He interrogated to the daughter first and thereafter called the complainant and her husband. He admits that the engagement of the daughter was done at Barod village. He also admitted that on the night when they were called for interrogation and when they returned to the house, the accused persons along with other were people was present in the house of the witness only. He admits that on interrogation, Parin had said that you will receive your articles by early morning and said why you are insisting that who committed theft. On giving this assurance, they were allowed to go. He also admits that at morning 5 O'Clock, when the mob came to the courtyard, many people were there and he informed to all the village people that now all may go at their house as ornaments are received but the mob had informed that the complainant and her husband may leave the house otherwise they would be beaten. When the daughter was interrogated Ranjanben had informed the witness that in absence only Parin and her mother came to the house and that was informed by this witness to Varsang Kana, Malu Govind and all other people. The mob was shouting near complainant's house that village people had given shelter to you R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 but you had committed theft of ornaments, therefore, handover ornaments and due to fear, the complainant and her husband, were not coming out form the house. With regard to the question with regard to the behaviour of the complainant and her husband, the witness submits that they used to sing a song of movie and used to behave indecently which all village people did not like. This witness also informed and asked Ranjan not to maintain relations with the complainant as their behaviour is not proper in the village. He also informed to the Parin

that do not come to the house, however, she did not follow the instructions but came to the house under the guise to have the tea, sugar or ghee. He admits that house and shops are in the same premises. However, when they were in the shop, they cannot ascertain what is happening in the house and the same situation, vice-e- versa also happens. He states that there is no any daughter having same age of the Ranjanben.

42. Next witness is Manharlal Amrutlal Kothari, PW-7, Exh.30, who is Executive Magistrate and conducted the Test Identification parade. He deposed in the chief examination that R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 T.I.Parade was held on 17.5.92 at 9.30. When he reached the Mamaltadar's office at 9 O'Clock, 3 witnesses were present in the office. Out of these 3 witnesses, 2 witnesses were instructed to sit in the Supply Branch (Purvatha Branch) and another was instructed to sit in Record Room. The 24 persons were called for participating in the T.I. Parade. He states that all 8 accused persons were identified by the complainant and her husband. He admits in the cross examination that he did not verify where witnesses were sitting for the T.I. Parade whether their door and windows were closed or not. He states that when the accused entered from the main door in the chamber, there is a Treasury Room having iron net in between. This Treasury Room, Office Talati Office and his chamber is situated in the common compound and in open wall. There is no wall in between this room. When the accused enters the chamber, the witness can easily see his presence from the ground. From the Record Room also, it can easily be seen. He admits that Pushkarbhai is a panch-witness, who is doing business of stamp vending for which recommendation is made by the Mamlatdar. Through this witness, the prosecution had proved the panchnama drawn for R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 conducting Test Identification Parade, which was exhibited at Exh.34.

43. The next witness, which was examined by the prosecution is PW-8, Exh.35, Pushkarbhai Bhavanishankar Raval, who was panch-witness of the panchnama, which was conducted by the Executive Magistrate for Test Identification Parade. This witness identified the signature made in the panchnama as a witness. Nothing much is coming out from this witness.

44. The another witness, which was examined by the prosecution is PW-9, Exh.36, Savdasbhai Ajmalbhai, who was panch-witness of the recovery of clothes and knife, which was made from the Savdas @ Ravan Magan. This witness has also identified his signature, which was made on the panchnama. However, witness had not supported qua the recovery, therefore, this witness was declared hostile.

45. Prosecution had further examined one Vinod Ganpati Prabhu, who was PW-10, Exh.53, who was Medical Officer R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 serving at Community Health Center, Wadhvan. He deposed before the learned Court that on 12.5.1992, the prosecutrix was brought by the police at Joravarnagar Police Station for medical examination. History given before the Doctor shows that prior to 20 days rape was committed on the prosecutrix during 1.30 to 3.00 O'Clock in the night. On examining the prosecutrix, 26 weeks pregnancy was found. She was found to have normal sign of pregnancy. In the cross-examination, this witness admits that in the case where 6 months or more than 6 months, the pregnancy is there and 5 persons raped on her, then, there may be chances of miscarriage of pregnancy or damage to the fetus. He further admits that in



normal circumstances, during the last 4 to 9 weeks, there would not be any intercourse with the pregnant lady and if that is done, there are chances of infection. But no any instructions in that line is given to husband and wife. But in those cases, there may be chances of premature delivery. Through this witness, the prosecution proved the Certificate issued by this Doctor, which is exhibited at Exh.54.

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46. Next witness, which was examined by the prosecution is Kashiben Lavjibhai, aunt of Bhupatbhai (Masi) who was PW- 11, Exh.55. She deposed in her examination in chief that Bhupat and his wife stayed thereafter 15 days of the incident. However, she was not having knowledge with regard to the incident as it was not disclosed by Bhupat and his wife. On reading the newspaper, she came into knowledge about the incident and thereafter, Bhupat had informed that 7 persons came to the house and 2 persons had taken him out of the house and 5 persons had committed rape on his wife. She admitted in her cross-examination that father of Bhupat is having two wives and family members are not maintaining the relations as Bhupat had performed marriage in different caste.

47. The prosecution had further examined, Malubhai Govindbhai, PW-12, Exh.56, who is owner of the house where Bhupat and his wife were staying at the time of offence. He admitted in the cross examination that there are two witnesses, Malubhai and Pratapgovind. Initially, Bhupat was staying in the house of Varsang Kana and doing the work at the flour mill of R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Varsang Kana. After 2 to 3 months, they had moved to the house of Mohanbhai Kanabhai and thereafter, he joined the factory of this witness. He worked for around 5 months in the factory of this witness and he also gave the house on rent to Bhupat. He admits that Bhupat and his wife and mother of his wife, namely, Zubedaben, were staying in the house. The offence of theft committed at the house of Narsang Hari and needle of suspicion was raised on the wife of Bhupat, and therefore, he instructed Bhupat not to come at factory for work as he was having apprehension that in the factory, there are valuable items like diamond and if something would happen to that, then he may incur the huge loss. He admits that he had given Rs.4000/- as advance to Bhupat, which was not returned till date. He admits that on 12.4.1992, Bhupat, Parin and her mother were called at house of Narsang Hari for interrogation. They were called when he reached the house at 8 O'Clock by 3 persons. These 3 persons and accused persons were also there in addition to 50 to 60 other people. Outside of the house, mob of 1000 people were there, he remained in the house of Narsang Hari upto 4 O'clock in the morning. He deposed in the cross-examination that upto 12 R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 O'clock, the interrogation went on and thereafter Parin had conveyed that the articles would be received by early morning and allow them to go. Thereafter, they went to the house. He conveyed to Parin, Bhupat and his mother in-law that they need not be afraid, if any difficulty would be there in the night, then he asked to inform him. He deposed that at 4 O'clock early morning, one bunch of handkerchief (rumal) came from the house from the side of Narsangbhai. On opening the bunch, ornaments were there but cash was not there. Including the accused persons, the other mob had also shouted that these persons should not be allowed to move in the village. In the morning, he went to the house of Bhupat and told to vacate the house. Bhupat had informed that they also want to leave the village as false allegations are made and there is risk of life in the village. He admits that at that point of time,

he had not disclosed with regard to the offence of rape, neither Parin nor her mother disclosed the same. He did not allow to take household articles as he lent Rs.4000/-, which was not paid till date. He admits that their behaviour was indecent in the village and they used to move in the village signing songs and their behavior was like R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 hero and heroine of the movies. Through this witness, prosecution had proved the panchnama drawn by the FSL officer at Exh.57 of place of offence.

48. The next witness, which was examined is Gunvantrai Swaminarayan, PW-13, Exh.58. He was serving at Superintendent, Community Health Center, Wadhvan and examined the prosecutrix on 12.5.1992. The history, was given to earlier Doctor before this Medical Officer as well. The MLC certificate was issued vide Exh.59. Through this witness, at Exh.60, there is certificate which was issued wherein it is mentioned that post rape, on 2 to 3 occasions, the intercourse was done between husband and wife.

49. The next witness, which was examined is Rameshchandra Labhubhai, PW-14, Exh.64, who was serving as a constable at Rampara outpost. He deposed in the chief examination that as the theft was committed in the house of Narsang Hari, the mob gathered. Therefore, he along with Kedarsinh went to the house of Narsang Hari. On instructions of R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Kedarsinh to call Parain and Bhupat, he went to house of the Bhupatbhai to call them and Parin Bhupat and mother of Parin, Zubedaben came to the house of Narsang Hari. Kedarsinh has made initial interrogation about theft, which was committed and then handover of the articles at that point of time, at around 9.15 hrs. was done. After interrogation, they were allowed to go and this witness had gone to drop them at the house. Thereafter, he along with Kedarsinh went to the outpost chowki. In the cross examination, he denied the allegations of outraging the modesty of Parin when she was called at the house of Narsang Hari.

50. Next witness, which was examined by the prosecution is Ranjitsinh Ajitsinh, PW-15, Exh. 65. This witness was serving as a constable at Rampara out police chowki. He deposed in the chief examination that on the next day of incident, he was informed that they wanted to leave the village and he was crying. Kedarsinh had conveyed that if any difficulty is there, he would help him. On asking this, Bhupat had said that please provide protection as they want to leave the village. He and Kedarsinh went to the house of Bhupat and on calling rickshaw, they had R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 dropped them at Fulgram Patia. He admits that in the rickshaw Bhupat, Parin and her mother were there. The witness also admits that Parin, Bhupat and her mother were provided meal before they were made to sit in the truck. In cross examination, he admits that auto rickshaw of Laljibhai, who is accused herein, was called for. The witness also admits that key was also handed over to owner, namely, Pratap Mala. The witness also admits that neither Bhupat nor Parin had disclosed any incident of rape before this witness.

51. The next witness, which was examined by the prosecution is Zubedaben, PW-16, Exh.63, mother of Parinben. She deposed that her native is at Dadva but since last 4 to 6 months, she staying at Chittal at her sister's house. She deposed in her chief examination that she came to house of her daughter, namely, Parinben after her marriage and stayed for around 10 days. Thereafter, she went to her sister's house at Chittal. From her chief, it is coming out that she is frequently coming and

staying with the daughter at village: Rampara. She deposed in chief examination that, she came to know about the incident on R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 reading the newspaper and thereafter she informed her brother in law, Amir Ali and said that let them go to Rampara, but same was denied by Amir Ali. She deposed in her chief examination that after the incident, police came at Chittal village and informed that as no one is ready to stand as witness in Rampara, we may record your statement stating that you were present and you are witness of an offence. On that line, statement was recorded by the police. She deposed in chief that in fact that statement was never given by the witness. Thereafter, her sister and brother in-law had a quarrelled and she was instructed to leave the house. Thereafter, she stated at Paldi Vikas Gruh, Ahmedabad. She had narrated the incident to one Sudhaben working at Nari Vikas Gruh, Paldi. She conveyed that they will be calling Parin and Bhupat tomorrow. On next day, Parin and Bhupat came at Ahmedabad around 10.30 in the morning. They were crying and narrating the incident. She also conveyed that police had recorded the statement stating that she was present at Rampara village. Bhupat had left the Nari Vikas Gruh, Ahmedabad conveying that there was some work at Court and on returning checked the matter. At 3 O'clock, they had come R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 back at Vikas Gruh and again police recorded the statement. She deposed that though Parin had disclosed the name of the accused persons but she forgot to mention their name. She admits in cross examination that when news was published in the newspaper, she was at Chittal village. Police came for recording the statement after 8 to 9 days thereafter. During that time, she had not inquired with regard to the Parin and Bhupat about their condition. She admits that she never visited Vikas Gruh earlier. On coming to Paldi, she inquired with regard to the Vikas Gruh and reached at night hours. She had not visited the house of Kashiben when she came to know that daughter and Bhupat are at house of Kashiben. In the cross examination, she admits that previously, no one had instructed or informed that if any difficulty is there, then to go at Vikas Gruh, Paldi. She admits that if she would be present in the night, offence might have not committed. She denied the fact that as the daughter and her son in-law had created false story, therefore, second statement was recorded. She admits that in all around 30 days, she stayed at Rampara village with her daughter. She admits that she was not having cordial relations with her husband and stayed separately R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 since last 7 to 8 years. She admits that when she came to know police had recorded false statement she had not raised her voice. She admits that she had never visited Ahmedabad. However, she came alone from Chittal to Ahmedabad. She admits that her brother in-law had not given reference of Vikas Gruh. She deposed in her cross examination that if her sister and brother in-law are staying when she was at Rampara village at the time of offence, said fact is not correct. She denied to the fact that she had submitted before the police that on 20.4.1992, she along with her Doctor and son in-law went to the house of Narsang Hari for interrogation. They were interrogated and at that time, Jamadar, Kedarsinh and Ranjitsinh were also present. They had conveyed to old lady (Dosi) that if you are aware about anything, please disclose. She further denied to the fact that she never disclosed before the police that 7 persons came to the house at night hours and they were threatening the witness as well as her daughter and son in-law and she was also thrown out of the house and thereafter, rape was committed on her daughter, Parin and on the next day, with the protection of the police, they had left the village. She also denied the fact that R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 new statement was recorded which being drafted by Parin and Bhupat before the police.

52. The next statement is of Lilaben Haribhai Desai, PW- 17, Exh.69 who was a Social Worker in the Women Protection Department run by the Home Department of the State. She deposed in her chief examination that on 11.5.1992, Parinben came with her at her Institution and disclosed about rape and also complained that no action has been taken, therefore, this witness immediately called the police department and instructed DSP to do the needful. She further deposed that Parin had disclosed that theft was committed in the neighbour's house for which, they were absolutely unknown. However, they were harassed in that regard. 5 persons committed rape on her and she gave her statement on 11.5.1992 in the Institution with regard to the narration of incident, which is exhibited at Exh.24. This witness on next day went to the Village: Rampara for making inquiry and personally met the DSP, Mr.Tirthrajan and complained about improper investigation. She deposed in her chief that DSP had conveyed that for extorting money, this type R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 of offence was sought to be created. However, she conveyed to the DSP that this is not a false case and he was instructed to see that justice is done to Parin. She admitted in her cross examination that Parin had disclosed that no investigation was carried out on the complaint of rape and sought help and guidance from this witness. She admits that when she went to visit Rampara, Parin was also present at Rampara village. She went along with other lady who is also a social worker at Rampara village. She admits that area of the place of offence is having residential locality. She was under impression that as Parin visited on 11.5.1992, the offence was committed on earlier night. It is admitted in her cross examination that Parin had never disclosed with regard to her mother who is in the Vikas Gruh itself. She admits that Parin had disclosed that in the night hours, offence was committed with the help of villagers and she reached directly from Rampara to her Institution. She is also not having the knowledge that her story was published in the Gujarat Newspaper under the title of 'Kabhi Kabhi'.

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53. Next witness which was examined is Amir Ali, PW-18, Exh.72, who was the brother in-law of the mother of Parinben. He was declared hostile as he was not supporting the case of prosecution. He deposed in cross examination that at the time of offence, Zubedaben was at the house of Parinben.

54. The next witness which was examined is Arvindbhai Sajubha PW-19, Exh.74, who was serving as PSI at Joravarnagar Police Station. He deposed in chief examination that on the instructions of DSP, this offence is registered. He admits in the cross examination that place of offence is having the residential houses. He admits that because persons were arrested on 11.5.1992 and they were on remand upto 17.5.1992, the T.I. Parade was held on 17.5.1992 except Ranchood and Pratap who were arrested on 17.5.1992. He admits that first statement of Zubedaben was recorded as per his instructions that around 400 to 500 villagers had sent the application regarding this false evidence to him which was exhibited at Exh.77. He recorded statement thereafter of 15 to 17 villagers. This witness admits in his cross examination that Kedarsinh had disclosed that at the R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 time of offence, mother in-law was also there when they were at outpost and only with regard to the theft incident, disclosure was made. However, no any rape of offence was disclosed before Kedarsinh. Certain omissions in the statement were admitted by this witness. Relevant part would be discussed at the subsequent stage. Through this evidence of the witness, FIR was exhibited at Exh.75.

55. On filing the closing pursis, the statement under Section 313 of the Criminal Procedure Code was recorded and incriminating material was put before the accused persons which was denied by them and accused had also examined two witnesses in their defence, namely, DW-1, Varsang Kana, Exh.84 and DW-2 Devsi Mavji Exh.87.

56. Defence Witness No.1, who was examined below Exh.84, Varsang Kanabhai had deposed in his evidence that he was doing the polishing work of diamond. After 8 to 10 days, on reaching to Rampara Village, Bhupat and Parin both came at Rampara and requested to allow to stay in Rampara for some R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 time as it was informed that they wanted to marry each other and as there is a quarrel, which had taken place in the house, he gave one room from his house and also gave necessary household articles. On asking to permit to allow the work of Diamond Polishing, witness accepted the same. Bhupat was taking money of Rs.4/- per diamond at the end of day. The house consisted of two rooms and one gallery and out of which one room was given to Bhupat. They used to take meal together. Behaviour of Bhupat and Parin was indecent as they used to sing song of movies while moving around in village. They used to tease each other in courtyard and behave like a Hero and Heroine, which wife of the witness did not like it. They behaved in the same manner in village as well, therefore, villagers were also annoyed, therefore wife had instructed not to permit them to stay more in the house. Due to the same, after sometime, he recommended Mohanbhai to give house on rent basis to Bhupat and Parin. They stayed in the house of the present witness for 2.5 months to 3 months. During that time, the mother came there for two to three occasions and after staying for some time, she used to leave. His brother, namely, Pratapkana is also R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 staying at a distance of 100 Ft. When Bhupat had started to stay in the different house, one Paramar Mala Govind had given work in his factory. They stayed for 1 and 1/2 months at the house of Mohan Kana and thereafter shifted to the house of Malu Govind as he was working in the factory of Malu Govind. They are having cordial relations and they used to visit frequently each other's house but he did not complain with regard to the outraging of modesty of wife on any occasions. The house of Narsang Hari is situated next to the house of Mala Govind and in between this house one compound wall is there. Narsang Hari came to the house complaining with regard to the theft, which took place and raised a suspicion on the Bhupat, Parin and mother of Parin. Narsang Hari asked him to make them understand. He went to Parin and Bhupat and conveyed please disclose the true facts and at that point of time, Parin and Bhupat had conveyed that they had not committed any offence of theft and they are not knowing with regard to the same. On 20th night, at around 9.00 hrs., hubbub was made at the house of Narsangbhai and on hearing the same, this witness went to the house of Narsangbhai. There was a mob of 1000 people near the house of R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Narsangbhai. On knocking the door of Narsangbhai, door was opened where around 50 persons had gathered including the applicant - accused and all were talking about incident of theft. One Moti Harbam was sent to the house of Bhupat to call Zubedaben, Parin and Bhupat and when they came to the house of Narsang Hari, he had tried to talk to them as mob of people were telling to lodge the FIR. Some people had also slapped to the Bhupat and conveyed to disclose the true facts otherwise he will face difficulty to stay in the village. This witness has also conveyed that as initially shelter was given by him, you disclose the correct facts and at that time, all three persons had conveyed that you are concerned with your articles which you will get by tomorrow morning and do not lodge any FIR. The mob was shouting that these are thieves and they

should not be permitted to stay in the village. On giving assurance that articles would be received by morning, Moti Harbam was asked to drop them at their house. Around 4.45 in the early morning, all the accused and these witnesses were present in the house of Narsangbhai Haribhai and the mob was also outside their house and around 4.45 to 5.00 O' Clock, mob was shouting that they R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 are thieves and nobody else have committed offence of theft. At that point of time, from the side of the Bhupatbhai's house, one bundle was found wherein ornaments were there but money was not there. Narsangbhai conveyed to mob that now ornaments have been received and conveyed all to leave the house. In the morning, around 8 O' Clock, Bhupat, Parin and Zubedaben came to house of this witness and Bhupat said that they are having fear of being beaten by the village people, and therefore, he wants to go to the police station. This witness also accompanied Bhupat and went to the outpost police station at that time, Zubedaben and Parin stayed in the house of the present witness. When they reached police outpost, Kedarsinh and Ranjitsinh were present. Kedarsinh was conveyed that as Bhupat and family wants to leave the village, they may be allowed and dropped upto the highway. Bhupat had conveyed that they do not want to stay in the village. Thereafter, this witness along with Bhupat, Parin and Zubedaben and Kedarsinh went to the house of Malu Govind where Bhupat was staying. There Malu Govind was present and as Malu Govind lent Rs.5000/-, which was remained unpaid, therefore, it was conveyed to Bhupat to leave R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 the baggage and after making payment to take the same. Bhupat had handed over the keys after putting the baggage in the room and they were made to sit in the rickshaw. Kedarsinh and Ranjitsinh were following them. After some time, one Lilaben Desai came to the village and also came to the house of Malubhai where Bhupat was staying on rent. This Lilaben had also visited the house of Narsangbhai and made inquiry with regard to the offence. The village people conveyed that this is absolutely false allegations but Lilaben also conveyed that all the people of village are one and same, therefore, she denied to accept with regard to the false allegations. In cross examination, he accepted that due to the indecent behaviour in the village, village people were annoyed and conveyed to this witness with regard to the same. She also observed the misbehavior of Bhupat and Parin but she was not giving much attention to the same. He accepted that accused Raisang is uncle of Ranjanben and on interrogating Ranjanben with regard to the theft, Ranjanben had conveyed that when she went to fetch the water, Parin was alone and therefore, accused Raisang was interrogating Bhupat and Parin about the theft.

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57. Another witness, which was examined by the defence, namely, Devsibhai Mavji, Exh.87, DW-2 was the owner of Chamunda Restaurant where the complainant and her husband along with her mother had taken lunch before leaving Rampara village. In his chief examination he deposed that he had not taken any money from the complainant and her husband and Kedarsinh had instructed not to take money. No any incriminating things are found from the cross examination from the present witness.

58. Before analysing, sifting and assessing the evidence on record with particular reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny, this Court deems it fit to discuss with regard to the law laid down by the Apex Court in various decisions.

59. Learned APP has relied on the decision of the Apex Court rendered in the case of Bharwada Bhoginbhai Hirjibhai vs State Of Gujarat reported in 1983 (2) GLR 1073 (SC) R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 wherein, Apex Court held as under:

"9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opiated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the Western World which has its own social mileu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to transplate it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society and its profile. The identities of the two worlds are different. The solution of problems cannot, therefore, be identical. It is conceivable in the Western Society that a female may level false accusation as regards sexual molestation against a male for several reasons such as:

(1) The female may be a 'gold digger' and may well have an economic motive to extract money by holding out the gun of prosecution or public exposure.

(2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and chased by males.

R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 (3) She may want to wreak vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.

(4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendatta. (5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self-importance in the context of her inferiority complex.

(6) She may do so on account of jealousy.

(7) She may do so to win sympathy of others.

(8) She may do so upon being repulsed.

10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statements or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because: (1) A girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 happiness being shattered. (S) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.

60. Learned APP has also relied on the judgement rendered by Apex Court in the case of State Of Maharashtra vs Chandraprakash Kewal Chand Jain reported in 1990 (1) SCC 550 wherein para-16 of the judgment is referred, which reads as under:

"16. (b). A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or



practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

61. As per the ratio laid down by the Hon'ble Apex Court in above mentioned cases, to hold the guilty to accused for the commission of offence of rape, Solitary evidence can be relied of the prosecutrix provided the same inspires confidence, absolutely trustworthiness, unblemished and should be of sterling quality. In the case on hand, the evidence of the prosecutrix shows several lacuna, which would be projected herein below, which would go to show that her evidence did not fall in the category and could not be relied to hold the appellant guilty of the offence.

(a) The prosecutrix is major and adult person.

(b) Due to the inter caste love in the year 1992, their relationships were not accepted by the family of the prosecutrix R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 as well as the family of the husband, namely, Bhupat. They had ran away from Village: Dalva and stayed at Rampara village in the house of Varsang Kana, who is the friend of husband, Bhupat.

(c) It is undisputed fact that they stayed around 3 months without solemnizing the marriage in the house of Varsang Kana.

(d) After some time, marriage was solemnized in the presence of an advocate, mother-Zubedaben and Sarpanch-Laljibhai at Wadhwan, which was also registered.

(e) As per the allegation, headstrong people of the village: Rampura had made some immoral demands and used to tease her for which, the husband, namely, Bhupat had made a complaint to Kedarsinh, who is Head Constable serving at outpost Police Station.

(f) From the evidence recorded during the trial, it is coming out that after shifting in the house of Malu Govind, there was no R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 facility of fan, therefore, she used to go to the house of Narsinhbhai, which is adjoining to the house of the prosecutrix.

(g) The mother of the prosecutrix, namely, Zubedaben used to come frequently and stay with the complainant and her husband.

(h) Incident of theft had taken place in the house of Narsinhbhai where the ornaments of daughter Ranjanben was stolen, which was arranged for her engagement.

(i) Needle of suspicion was raised on the prosecutrix and her mother, namely, Zubedaben as she used to remain in the house of Narsinhbhai in the noon hours alone under guise that she was not having facility of fan in the house and when Ranjanben went to fetch the water from the well, the ornaments were stolen.

(j) On 20th April, 1992, the prosecutrix and her husband were called to the house of Narsinhbhai for interrogation with regard R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 to the theft of stolen articles. They were interrogated for 2 to 3 hours by the village people including the accused persons in the house of Narsinhbhai.

(k) They left the house of Narsinhbhai after giving assurance that by next day early morning, they would get their stolen articles back.

(l) The allegation of rape against 5 persons was made who were also present among the mob where interrogation was made.

(m) At the time of alleged rape, the prosecutrix was conceiving 26 weeks pregnancy. No injury has occurred to the fetus, neither did she immediately go to the Doctor though as per the deposition, she was feeling unbearable abdomen pain. She gave birth to a girl child in the month of August, 1992 i.e. after the period of 3 months from the date of FIR and as per the evidence, the girl child at the time of recording of evidence was 1 1/2 years old.

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(n) They had opportunity to report to the police officers as they had already taken help to leave the village of the police officer, who is the witness but they did not deem it fit to disclose the commission of crime i.e. rape to the police officers and Bhupat has reported the incident of teasing to Kedarsinh, Head Constable prior to few months but did not report incident of rape.

(o). They had stayed at Padhghari village at the house of Kashiben for 10 to 30 days. Prosecution went along with her husband at the house of Kashiben i.e. Masi of Bhupat. There also they did not disclose the offence of rape, neither they took any medical treatment though she felt severe abdomen pain.

(p) In the cross-examination, it is admitted by the prosecutrix that they had decided to teach lesson to the accused persons.

(q) After 4 or 5 days of the offence, as per evidence, she conveyed to her husband to lodge complaint about commission of offence.

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(r) Thereafter also, instead of approaching the Police Station, husband approached to Kanubhai Pandya, who is a social worker staying in the Dadva Village. There also the husband stayed for 4 to 5 days at his house.

(s) Her husband returned from the Dadva and conveyed to the prosecutrix that Kanubhai has written a chit addressed to advocate of Bhavnagar and both of them have to go at Bhavnagar. The offence which was alleged to have been committed is falling under the territory of District: Surendranagar.

(t) Thereafter, both left for Village Padghari, District: Bhavnagar. However, advocate conveyed that he had lot of work in the Court and conveyed him to come on 3<sup>rd</sup> day in the evening. Though the said aspect was conveyed instead of taking help of the another advocate, they chose to wait for 3 days at that time. Thereafter, advocate at Bhavnagar had drafted the complaint as per the version explained by the prosecutrix and husband and sent typed copies to 7 to 8 places with the R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 signatures of prosecutrix and husband-Bhupat. (1) One of the copy was sent to Lilaben Desai, Head of Women Protection Home.

(2) DSP, Surendranagar

(3) Devendrabhai Patel, who is publisher of Gujarat Samachar.

(4) Shri Tandon I.G. Ahmedabad

(5) One copy was sent to Rajkot Police.

Thereafter also, they had not visited the Police Station but went to one Devendrabhai Patel, to publish the story in the article 'Kabhi Kabhi' in Gujarat Samachar. After they met Devendrabhai Patel, 2 to 3 days thereafter they went to meet Lilaben Desai, Head of Women Protection Home. (u) They met Lilaben on 11.5.1992 and it was conveyed to Lilaben that in the previous night, the offence is committed and they directly came from Rampura to Ahmedabad to meet Lilaben. She made a call to the higher officer with regard to registration of FIR and thereafter FIR was lodged on 11.5.1992.

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62. On scrutinizing the evidence of prosecutrix, the possibility to falsely implicate the accused persons cannot be ruled out in view of the fact that, on the incident of the theft, all the persons named as accused had been interrogated and they are closely related to each other.

63. There is a motive to falsely implicate all the accused persons as Pratap Kana, who is the brother of Varsang Kana where they were given the shelter had objected behavior of the prosecutrix and her husband, who was indecent in the village. Another accused namely, Raimal is also relative of Narsang Hari, at whose house offence of theft was committed and interrogation was made by this Raimal, who was Ghode Savar in Police Station. The other accused persons, namely, Ghanshyam Kher, Savdas Laljibhai Rickshawvala, Ramji Mala Mori were also present at the time of interrogation among the mob and appears to have committed lead role to see that confession of theft

is made. It transpires from the evidence that victim and her husband are keen to book the accused persons in view of the strong interrogation and ultimately, compel the prosecutrix and her R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 husband to throw the ornaments covered in handkerchief in the compound of Narsang Hari. Coupled with the evidence of the prosecutrix, if evidence of the other witness is scrutinized, namely, Ramesh and Ranjit as well as Kedarsinh, who are the police witnesses and except the evidence of Kedarsinh, it is coming out from the evidence of Ramesh and Ranjit that on the night of incident, the mother of the prosecutrix, namely, Zubedaben, was also present there. Even from the evidence of the mother, namely, Zubbedan, she gave her first statement to the police that she was present when the offence was committed. However, she explained subsequently that police had falsely recorded statement under the guise that no independent witness in Rampura is ready to support the prosecution case, therefore, her presence is required to be shown. However, there was no motive to the police officer for recording such a false statement of Zubedaben which has been established by the prosecution. The second statement which was recorded by the police on 22nd May, 1992, Exh.18, was in the presence of the prosecutrix and her husband, wherein presence was not disclosed in the statement. However, the other witnesses, R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 namely, Ramesh PW-14 and Ranjitsinh PW-15 and Devsi Mavji, DW-2, all their statements reveal that mother was present when the incident occurred. Mother - Zubedaben in her statement said that if she is present at the time of offence, the offence might not have committed.

64. The conduct of the mother is also creating doubt as after leaving the house of sister at village: Chittal, she immediately took shelter in Nari Vikas Gruh, Paldi though in the cross examination, she had admitted that before she reached the Ahmedabad, she was not having any knowledge with regard to Nari Viaks Gurh, Paldi, Ahmedabad. She reached first time in Ahmedabad and directly reached Nari Vikas Gruh, Paldi, Ahmedabad. There cannot be any coincident that prosecutrix after registration of FIR was staying in Nari Vikas Gruh and mother showing her unawareness about the incident of daughter taking shelter in the same Nari Vikas Gruh, Paldi. Identification Parade which was held on 17.5.1992 is also not trustworthy. With regard to evidence of Test Identification, that is also not taken into consideration as material discrepancy in following the R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 procedure. It transpires that the victim and her husband came earlier before accused persons reached there prior to T.I. parade. From the evidence of the DW-1, namely, Varsang Kana, who in fact was named in the charge-sheet, but prosecution dropped him and thought it fit not to examine him as a Prosecution Witness, though named in charge-sheet as witness and he was the first person, who gave shelter to Bhupat and prosecutrix in Rampara village and due to him only, they could stay at Rampara. From his evidence, it transpires that theft articles came from the house of the Bhupat in the courtyard of the Narsang Hari in the early morning around 4.45 to 5.00 O'Clock, as assured by the prosecutrix and her family members, in the earlier night. It further came from the evidence of this witness that behavior of the present complainant and her husband was indecent. They used to sing song of movies in the village and keeping hands of each other and used to move in the village like hero and heroine, which the village people disliked.

65. In view of the above evidence, this Court is not satisfied with the evidence led by the prosecution to prove the case R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 beyond reasonable doubt. In fact, there is a reason to falsely implicate the accused persons in the case. Therefore also, evidences

of the witnesses do not inspire any confidence.

66. This Court has also examined the ground of delay raised by respondents-accused and has taken into the consideration the law laid down by the Apex Court in the case of Gadadhar Pati vs Banshidhar Pati reported in 1992 CriLJ 1811 wherein it is held that:

"delay in setting criminal law in motion by lodging complaint in a Court or FIR in a police station, is normally viewed by the Courts with suspicion because there is a possibility of concoction of evidence against the accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Delay is so long as to throw the cloud of suspicion on face of prosecution would depend on variety of factors. In fact, long delay can also be condoned if informant has no motive for implicating the accused falsely".

67. As per the law laid down by the Apex Court in the case of Rajesh Patel vs. State of Jharkhand, reported in (2013) 3 SCC 791, where in the Head Note it is held as under:

R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 "Penal Code, 1860-S.376-Rape-Appreciation of evidence- Contradictions, inconsistencies, exaggerations or embellishments-Testimony of prosecutrix unnatural and improbable-Delay in filing FIR not properly explained- Prosecution case not consistent-Case if one of consensual sex-Benefit of doubt extended and conviction reversed- Criminal Procedure Code, 1973-S.154-Delay in lodging/filing FIR-Not properly explained."

68. For the above mentioned decision, it transpires that though delay is not fatal in all cases but unexplained delay would certainly fatal the case of the prosecution. In order to make sure the case, delay should be properly explained. On explaining the delay as well as for the corroboration of the evidence of the witness, delay might have not been fatal. In the case on hand, prosecutrix was staying in the locality surrounded by the residential premises. Prosecutrix is having ample opportunity to disclose the offence to the Police Head Constable i.e. (1) Kedarsinh, Police Head Constable (2) Advocate who had performed the marriage (3) Sarpanch of the Village who was also present at the time of registration of marriage (4) Kashiben one of the relatives where shelter was given. However, for lodging the prompt FIR, they had thought it fit to approach the various people like (1)Lilaben Desai, Head of Women Protection Home, (2) DSP, Surendranagar, (3) Devendrabhai Patel, who is publisher R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 of Gujarat Samachar, (4) Shri Tandon I.G. Ahmedabad.

69. There is a motive to implicate the accused as they were interrogated in previous night by the accused persons and due to that strong interrogation, they were compelled to handover the theft articles. As there are material discrepancies in the evidence on the prosecutrix and other witnesses, this Court deems it fit to confirm the judgment and order of acquittal passed by the learned trial Court.

70. One more crucial aspect is with regard to the prosecutrix who was conceiving pregnancy of 26 weeks at the time of rape. However, though she was having severe pain in abdomen, no treatment from Medical Officer was taken, neither she had taken advice from elder person, namely, Kashiben, where they had taken shelter, nor went for medical check up. Normally, married women would not make any false allegation by putting her own reputation at stake. But in the case on hand, though she had instructed the husband and decided to lodge the FIR after 4 days, for another 17 days, they visited one place to another place, and took legal advice and filed drafted complaint before R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 the police officers, which also raises doubt on the credibility and trustworthiness of the case of the prosecution. In addition to that, there is cogent and convincing reasons given by the trial Court for not accepting the version of the prosecutrix and her husband, and therefore also, the judgment and order of the acquittal is just and proper.

71. After analysing, sifting and assessing the evidence on record with particular reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny, this Court finds that there was no evidence to connect the accused with the crime. Prosecution failed to prove the case beyond reasonable doubt, therefore, respondent is entitled to benefit of doubt. As propounded by the Supreme Court, every accused is entitled to benefit of reasonable doubt regarding his guilt and when the trial Court acquitted him, he would retain that benefit in the appellate Court also. In our view, acquittal of the respondent can hardly be regarded as illegal or erroneous on the basis of evidence on record.

72. We have gone through the ratio laid down in the decisions R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 of the Apex Court in the case of Harijana Thirupala and others V/s. Public Prosecutor, High Court of A.P. reported in AIR 2002 Supreme Court p. 2821 and in the case of Kunju Mohammed V/s. State of Kerala reported in JT 2003 (7) SCC 114 .The Apex Court in the above cases has held as under:

"Doubtless the High Court in appeal either against an order of acquittal or conviction as a Court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with order of acquittal merely because it feels that sitting as a trial Court would have proceeded to record a conviction: a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity."

73. This Court has also considered the ratio laid down by the Apex Court in the case of Jafarudheen and others V/s. State of Kerala reported in (2022) 8 SCC 440 more particularly para- 25, which is reproduced herein below.

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters".

74. This Court has also gone through the decision rendered by the Supreme Court of India in the case of Ramesh Babulal Doshi vs The State Of Gujarat reported in 1996(9) SCC 225 para-7 which is reproduced herein below.

"7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately R/CR.A/101/1995 JUDGMENT DATED: 07/07/2023 arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not".

75. Lastly, in the case of Mahavirsinh V/s. State of Madhya Pradesh reported in 2016 (10) SCC 220, the Apex Court in para-12 of the said decision, has reminded the Hon'ble Court to remain very cautious in interfering with any appeal against acquittal unless there are compelling and substantial grounds to interfere with the order of acquittal.

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76. It is, therefore, that this Court in acquittal appeal will be slow in interfering with the findings of fact arrived at by the learned trial Judge on scrutiny of evidence on record and, when two views are possible even on re-appreciation of evidence, benefit of doubt must go in favour of the accused as per the settled law, and therefore, in the present case, no infirmity in appreciating the evidence by the learned trial Judge is found, and therefore, the order of acquittal passed by the learned trial Court does not require any interference by this Court.

77. In the result, the appeal fails and is dismissed. Muddamal to be disposed of in terms of the directions given by the learned Judge in the judgment impugned in the appeal. Bail bond stands cancelled.

Record and proceedings be sent back to the court concerned forthwith.

(UMESH A. TRIVEDI, J) (M. K. THAKKER,J) ASHISH M. GADHIYA