

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 597 of 1999****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK****and****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No

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STATE OF GUJARAT

Versus

AHMEDLATIFF NAVAZUDDIN SHAIKH & ANR.

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Appearance:

MR K B ANTANI, APP for the Appellant(s) No. 1

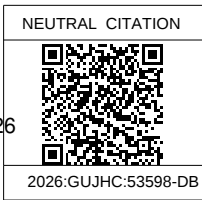
ADVOCATE NOTICE UNSERVED for the Opponent(s)/Respondent(s) No. 1

NOTICE SERVED for the Opponent(s)/Respondent(s) No. 2

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**CORAM: HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK****and****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI****Date : 21/08/2026****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE MOOL CHAND TYAGI)**

1. The present Appeal is filed by the Appellant – State of Gujarat under Section 378 (1) (3) of the Code of Criminal Procedure, 1973 (*hereinafter be referred to as Cr.P.C.*)



challenging the Judgment dated 22.01.1999 passed by the learned Special Judge, Dist:Valsad at Navsari (*hereinafter be referred to as the Ld. Trial Court / Ld.SPJ*) in Special Criminal Atro Case No.6 of 1996, whereby the Respondents herein was ordered to have been acquitted of the charges for the offences punishable under Sections 376 of the Indian Penal Code,1860 (*hereinafter be referred to as "IPC"*) & Section 3 (11) (12) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter be referred to as "Atrocities Act").

2. The facts and circumstances giving rise to the filing of the present appeal are as follows: The prosecutrix was residing with her husband near Saputara Circle, Nasik Road. She was running a tea stall and also supplied food on order. On 18.12.1995, at about 11:00 a.m., Ahmedlatif Navjuddin Shaikh, who was serving as a Jamadar at the Saputara Outpost came to the prosecutrix's tea stall and ordered a food. At about 2:30 p.m., the prosecutrix went to the Saputara Outpost to deliver the food. Upon reaching the outpost, she found that two Home Guards were present, but Jamadar Ahmedlatif was not there. The Home Guards informed her that he had gone to the guest house. Thereafter, the prosecutrix proceeded to the guest house along with one of the Home Guards. The Home Guard showed her the room occupied by Jamadar Ahmedlatif. When she reached the room, Ahmedlatif instructed the Home Guard to leave. The prosecutrix then entered the room carrying the food. As she was about to place the meal on the table, Ahmedlatif closed the door of the room. He then covered her



face with a large towel and dragged her into an inner room, where he allegedly committed rape upon her.

3. Accordingly, FIR being I-C.R.No. 77 of 1995 was lodged at Vaghai Police Station, District -Dang and investigation was carried out and ultimately, charge-sheet came to be filed against the accused under Sections 376 of the IPC & Section 3 (11) (12) of the Atrocities Act before the Judicial Magistrate. As the case was exclusively triable by the Court of Sessions, learned Magistrate under Section 209 of the Cr.P.C. committed the said case to the Court of Special Court, Valsad at Navsari, which came to be numbered as Special Atrocity Case No.6/1996.

4. On 04.07.1998, the learned Trial Court framed the charges at Exh. 3 under Sections 376 of the IPC & Section 3 (11) (12) of the Atrocities Act. Since, the accused did not plead guilty and claimed to be tried, he was tried for the said offences.

5. In order to bring the home the guilty of the accused, the prosecution has led following oral and documentary evidence:-

ORAL EVIDENCE

Sr.No.	P.W.NO.	WITNESS	Exh.
1.	1.	Deposition of Dr.Malti Thakordas Patel	8
2.	2.	Deposition of witness - Mohmadnoor Noormohmad Nagori	10
3.	3.	Deposition of witness - Complainant - Prosecutrix	14
4.	4.	Deposition of witness - Husband of the Prosecutrix	15
5.	5.	Deposition of witness - Dalsukhbhai Mavjibhai	17



6.	6.	Deposition of Panch witness - Janubhai Avsubhai Pawar	18
7.	7.	Deposition of Panch witness- Somabhai Bablubhai	19
8.	8.	Deposition of Panch witness- Ramabhai Devram	21
9.	9.	Deposition of Panch witness- Rameshbhai Raghunath	22
10.	10.	Deposition of Panch witness- Rajubhai Sukkarbhai	25
11.	11.	Deposition of Panch witness- Arjun Ramji Pavar	26
12.	12.	Deposition of Panch witness- Bharatkumar Madarbhai Patel	27
13.	13.	Deposition of Panch witness- Kalubhai Govindbhai	28
14.	14.	Deposition of witness- P.S.I.- Babulal Chhedilal Sharma	30
15.	15.	Deposition of witness- Motiyabhai Shatubhai Pawar	46
16.	16.	Deposition of Panch witness- Devram Gangaram Pavar	48
17.	17.	Deposition of witness- P.S.I.- Govindbhai Devshibhai Thakorbhai	54
18.	18.	Deposition of Panch witness- Bharatkumar Natwarlal Joshi	58
19.	19.	Deposition of witness - Gunvantbhai Manubhai Damor	60

DOCUMENTARY EVIDENCE

Sr.No.	EXH	Description
1.	9	Medical Certificate of Prosecutrix
2.	11	Medical Certificate of Accused
3.	12	Medical Certificate of Prosecutrix given by Medical Officer - Ahva
4.	20	Recovery Panchnama pertaining to the sealed packet containing the saliva sample handed over by the Medical Officer.
5.	23	Recovery Panchnama of the sealed cover packet provided by the Doctor of Ahwa Hospital.
6.	24	Panchnama of body of the accused
7.	29	Recovery Panchnama of the samples collected from the Medical Officer in connection with the body of husband of the prosecutrix.
8.	31	F.I.R.
9.	32	Report regarding lodging of F.I.R.
10.	33	Panchnama of house search of accused.
11.	34	Search Panchnama of Saputara Outpost



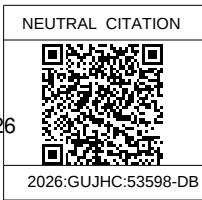
12. 35 Panchnama of map of scene of offence
13. 41 Panchnama of room of scene of offence
14. 45 Panchnama of guest house register.
14. 49 Recovery Panchnama of clothes of accused
15. 50 Recovery Panchnama of clothese, hair and bangles of the prosecutrix
16. 61 Panchnama of the Muddamal Collected from the Scene of Offence and Sent to the FSL
17. 62 & 63 F.S.L. Report
18. 64 Recovery Panchnama of clothes of husband of the prosecutrix

6. After recording all the evidence, statement of the accused under Section 313 of Cr.P.C., was recorded and all the incriminatory evidence were put to him. He denied all the incriminatory evidences and took the plea that he has been falsely implicated in the crime. Thereafter, the case was fixed for the evidence of accused.

6.1 Thereafter, hearing the arguments on behalf of the prosecution and the defence and having considered the arguments and evaluating the oral as well as documentary evidences, the Ld. SPJ acquitted the accused of all the charges levelled against him by the Judgment dated 22.01.1999.

7. Being aggrieved by and dissatisfied with the judgment dated 22.01.1999, passed by the learned SPJ, the appellant-State has preferred the present Criminal Appeal.

8. We have heard learned advocates for the appellant-State.



9. Mr. K. B. Antani, learned Additional Public Prosecutor appearing for the appellant-State vehemently submitted that the prosecutrix, in her deposition at Exh. 14 has categorically stated that on 18.12.1995, when she went to Room No. 17 of the Guest House to supply food to the respondent-accused, the respondent-accused subjected her to rape. It is submitted that P.W.4, the husband of the prosecutrix, in his deposition recorded at Exh.15 has also supported the case of the prosecution. It is, therefore, submitted that, in view of the depositions of P.W. 3 and P.W. 4, the learned Trial Court ought to have convicted the respondent-accused for the offences punishable under Section 376 of the IPC and Sections 3 (11) (12) Atrocities Act. It is submitted that the impugned judgment passed by the learned Trial Court acquitting the respondent-accused deserves to be quashed and set aside and the respondent-accused ought to be held guilty of the charges levelled against him.

10 It emerges from the record that, initially, the respondent-accused was represented by a learned advocate. However, the learned advocate subsequently withdrew his Vakalatnama. Consequently, this Court issued notice to the respondent-accused. Though the said notice was duly served upon him, the respondent-accused has chosen not to appear before this Court.

11. Having considered the submissions of learned APP and having gone through the record, it is to be noted that in order to bring home the guilt of the accused, the prosecution has



examined as many as 19 witnesses and also produced 19 documentary evidences on record.

12. In order to appreciate the submissions advanced by the learned APP, it would be apposite to refer to and examine the depositions of the witnesses examined by the prosecution.

13. The prosecution examined Dr. Malti Thakordas Patel as P.W.1 at Exh.8. In her deposition, she stated that the prosecutrix was examined by Dr.Divya Tyagrajan on 28.12.1995. As per the medical report, no injury marks were noted on the body of the prosecutrix and no spermatozoa were detected. She admitted that she had not personally examined the prosecutrix. According to her deposition, the prosecutrix was examined by Dr.Divya Tyagrajan, who was not available for examination before the Court, as he had left the town.

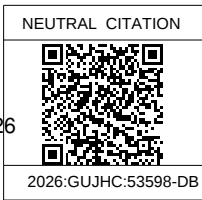
14. The prosecution examined Mohammadnoor Noormohammad Nagori as P.W.2 at Exh. 10. In his deposition, he stated that he had examined the respondent-accused on 21.12.1995 and collected the requisite samples. He further deposed that he had not noticed any injury marks on the person of the respondent-accused.

15. The prosecution examined the prosecutrix as P.W.3 at Exh. 14. In her deposition, she stated that she had lodged the complaint before the police and proved the same at Exh. 31. She deposed that, on the day of the incident, the respondent-accused came to her tea-stall and requested her to provide



food. Accordingly, she went to the outpost to deliver the food to the respondent-accused. However, the respondent-accused was not present there. The Home Guard posted at the outpost informed her that the respondent-accused was staying in Room No.17 of the Guest House. Accordingly, she went to Room No. 17 along with the Home Guard. Upon reaching there, she knocked on the door and entered Room No. 17. The respondent-accused then asked the Home Guard to leave. Thereafter, the Home Guard returned to the outpost. While the prosecutrix was placing the plate of food on the table, the respondent-accused caught hold of her from behind and forcibly committed rape upon her without her consent. Thereafter, her husband came there and she left the place along with her husband on his bicycle. Subsequently, she lodged the complaint before the police.

16. The prosecution has also examined husband of the prosecutrix as P.W.4 at Exh. 15. In his deposition, he stated that, when the prosecutrix did not return home, he went to the Guest House and knocked on the door of Room No.17. The respondent-accused opened the door and informed him that the prosecutrix had already returned home. However, upon noticing that the slippers of the prosecutrix were lying outside the room, he entered the room and found that the respondent-accused had confined the prosecutrix in another room. Thereafter, he took the prosecutrix and returned home with her.



17. The prosecution has also examined Dalsukhbhai Mavjibhai as P.W.5 at Exh. 17. In his deposition, he stated that, on the day of the incident, the respondent-accused was staying in Room No. 17 of the Guest House.

18. The prosecution has also examined the panch-witnesses viz. Janubhai Avsubhai Pawar as P.W.6 at Exh. 18, Somabhai Bablubhai as P.W.7 at Exh. 19, Ramabhai Devram as P.W.8 at Exh. 21, Rameshbhai Raghunath as P.W.9 at Exh. 22, Rajubhai Sukkarbhai as P.W.10 at Exh. 25, Arjun Ramji Pawar as P.W.11 at Exh. 26, Bharatkumar Madarbhai Patel as P.W.12 at Exh. 27, Kalubhai Govindbhai as P.W.13 at Exh. 28, Motiyabhai Shatubhai Pawar as P.W.15 at Exh. 46, and Bharatkumar Natwarlal Joshi as P.W.18 at Exh. 58. All these witnesses are panch-witnesses; however, they have not supported the case of the prosecution and have turned hostile. Therefore, no further discussion is warranted in respect of their depositions.

19. The prosecution has also examined Babulal Chhedilal Sharma as P.W.14 at Exh. 30. In his deposition, he stated that the prosecutrix had approached him and made a complaint, on the basis of which he registered the F.I.R. He proved the complaint at Exh. 31. The prosecution has examined Gunvantbhai Manubhai Damor as P.W.19 at Exh. 60, who had conducted the investigation in the present case. In his deposition, he deposed regarding the manner in which the investigation was carried out and stated that he had drawn various panchnamas during the course of investigation. However, he could not prove the contents of the panchnamas



on record.

20. Now, in light of the oral as well as documentary evidence brought on record, the question that arises for consideration is whether the acquittal recorded by the learned Trial Court in favour of the respondent-accused is sustainable in law or not. In order to examine the correctness and legality of the impugned judgment and order, the entire evidence led by the prosecution requires careful and minute scrutiny.

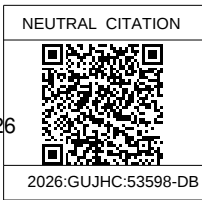
21. The prosecutrix was examined as P.W.3 at Exh. 14. In her complaint, she stated that she had gone to the outpost to deliver food to the respondent-accused. At that time, the respondent-accused was not present at the outpost and the Home Guard posted there informed her that the respondent-accused was staying at the Guest House. Accordingly, she went to Room No. 17 along with the Home Guard. However, in her deposition before the Court, she gave a different version. She stated that she had told the Home Guard to take the food to the respondent-accused, whereupon the Home Guard informed her that the respondent-accused had told her that she herself should come and deliver the food. Thus, there is a material variation between the version given in the complaint and the version stated before the Court regarding the circumstances in which she went to Room No. 17. The said variation assumes significance as the prosecutrix, in her deposition before the Court, appears to have attempted to explain her conduct and to project that she had no intention to personally go to the room of the respondent-accused.



22. There is also a material variation regarding the manner in which the prosecutrix entered Room No. 17. In the complaint, she stated that the Home Guard accompanied her to the Guest House, stood outside the room and that she knocked on the door, whereupon the respondent-accused opened the door. However, in her deposition before the Court, she did not state that she had knocked on the door and that the respondent-accused had opened it. On the contrary, she stated that she entered the room and placed the food on the table. Thus, the manner in which she entered Room No. 17 is itself not consistent in her two versions.

23. Similarly, there is a discrepancy regarding the presence and departure of the Home Guard. In the complaint, the prosecutrix stated that the respondent-accused asked the Home Guard to leave the room and that thereafter, the Home Guard returned to the outpost. However, in her deposition before the Court, she stated that, as soon as she entered the room, the Home Guard left the place. Thus, the specific assertion made in the complaint that the respondent-accused asked the Home Guard to leave is not borne out from her deposition before the Court.

24. There is yet another material variation regarding the manner in which the alleged incident took place. In the complaint, the prosecutrix stated that, when she was about to place the food on the table, the respondent-accused closed



the door, covered her face with a large towel and dragged her into another room, where the alleged offence was committed. However, in her deposition before the Court, she gave an entirely different version and stated that, while she was placing the food on the table, the respondent-accused caught hold of her from behind, threw her down and forcibly committed rape upon her. Thus, the material particulars regarding closing of the door, covering her face with a towel and dragging her into another room are conspicuously absent from her deposition before the Court.

25. The aforesaid version is also required to be considered in the light of the panchnama of the place of occurrence. From the evidence on record, it does not appear that Room No. 17 was divided into two separate rooms or portions. On the contrary, the panchnama indicates the existence of a single room. Therefore, the version given by the prosecutrix in her complaint regarding her being dragged into another room does not appear to be consistent with the physical features of the place of occurrence brought on record by the prosecution.

26. The prosecutrix has further given inconsistent versions regarding what transpired after the alleged incident. In her complaint, she stated that, after the alleged offence, when she attempted to leave the room and was opening the door, she sustained an injury on her jaw. She further stated that she was standing at the corner of the room when her husband arrived. However, in her deposition before the Court, she stated that



her husband came to the room, knocked on the door and asked whether his wife was inside. She further stated that the respondent-accused closed the door and confined her in another room. The latter fact viz. that the respondent-accused had confined her in another room, does not find mention in her complaint nor does it appear that she had shown such a room to the police during the course of investigation.

27. There is also a material discrepancy regarding the manner in which she allegedly sustained the injury on her jaw. In her complaint, she stated that she sustained the injury while attempting to open the door and leave the room. However, in her deposition before the Court, she stated that her husband pushed the door of the other room and at that time, she sustained the injury. Thus, even on this material aspect, her versions are not consistent.

28. It is, therefore, evident from the aforesaid discussion that there are material omissions, contradictions and improvements in the version of the prosecutrix with regard to the circumstances in which she went to Room No. 17, the manner in which she entered the room, the presence and departure of the Home Guard, the manner in which the alleged incident took place, the existence of another room, the circumstances in which her husband arrived and the manner in which she allegedly sustained the injury. These are not merely minor discrepancies or inconsistencies arising out of lapse of time, but relate to material particulars of the prosecution case and,

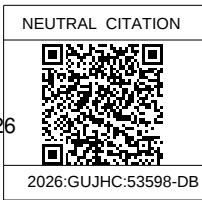


therefore, require due consideration while assessing the reliability of her testimony.

29. It is also borne out from her cross-examination that she remained in the room of the respondent-accused for a considerable period. The circumstances in which she went to Room No. 17, remained there and subsequently left the place with her husband are required to be considered along with the other evidence on record. Her conduct, when considered cumulatively with the material improvements and contradictions appearing in her testimony, creates a serious doubt regarding the prosecution version.

30. The prosecution has also relied upon the subsequent conduct of the prosecutrix. However, such conduct by itself cannot be treated as conclusive of the occurrence or non-occurrence of the alleged offence. Nevertheless, when the same is considered along with the material inconsistencies in her versions and the absence of supporting medical evidence, it becomes a relevant circumstance in assessing the overall credibility of her testimony.

31. Thus, on a careful and holistic appreciation of the evidence of the prosecutrix, it appears that her version has materially changed at different stages of the proceedings and that several material facts stated before the Court do not find place in her earlier version. Consequently, her testimony does



not inspire such confidence as would enable the Court to safely sustain a conviction solely on the basis thereof. Her evidence, therefore, has to be considered with due caution and in the light of the other evidence available on record.

32. P.W.4 - husband of the prosecutrix, in his deposition, stated that when the prosecutrix did not return after delivering the food, he went to the Guest House and knocked on the door of Room No. 17. According to him, the respondent-accused opened the door and informed him that the prosecutrix had already returned home. However, as he noticed that the slippers of the prosecutrix were lying outside the room, he entered the room and found that the respondent-accused had confined the prosecutrix in another room. Thereafter, he took the prosecutrix with him and returned home.

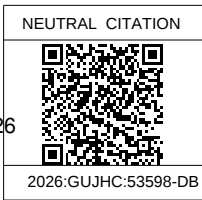
33. However, the aforesaid version of P.W.4 regarding the existence of another room and the alleged confinement of the prosecutrix therein does not find corroboration from the documentary evidence on record. In the panchnama of the place of occurrence, there is no reference to any such separate room as stated by P.W.4. Further, even in his statement recorded by the police, P.W.4 had not stated that the respondent-accused had confined the prosecutrix in another room. Thus, the fact regarding the alleged confinement of the prosecutrix in another room appears to be an improvement made by P.W.4 during his deposition before the Court.



34. It is further significant that, according to P.W.4 himself, while he was returning home on his bicycle along with the prosecutrix, she did not clearly inform him that the respondent-accused had committed rape upon her. As per his deposition, she merely stated, "*Jamadare Maru Sharir Kharab Karyu*". The said statement, in the context in which it was allegedly made, does not clearly and specifically disclose the allegation of rape. This aspect assumes significance when considered along with the subsequent version of the prosecutrix regarding the manner in which the alleged offence was committed.

35. There is also a material discrepancy regarding the injury allegedly sustained by the prosecutrix on her jaw. P.W.4 stated that, when he questioned the prosecutrix about the injury on her jaw, she informed him that she had sustained the injury when the respondent-accused had forcibly taken her into another room. However, as noticed hereinabove, the prosecutrix herself has given different versions regarding the manner in which she sustained the said injury. In her complaint, she stated that she sustained the injury while attempting to open the door and leave the room, whereas in her deposition before the Court, she stated that she sustained the injury when her husband pushed the door of the other room.

36. Thus, the evidence of P.W.4 also suffers from material inconsistencies and improvements regarding the existence of



another room, the alleged confinement of the prosecutrix and the circumstances in which she sustained the injury. His evidence, therefore, does not provide the requisite corroboration to the material portions of the testimony of the prosecutrix. On the contrary, when his evidence is considered along with the deposition of the prosecutrix and the documentary evidence on record, the same gives rise to further doubt regarding the prosecution version.

37. The prosecution has also examined the panch-witnesses, namely, Janubhai Avsubhai Pawar as P.W.6 at Exh. 18, Somabhai Bablubhai as P.W.7 at Exh. 19, Ramabhai Devram as P.W.8 at Exh. 21, Rameshbhai Raghunath as P.W.9 at Exh. 22, Rajubhai Sukkarbhai as P.W.10 at Exh. 25, Arjun Ramji Pawar as P.W.11 at Exh. 26, Bharatkumar Madarbhai Patel as P.W.12 at Exh. 27, Kalubhai Govindbhai as P.W.13 at Exh. 28, Motiyabhai Shatubhai Pawar as P.W.15 at Exh. 46, and Bharatkumar Natwarlal Joshi as P.W.18 at Exh. 58. All these witnesses are panch-witnesses; however, none of them has supported the case of the prosecution and they have turned hostile. Therefore, this Court deems it appropriate not to discuss their evidence in detail.

38. It is a settled principle of law that where the panch-witnesses do not support the prosecution case, the evidence relating to the panchnamas and the investigative proceedings sought to be proved through such witnesses requires careful and cautious scrutiny. In the present case, the failure of all the



panch-witnesses to support the prosecution version assumes significance, particularly when the prosecution seeks to rely upon the alleged recoveries and other investigative proceedings through such panchnamas. The absence of independent panch-witness support, coupled with the other discrepancies emerging from the evidence on record, creates a doubt regarding the genuineness and reliability of the alleged recovery and other investigative proceedings. Such circumstances are required to be considered while assessing the prosecution case as a whole and extend the benefit of reasonable doubt to the respondent-accused.

39. The prosecution has also examined Babulal Chhedilal Sharma as P.W.14 at Exh. 30. In his deposition, he stated that the prosecutrix had made the complaint before him and that, on the basis of the said complaint, he registered the F.I.R. He proved the complaint at Exh. 31.

40. The prosecution has further examined Gunvantbhai Manubhai Damor as P.W.19 at Exh. 60, who had conducted the investigation in the present case. In his deposition, he described the manner in which the investigation was carried out and stated that he had drawn various panchnamas during the course of investigation. However, he could not prove the substantive contents of the panchnamas on record, as all the panch-witnesses examined by the prosecution had not supported the prosecution case and had turned hostile. Though the Investigating Officer has exhibited and formally



proved the panchnamas as documents, he has not been able to establish the substantive facts and circumstances allegedly recorded therein. The panchnamas were required to be proved through the evidence of the panch-witnesses who had allegedly witnessed the proceedings recorded therein. However, none of the panch-witnesses has supported the prosecution case. In such circumstances, mere exhibition or formal proof of a panchnama by the Investigating Officer cannot, by itself, establish the truthfulness of the facts and circumstances allegedly recorded therein. The contents of the panchnamas, therefore, remain unsubstantiated in the absence of supporting evidence from the panch-witnesses. Consequently, no safe reliance can be placed upon such panchnamas, particularly when the prosecution has failed to provide independent and reliable corroboration of the facts sought to be established through them.

41. The prosecution has failed to examine the Outpost Home Guard who, according to the prosecution case itself, had accompanied the prosecutrix while delivering food to the respondent-accused at Room No. 17 of the Guest House. The said Home Guard was a material and independent witness, as he was allegedly present with the prosecutrix at the relevant time and was, therefore, in a position to throw light upon the circumstances preceding and surrounding the alleged incident. The evidence of the said Home Guard could have materially corroborated or contradicted the version of the prosecutrix, particularly with regard to the circumstances in which she went to Room No. 17, her entry into the room, the presence of the



respondent-accused and the circumstances in which the Home Guard allegedly left the place. His testimony could, therefore, have assisted the Court in arriving at the truth. However, for reasons not explained by the prosecution, the said material witness has not been examined. Such omission assumes significance, particularly when the prosecution case rests substantially upon the testimony of the prosecutrix and her version suffers from material contradictions and improvements. The non-examination of the Home Guard, who was allegedly an eye-witness to the events immediately preceding the alleged occurrence, creates a material gap in the prosecution evidence. In the facts and circumstances of the present case, the withholding of such a material witness, without any satisfactory explanation, casts a serious doubt upon the prosecution case. The resultant deficiency in the prosecution evidence is required to be viewed in favour of the respondent-accused and the benefit of reasonable doubt must necessarily enure to his benefit.

42. On 18.11.1995, at about 02:30 p.m., the alleged incident of rape is stated to have taken place, whereas the complaint came to be lodged only on 19.11.1995 at about 04:00 p.m. Thus, there was a delay of about 24 hours in lodging the complaint. Consequently, the police reached the scene of the alleged offence after a considerable lapse of time. Such delay assumes significance, particularly in the facts of the present case, as it afforded sufficient opportunity for the scene of the alleged offence to have been disturbed and for the physical evidence, if any, to have been altered, removed or substituted.



Therefore, the mere fact that certain material was or was not found at the scene of the alleged offence cannot, by itself, be treated as conclusive. In the facts and circumstances of the present case, the delay in lodging the complaint and the consequent delay in reaching and inspecting the scene of the alleged offence creates a reasonable possibility of disturbance or alteration of the physical evidence. This circumstance, when considered along with the other discrepancies and deficiencies in the prosecution evidence, assumes significance while assessing the overall reliability of the prosecution case and is required to be considered in favour of the respondent-accused.

43. It is well settled by catena of decisions that the an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

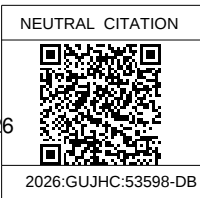
44. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the



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

45. In the instance case, learned APP failed to point out any cogent and incriminating evidence against the accused persons, which may connect the accused persons with the commission of the offence beyond reasonable doubt. At this stage, it would be profitable to refer to the judgment of Apex Court in the case of **Chandrappa & Ors. Vs. State of Karnataka** reported in **2007 (4) SCC 415**. The relevant observations made in the said judgment are as under:-

“..... (1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded; (2) The [Code of Criminal Procedure](#), 1973



puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

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

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

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

46. Applying the aforesaid principle as laid down by the Apex Court in the case of Chandrappa (*supra*), it is apparent on record that no credible evidence had been produced by the prosecution, which may connect the accused persons in the alleged crime. The prosecution has miserably failed to prove the guilt of the accused persons beyond reasonable doubt.



Thus, the Trial Court has not committed any error in appreciating the evidence on record and in acquitting the accused persons from the challenges levelled against them.

47. In these facts and circumstances, we are of the considered opinion that the learned Trial Judge committed no error in passing the impugned judgment and order. Hence, the present appeal deserves to be dismissed.

48. In the result, the appeal fails and is ***dismissed***. The judgment and order of the Trial Court dated **22.01.1999** stands confirmed. Bail and bail bonds of the accused, if any, stands discharged. R & P be sent back to the concerned Trial Court, forthwith. No order as to costs.

(HEMANT M. PRACHCHHAK,J)

(MOOL CHAND TYAGI, J)

GIRISH