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CRIMINAL APPEAL No. 509 of 1995

DATE OF DECISION : 29-11-1995

For Approval and Signature :

THE HON'BLE MR. JUSTICE K.J VAIDYA
AND
THE HON'BLE MR. JUSTICE M.H KADRI

MOHANLAL AMARJI MARWADI
V/s.
THE STATE OF GUJARAT

1. Whether Reporters of Local Papers may be allowed to s

2. To be referred to the Reporter or not ? YES

3. Whether their Lordships wish to see the fair copy of the judgment ? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ? NO

5. Whether it is to be circulated to the Civil Judge ? YES, to all Criminal Courts.

...T.....T.....T.....J.....T.....T.....T.....J.....T.....Mr. Surin Shah, Advocate {Appointed} for the Appellant
Mr. J.A Shelat, APP for the Respondent-State

CORAM : K.J VAIDYA & M.H KADRI, JJ.

29-11-1995

ORAL JUDGEMENT

Mohanlal Amarji Marvadi, by this appeal from jail has brought under challenge the impugned judgment and order dated 21st April, 1995, rendered in Atrocity Criminal Case No. 28 of 1994, passed by the learned City Sessions Judge, Ahmedabad, wherein he on his coming to be tried alongwith other three co-accused persons for the alleged offences punishable under Sections 376, 342 and 34 of the Indian Penal Code, and under Section 3 (1)(iii) and 3 (1)(xi) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was convicted for the same (alongwith other co-accused) and sentenced to suffer (i) RI. for 10 years and to pay a fine of Rs. 3,000/= and in default to undergo further R.I for six months; and (ii) R.I. for one year and to pay a fine of Rs. 500/= and in default, to undergo further S.I for 1 months for the said two offences respectively.

2. To state the earliest and afresh prosecution case as it gets unfolded through the FIR (Exh. 52) lodged by PW-4 Manjula, the incident in question wherein she came to be allegedly raped by Mohanlal Amraji (appellant-accused) and thereafter her modesty outraged by Natubhai Gulabbhai Gadhvi (not before this Court) took place on 17-7-1994 at 6.00 p.m in shed No. 13, Dhaval Estate, situated near Chakudia Mahadev, Rakhial, Ahmedabad. It is the case of the prosecutrix that she belong to the Scheduled Caste. Further, according to her, on the aforesaid date and time, Nathubhai Karandan Gadhvi and Dilip Gulabsinh Gadhvi, who happen to be original accused Nos. 3 and 4 respectively serving as Watchmen came to her and under the pretext of calling her for fetching water took her to their office situated at Dhaval estate. Thereafter, the said accused persons after rolling down the shutters confining her in the room went away, and though she raised shouts protesting about, none came to her rescue. Thereafter, Mohanlal Amraji and Natu Gulabdan Gadhvi, who were staying in the nearby hutments, entered the office by opening-up the shutter, fell her down and in the process, the original accused No. 2 caught her hands and gagged her mouth. First, it was accused No. 1 who committed sexual intercourse with her. Thereafter, the accused No. 1 caught hold of her hands, and the accused No. 2 molested / outraged her modesty and thereafter, both went away. Thereafter, she also came out. At that time, accused No. 2 Natu slapped her and asked her to go away. To this Nathu and Dilip accused Nos. 3 and 4 respectively present there exclaimed 'do not beat her more, otherwise there will be a

police case' !! Thereafter, she informed this incident to Lilaben - who happens to be wife of Natubhai, saying that her husband has outraged her modesty. It further appears from the record that on her way to the police station, she met PW-3, SRP constable-Gabdulal Ramdayal Sagwal and inquired from him as to where was the police station as she was raped. Thereafter, on reaching Rakhial Police Station, she gave a complaint (Exh-52) before PW-10 PSI J.A Patel at about 8-00 p.m. Thereafter, PW-4 Manjula was taken to PW-1 Dr. R.J Mankadia for her medical examination. On the basis of this information, all the four accused were arrested. They were also in turn got examined by the PW-1 and after the investigation was over, all of them came to be chargesheeted to stand trial for the alleged offences punishable under Sections 376, 342 and 34 of IPC and Sections 3 (1) (iii) & 3(1)(xi) of the Atrocities Act before the City Sessions Court at Ahmedabad.

3. At trial, the appellant as well as the other co-accused persons pleaded not guilty and claimed to be tried. It was their case that they were falsely implicated. According to Natubhai Gulabbhai Gadhvi (not before this Court) he was a Watchman in Dhaval Estate near where PW-4 complainant - Manjula and Champak were coming for secret meeting since last about a week and that he had warned them not to come. Not only that but for this purpose, he had also given a complaint to the police, but the police did not pay any attention to this. It is further his case that about 3-4 times he had warned both Manjula and Champak not to come there. According to him, Manjula getting enraged over this issue with a view to take revenge has filed a false complaint against him. While according to the accused No. 3 Nathubhai Karandan Gadhvi also (not before this Court), he did not know Manjula or Motibhai. He came to Ahmedabad for service just 20 days before the alleged incident from Kathiyavad. He was arrested from his house on 18th. He is innocent and that he is falsely implicated. According to accused No. 4 Dilip Gulabsinh Gadhvi (not before this Court) he was driving a ricksaw. At about 12.00 when he returned home, the police came and arrested him. On police making inquiry, he said that he was knowing nothing about the incident. He is innocent and falsely implicated.

4. The trial Court accepting and relying upon the evidence of PW-4 Manjula, convicted and sentenced the appellant and his other co-accused who are not before this Court as stated in detail in impugned order, giving rise to this appeal. Incidentally, as reported, other three accused persons viz., Natubhai Gulabsinh Gadhvi, Nathubhai Karandas Gadhvi and Dilip Gulabsinh Gadhvi have not filed any appeal before this Court.

5. At the time of admission, when this matter was called out on 14-11-1995, this Court prima facie in view of quite weak

and vulnerable prosecution evidence while admitting the appeal though learned Advocate for the appellant had preseed hard for releasing the appellant on bail, we bearing in mind the grave and serious allegation of gang rape, instead of granting the said prayer directed the learned advocate Mr. Saurin Shah to prepare paper-book peremptorily fixing the Appeal for final hearing on 21-11-1995 with consent of the learned APP Mr. J.A Shelat.

6. Heard Mr. Saurin Shah, the learned advocate (appointed) for the appellant and Mr. J.A Shelat, the learned APP for the respondent State. According to Mr. Shah, the evidence of PW-4 is not dependable at all with its patent intrinsic infirmities and in that view of the matter, even in case she is corroborated by any other attending circumstances on the record, it would not be safe to convict the appellant as has been done by the learned trial Judge in the instant case. Mr. Shah further submitted that PW-4 has materially improved upon her case in the complaint and has given gloss suiting to her exigencies going even to the extent of falsely alleging rape to accused No. 2 which was not her case even in FIR Exh. 52 !! Not only that, but so far as the original accused No. 3 is concerned, there also appears to be a clear case of mistaken indentity. Mr. Shah further submitted that from tenor and nature of her evidence before the Court PW-4 appears to be a lady of easy virtue, and she appears to have been made scape-goat for claiming unjust ex-gratia compensation to the tune of Rs. 10,000/=. According to Mr. Shah such exgratia compensation may be a good policy in a given case but at the sametime it is indeed too dangerous as it may provide dishonest and malacious motivation for false accusation to earn cheap, easy money by some unfortunate hard pressed needy desperate persons !! According to Mr. Shah such ex gratia compensation policy is too tempting for any body to allege anything against anybody, much more when the concerned women or girl is suffering from extreme poverty making her desperate, helpless to survive at any cost, fair or foul !! This appears so from the cross-examination of her father PW-2 Motibhai Ranabhai and herself. According to Mr. Shah, the other corroborative pieces of evidence viz., the evidence of PW-2 Motibhai Ratnabhai and PW-3 SRP Constable Gubdulal, is also not dependable. According to Mr. Shah, despite the allegation of gang-rape, medical evidence on the point that of PW-1 Dr. Makadia is utterly silent so much so that victim Manjula even refused to get herself examined by the Gynecologist !! This circumstance of refusal to get herself examined by Gynecologist renders her evidence further vulnerable and doubtful to be accepted at its face value !! Making good all these submissions, Mr. Shah has carefully taken us through the evidence of all the prosecution witnesses examined before the

Court and on the basis of the same he has utlimately vehemently urged that when the appellant has been alleged to have committed gang-rape, for which the minimum sentence provided is for 10 years, unless the prosecution evidence is proved to be of dependable nature and clinching enough entirely beyond any manner of doubt, no order of conviction and sentence ought to have been passed. Since, in the instant case, according to Mr. Shah, the evidence of victim PW-4 does not inspire that confidence, the appellant deserves to be given atleast the benefit of doubt and accordingly this appeal be allowed, acquitting the accused forthwith.

7. As against the above, Mr. J.A Shelat, the learned APP with equal vehemance has supported the impugned judgment and order of conviction and sentence passed by the trial Court. According to the learned APP, there was indeed no reason for PW-4 Manjula to falsely allege against the appellant and three others, if indeed no such incident of gang-rape as alleged had taken place. In this view of the matter, no exception be taken as regards the order of conviction and sentence passed against the accused persons and the same accordingly deserves to be confirmed.

8. Now, before we enter into the arena of the appreciation of evidence brought on the record, more particularly in the instant case wherein there is extremely grave and serious allegation of gang-rape against four accused persons, we indeed need to be extra careful and sound caution to ourselves bearing in mind two very important aspects involved in the case viz., on the one hand the overall sensitivity of the alleged gravity and seriousness of the offence, and that too gang-rape on Harijan girl and on the other hand any hasty, over-zealous, emotional, faulty, erroneous appreciation of prosecution evidence, the resultant outfall of which can be either denial of justice to the victim girl or foisting altogether patent injustice on an innocent accused !! Further, bearing in mind, on the one side as vehemently submitted by the learned APP if we are to decide this matter on the idealistic paddle swept with a passion for justice for women, more particularly obsessed with she being Harijan women, who are undoubtedly these days, day-in and day-out, are reported to be subjected to all kind of atrocities, cruelties including the rape, gang-rape, molestation, bride-burning and all sorts of insults and assault, etc., and at the sametime on the otherside becoming altogether quite oblivious to equally baseless, false, frivolous and fabricated not uncommon accusations these days levelled at the slightest pretext playing with the character, image of the innocent, sending him to the extreme penalty of life and atleast not less than 10 years, we are likely to wander away from the path of truth and justice, if the extreme idealism elbows out dispassionate objective approach while

appreciating evidence !! These are the cases where the court has to swim safe, undisturbed admist the cross-currents flowing either in favour of the victim or of the accused. We cannot permit ourselves to be swept like straws and dead-fishes by the prejudice of repeated cases of rape, killing and other sorts of violence on women without closely scrutinising as to whether there is any dependable, sufficient, cogent and convincing evidence to record the ultimate order of conviction and sending the accused to jail to suffer the maximum punishment. At the sametime, while appreciating the evidence of the prosecutrix, we are also equally not supposed to scrutinise her evidence with a microscopic exactitude finding errors of dotting the "i" and crossing the 't' ie., some trivial inconsistencies, hair splitting here or there not cutting at the root of the prosecution case. We can not also permit ourselves to be oblivious to the hard fact of life that ordinarily no girl, and for that purpose not even her parents with whatever little sense she/they have would ever dare to falsely allege a rape having been committed on her !! The reason is by making such wild accusation against any person (which prima facie indeed quite easy to make) before the said accused person is actually tried and punished to suffer imprisonment which is indeed a matter for future and as uncertain for one does not know what way it would ultimately turn depending upon the credibility of the overall prosecution evidence may command, but the fact remains that by filing complaint of rape against the concern person she atones of her own unquestionably put herself in dock inviting all ugly gazes of the society towards her exposing herself to the whole world as a pitiable character, with broken seal, virginity sullied if she is unmarried and virgin and if married over and above the same to stay rest of her life with the husband and family members in the most embarrassed, depressed, self-pitied, humiliated way with her eyes always down cast floor-struck ! This by itself in a sense and way self invited, inflicted punishment perhaps worst than suicide, sadly affecting future, in the first instance, the marriage prospects if the victim girl is unmarried and in the second instance, rest of the married life if the victim woman is married one !! To allege and by filing complaint for rape, the whole episode would flood light exposing her to the society at her own hands, cost with an eye of pity that here is a poor girl/woman raped ! Accordingly, before alleging / accusing / admitting any person of having committed rape on her, she is indeed in such a breath-taking traumatic mental condition, difficult to imagine even for the male-world, and therefore, it is not that easy to so allege that somebody has committed rape on her ! This is the ordinary way of looking at the things, under ordinary circumstances, and ordinarily the same is found to be quite true. But this is not the only yardstick in all the cases for all the times to come in the criminal trial to appreciate the evidence of victim girl irrespective of other

attending facts and circumstances of the case !! The most obvious and the first distinguishing reason is that till the time ultimately the court scrutinizes the evidence, reaches a definite conclusion beyond any manner of doubt that the accused is guilty, the accused is also presumed to be innocent. So when the trial commences, before the Court, there are two simultaneous balancing pictures, first one that no girl would ordinarily falsely accuse any person of the rape, and secondly, the accused is presumed to be innocent till proved guilty. Precisely, it is from this stand point, base that justice montaineering, justice expedition begins and we have to climb up and reach the pinnacle of justice unruffled by stormy weather ! Further the gravest the charge and equally stringent the punishment provided for it, it is the foremost guarded duty of the Court to see that in undue hurry, haste or sometimes even inadvertently swayed by class, caste prejudices, it does not reach the wrong conclusion on the basis of some street, press-trials which certainly in some given cases may not be that false, without the grain of truth, but at the sametime in a given case the same as well can also be, may be false, doubtful and we indeed do not know whether the case we are trying is one such case where appearance given to it may not have any substance precisely because based on engineered rumour ! With a view to see that some concerned trial Judge in a given case may not fall prey to the irresistible fear that if it decided the case in favour of the accused against the overwhelming public opinion, how indeed he would be viewed and characterized, in the eye of people, he is required to be made of the sterner stuff !! What we mean is with all dust and din raised by the prosecution, accused, street and press-trials alround the trial court has to be ultimately true to its own conscience, hear its dispassionate voice and deliver the justice as per its dictates without fear of brick-bats and greed for boquet !! The consideration neither of cheap recognition and appreciation of judgment nor its condemnation should be given any weightage when the Court is called upon to do justice !! While discharging the call of duty, judge has to transcend the consideration of greed of boquet and fear of brick bats, faithfully keeping in mind the only concern for justice !! Court always appreciates the value of public opinion and press trials, in fact it should be thankful to it in a given case for championing, crusading the cause of public justice but this awe and reverence of the public opinion and press-trial has to be respected within the permissible bounds only, may be it is sometimes based on some interested baseless rumours !! Every court when called upon to appreciate the evidence of complainant can never afford to be oblivious to the basic human make ups where even endowed with the best the of virtues, still some persons, in their unguarded weak moments of life sometimes are not that free of their frailties where he/she is still not that fully rational where ulterior motives

in him/her occasionally peeping out over powers their virtues and make them act quite sadly and madly as wild animals pouncing upon the innocents making even palpably false accusations against them !! This natural, changing phenomenon, behavioural pattern of human being was continues to be as it was and what ought we not know may further continue even in future till the time of course the improved quality of human race descends on earth to bless us !! It is indeed too difficult to fathom the minds and the inner-most recesses of the heart of a person as to why he/she is out to falsely implicate or support wild, baseless allegations against anybody !! It is anybody's guess sometimes right sometimes wrong. A victim or a witness may be right or wrong, but that shall have to be ultimately judged and decided on the basis of the intrinsic credibility of his/her evidence before the Court !! The reason is one cannot rule out the possibility these days where any sort of allegation can be flunged against any person at any point of time putting the ball in the cot of the court taxing, testing its wisdom, pragmatism to do justice. Under such circumstances, if by chance the court fails or is swept by the ordinary approach, it is very likely that in a given case it may become the instrument of miscarriage of justice. Accordingly, it is here that the court has to become quite conscious ! It is here that the court has got to be extra alert !! It is further here that the court should always be on constant unwinking guard with a view to see that its craving, passion, zeal and zest for justice to weak and down-trodden at any time to curb the social evil, that its over zealous enthusiasm does not cross the limits and become handy instrument in the hands of character assasin and ultimately turn out to be injustice !! For this, it is here that the scales of justice, in order, it is not disturbed slightly even by the wafting breezes, like fast moving fan distrubing the golden-scale, the court also like a goldsmith always and invariably must put its golden scale of justice in tightly safe and secured place where it is not tilted or lose the balance by wafting thoughts, cross-breezes of over-enthusiasm passing across the mind while deciding the case !!

9. With the aforesaid background, we now proceed to appreciate the evidence of PW-4 Manjulaben and thereby the ultimate turn out of the fate of appellant in the instant case. According to PW-4, in her examination-in-chief at para-1, she has asserted that she knew all accused persons, who were present in the court room. At the sametime, in examination-in-chief itself quite strangely adds for the first time that she also knew accused No. 3 Nathubhai as Mathurbhai !! In para-23 of cross-examination she has clearly admitted that she was knowing accused No. 3 Mathurbhai from the date of the incident only and before that she was not knowing him not only that but she had not even talked with him !! According to

PW-4, on the aforesaid date, time and place, when she was sitting on Otta of Chakudia Mahadev, Natu and Dilip original accused Nos. 3 & 4 respectively came to her and told her that since they want to wash the clothes, accompany them to fetch water. Accordingly, she alongwith the said accused persons went to the office, where she was taken to the first floor. There both the said accused persons placed two buckets and thereafter stepped down closing the shutter. At that time, Mohanbhai Marvadi (present appellant) was sleeping in the office. Thereafter, Natu opening the shutter entered in and while gagging her mouth, tide her hands and feet with rope. Thereafter, she was made to lie down on the table and in process her bangles were broken, and after lifting her clothes, the accused No. 1 mounted over her. After he came down, that was accused No. 2 who fell over her and he also did the same thing. While Natu was doing this, the accused No. 1 was sitting nearby. Thereafter, both the accused persons while leaving, threatened PW-4 saying that if she ventured to report to the police, she will be beaten more. Thereafter the accused Nos. 1 and 2 went out of the said premises. During the relevant period, the accused Nos. 3 and 4 were sitting outside on the Otta. PW-4 also thereafter came out and on her way back called one SRP constable who was sitting near Chakudia Mahadev. The said SRP constable PW-3 asked her to go to the Police Chowky. Thereafter, she went to Rakhial Police Chowky and gave a complaint (Exh-52), which came to be recorded, as stated above in para-2 of this judgment. It is further the case of PW-4 that she has studied upto Std. X and she knew how to put signature in Gujarati. Lilaben is wife of the accused No. 2. After the police recorded the complaint, she was taken in police car to the house of the accused No. 2, where all the four accused persons were present who were arrested and taken to the police station. Thereafter, PW-4 was taken to the hospital where she came to be examined by PW-1 Dr. Mankadia. Thereafter, she was taken to the scene of the incident where the police collected the broken pieces of the bangles under Panchnama. Incidentally, it may be stated here that the panchas have not supported the prosecutrix on this count !! According to PW-4, after the alleged incident, for sometime, she had stayed with her father and thereafter she was staying with one Champak with whom she was to marry. This witness in cross-examination has admitted that she was married with one Ramesh Kanji five years before the alleged incident in question, but she had not gone to her in-law's house as her mother-in-law was not prepared to keep her alongwith her. She has also admitted that there was no love lost between herself and her husband. She has also admitted that since her relations with her husband were strained, she had made a complaint before 'Jyotisang' which had directed her to go to her in-law's house, but her in-laws were not prepared to accept her, as a result, she was alone. She has also admitted in

para-20 of the cross-examination that she was daily going to Chakudia Mahadev for taking meals and there she came in contact with one Champak who was preparing 'chapatis'. She has also admitted that she was daily going to see Champak. She has also admitted that she and Champak were daily talking together alone in the lonely place behind the office of Dhaval Estate. She has also admitted that accused No. 2 was serving as a Watchman in Dhaval Estate. She has also admitted that because she and Champak were meeting near Dhaval Estate, the accused No. 2 was asking her not to come there. She has also admitted that because of this, she had strained relations with accused No. 2. She has also admitted that just near behind Chakudia Mahadev, number of persons come and go and that particular place is just behind Chakudia Mahadev. She has denied the allegation that she has filed a false complaint against accused nos. 1,2,3 and 4 with a view to take compensation from the Government. She has further admitted that no marriage has taken place with Champak. She has admitted in para-23 that she was knowing accused No. 3 as Mathurbhai from the date of the incident. Before that, she was not knowing him by that name. She has also admitted that before the incident she was not knowing Mathurbhai. On the date of the incident, when accused Nos. 3 and 4 came to call her, she was all alone there. She has also admitted that before the alleged incident, accused Nos. 3 and 4 had never called her for fetching the water. She has also admitted that after the shutter of the office was closed, she was there inside for five minutes. She has also indeed surprisingly admitted that her father was very greedy by the nature in the matter of money. She has also admitted that at present she was staying with Champak in his house since last six months. She has also admitted that for making such complaint, Rs. 10,000/= are given to her. She has also admitted that to take that money, her father was pressuring her. However, she has stated that she has not received the said money. Finally, she has denied the allegation that she has filed a false complaint at the instance of her father only with a view to claim compensation of Rs. 10,000/-.

9.1 That takes us now to the evidence of PW-1 Dr. R.J Mankadia. According to him, PW-4 Manjula was brought to him on 18-7-1994 at 4-00 a.m with police yadi. After examining her, he issued a medical certificate which is produced at Exh. 14. On perusing the said medical certificate, it is indeed clear that there are no signs of either sexual intercourse or any external marks of violence during the course of the alleged intercourse. At this stage, we would like to clarify that from this medical evidence, we do not say for a moment even that for want of the medical evidence her evidence suffers and no credibility can be attached. The reason is there are cases and cases where medical evidence may not be supporting, not immediately available and for very many other reasons !!

Accordingly merely because medical evidence is not found supporting that by itself in a given case may not be sufficient to throw away the entire testimony of the prosecutrix overboard outright. Ultimately, if the prosecutrix is found to be dependable and of sterling quality, then even in absence of the medical evidence, in a given case, the Court can convict the accused. The reason is that medical evidence is ultimately merely a corroborative piece of evidence. It is altogether a different thing that by way of ordinary prudence the Court may insist upon the medical evidence to convict the accused but then there is no law or hard and fast rule that in order to record the order of conviction and sentence, the medical evidence is necessarily and invariably must and first, and it must further invariably corroborate the say of the victim girl and then and then only the evidence of victim girl could be accepted !! In fact, as stated above, the only and the basic test for the court is to find out whether the victim girl is wholly dependable. If it satisfies the conscience of the Court that she is 100% dependable then the accused can be convicted even in absence of medical evidence. Ultimately, it is for the concerned court to find out whether its judicial conscience needs some corroboration. After going through the evidence of victim girl, if its conscience feels little thirsty about the corroboration, then it need not record the order of conviction on bare testimony unless it finds some such corroboration forthcoming. But at the sametime if it feels absolutely clear, safe, not risking the fate of innocent accused reconciled to the jail then in that case it can certainly record the order of conviction and sentence even without corroboration. In this view of the matter, we make it clear that merely because PW-4 is not corroborated by the medical evidence on the record, we are not inclined to reject her evidence on that ground alone, but at the sametime at this stage, recalling the argument of learned defence advocate Mr. Shah and examining the same in the light of overall doubtful evidence of PW-4, we feel that she refused herself to get examined by gynacologist as suggested and referred by PW-1 Dr. Mankadia, in all probability because her allegation of rape, much apart gang-rape would in that case would stand stripped nacked and self exposed as false !

9.2 In sequence of events, next stands the evidence of PW-3 SRP constable Gabdulal Ramdayal Sagval. According to this witness, on 17-7-1994 at about 6.00 p.m. one girl came to him when he was on duty near the temple and inquired of him as to where was the police station, and when countered what work she had, she stated that she has been raped and she wanted to go to the police station for filing the complaint. This constable also inquired from her whether he may accompany with her to the police station to which the girl refused !! Thereafter, his statement was recorded on 19-7-1994 that is to say two days

after the alleged incident. In cross-examination he frankly admitted not knowing the place where the alleged incident of rape had taken place ! He also admits that he did not inquire of the girl about her name !! He also admits that he had not inquired even as to the person who had committed rape on her !! The evidence of this witness, more particularly when he is a police personnel prima facie sounds quite unnatural and appears to be got up one, engineered only with a view to supply the theoretical corroboration to PW-4. Else how indeed a person no less than constable on duty near temple would fail to know her name, time, place, person alleged to have committed rape on her !! We are saying so from patently improbable conduct of the SRP constable who was aged 45. If a victim of the rape makes a grievance before the constable and inquires about as to where is the police station, it is indeed difficult to conceive that he will not inquire as to at what place the rape was committed, what was the name of the girl and who were persons who had committed rape, etc. etc. Either the said constable was totally dunce not knowing what was his duty or the incident had not taken place at all. In this view of the matter, this witness has not impressed us at all as a dependable witness worthy of placing implicit reliance rendering corroboration to the evidence of PW-4 to sound it genuine regarding her allegations against accused persons. Of course, we do come across some cases where police trying to give extra-gloss to make the prosecution story appear real and acceptable, many a times bonafide concocts case to help the prosecution. May be, may not be. However, this being a case of gang-rape, we applying the above caution to ourselves would not like to straighway throw away case of the prosecutrix merely because of police overzealously overdoing something !! Accordingly, we simply say that PW-3 do not appear to be dependable and not the conclusion that because his evidence is concocted that in turn clouds even the testimony of PW-4.

9.3 That takes us to another witness viz., Motibhai Ratnabhai PW-2, who happens to be the father of PW-4 Manjula. This witness while identifying the accused No. 1 in the witness box has wrongly identified accused No. 2 as accused No. 1 !! The learned trial Judge recording the evidence has also placed demeanour note observing that - "The witness after going near the accused persons, identifies accused No. 2 as Mohanbhai (Appellant herein) and that accused No. 3 as brother-in-law. He identifies accused No. 4 Dilip as his brother of accused No. 1 Mohanbhai". In para-5 of his examination-in-chief he has stated that the brother of Mohanbhai had given a threat that your daughter has made a false allegation against his brother, and therefore, get him released. This witness in para-8 has admitted that at present his daughter PW-4 Manjula was staying with one Sampat Babulal since last two months. He has also further admitted that he

does not know the whereabouts of Sampat !! He has further volunteered in para-12 that his financial condition was weak. He has also admitted that he was fed-up and tired with the conduct of his daughter PW-4 Manjula. This witness has admittedly wrongly identified accused No. 2 as accused No. 1 and 3 !! Not only that but has admitted that his daughter has made a false allegation against one of the accused, and therefore, get him released. Not only that but instead of Champak this witness has deposed in para-8 of the cross examination that his daughter was staying with Sampat Ambalal since last about 6 months and he was not knowing about his address. Now when a witness before the Court commits an unpardonable mistake in falsely identifying the accused, that certainly creates serious doubt about his evidentiary value. Not only he but even PW-4 has also committed mistake regarding the identity of one accused. Under such circumstances, when a person comes out with the gravest type of allegation of the gang-rape, precisely naming the accused and thereafter while identifying before the Court some fatal unexcusable mistake is committed, it will not be merely dangerous to base the order of conviction and sentence thereupon, but it would be simply blind and unbecoming for the Court to overlook such a glaring telltale circumstances on the record. Under such circumstances what is the guarantee of truth that here the witness is honest, truthful and was not falsely implicating innocent persons !! Now this is not merely a matter of doubt. Rather it is an accomplished fact that though the incident has taken place in a broad day light and the accused persons were previously known, and still before the Court, the witnesses fail to identify the accused No. 1 & 3 !! At this stage, we may indeed clarify that merely because for whatever reason PW-4 Manjula did not carry well with her in-law's house for five years, and she was left to run from man to man and place to place, we do not hasten to the conclusion that she was a woman of easy virtue, and therefore, her evidence should not be accepted !! Supposing she was ultimately found to be a lady with easy virtue then even such lady with easy virtue, if sexual intercourse is committed against her will and desire, and her evidence is found to be reliable enough then the accused can certainly be convicted on charge of the rape. The point is not that but the real point is not properly identifying the appellant, when accused was known to her, and the accused No. 3 whom she came to know only from the date of the incident and still before the Court she identified him as Mathur and in FIR gave his name as such. Here when a person was not known previously from where did she get his name and identified him as an accused person !! Under such proved mistaken identity and doubtful circumstances, how indeed the Court can put faith in evidence of such a witness. Merely because a woman is coming from the Scheduled Caste, therefore, her evidence is to be accepted as a gospel truth !! Of course undoubtedly when a

person from the Scheduled castes / Scheduled Tribes come before the Court, their case is required to be considered with special care and quite sympathetically and in case if ultimately the offence is proved, the Court, but for the special circumstances, should not spare the accused and indeed must come down quite heavily upon him and must impose severest exemplary sentence depending upon the facts and circumstances of that particular case !! That is entirely and altogether quite a different thing. But merely because a witness is of Scheduled Caste / Scheduled Tribe community and therefore whatever he/she states before the Court is to be taken as a gospel truth and the Court in its turn quite meckly is to proceed on that reserved presumption / assumption, then it will be nothing lesss and else but abdication of judicial function and with some such misplaced passions and prejudices the Courts are to ultimately decide the case that will surely bring about nothing less and else but outright/downright miscarriage of justice !! Not only that but PW-4 has not only falsely identified one of the accused herein, but her allegation in the FIR (Exh-52) and her evidence before the Court is quite at variance. In FIR she states that the accused No. 1 committed a sexual intercourse and Natubhai outraged her modesty, while giving evidence before the Court she alleged that both of them committed rape. From her evidence, it can be said that she was capable enough to know underlying difference between the rape and outrage of modesty. There is a reason for this because she has stated in her FIR Exh.52 that the accused No. 1 had committed sexual intercourse with her and the accused No. 2 had outraged her modesty. Now under the circumstances, how indeed to accept her evidence, when she on oath before the Court deposed that both accused No. 1 & 2 committed rape on her !! This was not the case even in FIR Exh. 52 !! Before the Court she stated that her hands were tied, if we look at her police version in FIR Exh-52, there is not even a word about it !! Now if at the time of alleged gang rape if hands and feet of PW-4 were not tied, then naturally she would have resisted with all her might the forcible intercourse and in the process she was bound to receive some injuries ! This as per medical evidence was not there. This is perhaps the reason why, while giving evidence before the court she was made to improve her original story by providing extra gloss that while committing gang rape original accused No. 1 and 2 her hands and feet were tied and was made to lie on the table !! Now quite interestingly the investigating agency which collected pieces of broken bangels and earring from the alleged scene of offences has failed to attach the string or rope in question with which she was tied !! This circumstance of not attaching string or rope used in commission of the offence by itself in a given case may not be given that importance making the entire prosecution case doubtful but at the sametime if the police can called pices of broken bangles, and errings from the scene of

offence, one would certainly expect it to also attach and seize the string or rope in question !! This is not done which squarely gives and additional exposure to the prosecution case as coocked up one !! Further still, in FIR Exh-52 according to PW-4, accused No. 1 & 2 opened the shutter, came in the room and committed alleged offence. While giving deposition before the Court, she in clear terms have stated that accused No. 1 was already sleeping inside the room before he committed the alleged offence of rape !! Are we still to believe her ? Further, in FIR there is no story of breaking of bangles, and yet if we see her evidence before the Court, where she has stated that her bangles were broken. The panchas have not supported the said story. Merely from the production packet of bangles by the Investigating agency are we to accept prosecution story given out for the first time before the Court though undoubtedly in a given case the evidence of the Investigating officer if found of sterling quality that could be accepted and relied upon ??!! If the Court is to condone every improvement, inconsistency, material omissions, contradiction and improbabilities at every stage merely because a witness comes from SC/ST community and/or the stoke argument that a witness is a rustic villager and therefore accept the story as gospel truth then in that case, it has indeed all the potentialities to place the court on the wrong track of appreciation of evidence, which can never take us to the correct distination of justice !! Then in that case, there is no need for the Court. Let the police record the complaint and statements of other witnesses and on the basis of the same alone, final order of conviction and sentence be passed !! There is no need for Administration of Justice !! It is not that we are discarding evidence of PW-4 because she is coming from the downtrodden class, but at the same time when we closely scrutinise her evidence and the testimony is ultimately found to be totally wanting, unworthy of credit then under such debased circumstances, to accept her evidence would be patent injustice. May be to some extent PW-4 is perhaps right when the appellant and his associates might have at the most outraged her modesty and/or taken some undue liberty with her !! That may be. That may not be. But under such doubtful circumstances the Court cannot accept the case of gang-rape, when that was not her case even at the earliest in complaint against the accused No. 2 !! On careful and close scrutiny of PW-4, it appears that her evidence has not only no depth but is so sandy, and shacky that no amount of labour can sustain the super-structure of conviction and sentence against the accused, recorded by the trial Court on slippary foundation of the case !! In view of this discussion to accept the allegations of gang rape, even of rape at its face value, which are found to be quite inconsistent and doubtful would be nothing but violence on the common sense.

9.4 Further, it appears from the record that at the time of the trial, PW-4 was not available for recording her evidence before the Court !! Even her father was not knowing her whereabouts so much so that the Court was ultimately constrained to release Accused Nos. 3 & 4 on bail in the same of Rs. 10,000/= and further as the misfortunate would have been, since these poor accused persons could not furnish the bail, the learned Judge cancelled the bail. This circumstance of not only PW-4 not traceable and readily available for giving evidence before the court but even her father not knowing her whereabouts is indeed quite enough to some extent impair her credibility but then even the same standing by itself, may not totally weaken her credibility, but at the sametime when the same is examined in light of other continuous consistent infirmities in her evidence it certainly adds to the long list of infirmities exposing her as unworthy of credit reliable enough to base order of conviction and sentence !!

10. In view of the aforesaid discussion, we make it clear that we are not throwing away her evidence from being taken into consideration merely on the ground of (i) PW-1 medical evidence, not corroborating, (ii) PW-2 her father, and (iii) PW-3 SRP constable not corroborating PW-4 Manjula. Rather, we are not accepting the prosecution case because PW-4 herself is found to be utterly undependable. Had indeed PW-4 satisfied us as witness dependable enough of the sterling quality we despite other corroborative piece of evidence not satisfactorily supporting her would have still accepted her evidence and confirmed order of conviction and sentence against accused.

11. This takes us yet to another limb of the argument of the learned advocate for the appellant-accused when he vehemently submitted that the false case has been raked up by PW-4 against innocent accused persons probably and indisputably under the compulsion of poverty with rough and ready motivation of earning wind-fall exgratia compensation of Rs. 10,000/= from the State Government !! To clarify this aspect as to whether PW-4 is paid the said compensation we had requested the learned APP to inquire and enlighten us by filing the affidavit of the competent authority. Accordingly Shri P.M Chavda, District Backward Class Welfare Officer, Ahmedabad has filed an Affidavit in Reply, wherein he has frankly stated that till today no amount is paid. We accept the said statement on oath by the responsible officer. We are also informed at the Bar that of late the State Government has enhanced the amount of compensation from Rs. 10,000/= to Rs. 50,000/=. Well and good !! In this regard, we are firmly of the opinion that whenever any offence is committed against any members of the SC/ST community, the government and Court must take the strictest possible view of the matter. We are also of the

opinion that this suppressed, demoralized section of the Society which had struggled and indeed are struggling hard under the most cursed situation created by some the irrational, stupid section of the society from generations require immediate attention at the hands of the enlightened members of the public and Government. Their cases should be and must be sympathetically considered and accordingly be adequately compensated more than perhaps what amount the Government has decided, and on that point we have indeed no issue either with the members of the said community or the Government. It is their privilege to get the compensation, and it is equally the sacrosanct duty of the Government to pay the same. This exgratia compensation in rape cases can also be extended to equally poor persons from other communities !! But at the sametime, while doing justice to the persons belonging to SC/ST community, we believe that a special care is also required to be taken that while awarding exgratia compensation which comes from the public exchequer, undoubtedly filled up by the honest taxpayers money, those money are not squandered away on mere bald and false allegations !! We say so because these days it is very easy to allege anything and everything against any person at any time involving him in any of the offence, and when such cases are tried in the Court sometimes persons are given benefit of doubt, then in that case, compensation can be considered. But in a given case where the witness is found to be totally undependable, like the one in the instant case and the accused is found to be falsely implicated, whether one would still be justified in awarding the compensation and that too such huge astronomical amount is a matter which requires immediate consideration ?? The reason, the test of prudent man of course says NO. Because idealistic zeal, crusade cannot be permitted to champion the otherwise sometimes fraudulent claims to overburden the honest tax payers money. It is indeed the duty of the Government to take maximum possible best care of the SC/ST persons. But at the sametime, it is also equally the duty of the Government to see that the honest pie is just not squandered away, and accordingly, the Government shall have to device a way/procedure with a view to see that well meant amount of ex gratia compensation is not just whisked away by some greedy, unscrupulous, scheming and mischievous people, who may extract huge amount on bald/false allegations duping the Government trapping it into the misplaced sympathy with other anti-social thrid agencies intermeddling devouring sizeable share of the compensated allowance !! This possibility in our Society cannot be ruled out. So the Government while necessarily protecting the interest of the SC/ST community, should also try to protect the overall interest of the public revenue that is to say, take care to protect the contribution of the honest tax payers and should not readily be agreeable to any and every allegation which may ultimately be proved to be bald, false, etc. etc. We hope that Government will take due

care firstly of the persons belonging to SC/ST community, and secondly, of the supreme public interest involved viz., public revenue also !! In substance, the concern of this Court is that in a given case on the basis of the totally false, frivolous and vexatious allegation, if the so-called victims of rape, assault, etc., are readily compensated, and if they ultimately are found to be so by the Court then not only the authorities empowered to grant such ex-gratia claims stand be-fooled and demoralized but the same may as well further unnecessarily bring about bad name to entire SC/ST class as a whole (for no fault of them) for folly of an unworthy individual ultimately raising the question mark against the reasonablenes and justification of such ex gratia compensation policy !! With a view to see that some such dishonest member of SC/ST community do not bring bad name to their entire community, and thereby prejudice and damage the interest of genuine victim of offences, the authorities concerned must be extra careful in readily awarding the exgratia compensation !! May be that at present on some routinal inquiry, the claim of the victims of SC/ST are granted, but such peripherial, slip-shod, mechanical preliminary inquiries when ultimately are found to be false, it will hit the very laudable object firstly of immediate ex-gratia benefit to the down-trodden SC/ST people, which in turn secondly, result into undermining the public revenue ie., public exchequer filled up with the taxes from the honest tax-payers. Not only that but we are further quite afraid that to readily grant ex-gratia compensation in a given case may even in a way tempt any person with ordinary human failing and weaknesses to which even SC/ST class cannot claim exception, to level false, baseless allegations, file a criminal complaint, collect ex-gratia compensation and then make good their escape, irrespective of clean acquittal !! This in a way may also tempt and encourage in filing the false complaints which in turn instead of narrowing difference and closing rank between the two classes, may widen the same !! This is a very dangerous spot which requires to be immediately attended with !! Be it a member of the high class society or SC/ST class, ordinarily the greed once if it takes possession of the person can prod him to go to any extent any length including making false allegation and filing false complaint for the sake of money !! This is simply dangerous, as such a policy instead of encouraging clossing the difference, class prejudices may if not further widen at least would come in a way to start new and happy chapter of mutual love and respect between the cross-sections of the Society. With a view to see that such ex-gratia compensation does not falsely motivate the concerned person to make false accusations, some workable check is required to be devised and exercised to stand the overall test of reasonableness with the help of the leaders of SC and ST communities !! To suggest one such way would be to initially award 1/10th of total exgratia compensation as

immediate relief and rest of the amount be put in any nationalized Bank for two to three years and the quarterly interest accrued thereupon can be given to the victim till the case is favourably decided in his/her favour !! Of course here also ultimate care should be taken to see that some scheming person do not dupe government ! A special care must be taken setting out reason before awarding interim ex gratia compensation.

12. Incidentally, it may also be stated as it appears from the record that except the present appellant, who is original accused No. 1, none of the other three accused persons have filed any appeal !! We do not know why and under what circumstances they have not filed appeals challenging the impugned order of conviction and sentence. But at the same time, when we have come to a definite conclusion that the evidence of PW-4 is outright unworthy of credit, it would be simply illegal and unjust to detain further those accused persons also who have not appealed before us !! Once our conscience is satisfied that on such trecherous prosecution evidence no order of conviction and sentence can ever be recorded, sustained, then the benefit of that necessarily must also go to those persons who stood convicted and sentenced on the very same evidence but have not unfortunately come before this Court. Merely because they have not appealed before us, it cannot be assumed that prosecution case was true and therefore they have not come. This can never be done. We do not know why the rest of the convict prisoners have not challenged their conviction before us !! There can and may be very many reasons for not filing appeal against their orders of conviction and sentence. It may be because of utter frustration that losing all hopes they have not filed appeal. May be because rightly or wrongly imagining that by filing appeal the Court may perhaps enhance the sentence to their prejudice though they are innocent !! May be also wrongly advised that looking to the allegation of rape, gang-rape and that too on the members of scheduled caste and schedule tribe, these days there were no chances of acquittal !! Be the case it may as it is, we are not concerned with the same. The Court decides the matter on the basis of actual evidence on record and not on some such views or conduct of the accused persons not filing the appeal. In this view of the matter, justice warrants that once Appellant gets acquitted, on the basis of the doubtful nature of PW-4 Manjuila, the rest of the three accused, whose case and ultimate fate is also based on the very same set of evidence must as of legal imperative obliges us to bestow benefit of acquittal on them.

13. In the result, this appeal succeeds and is allowed. The impugned judgment and order of conviction and sentence is hereby quashed and set-aside. The appellant herein viz.,

Mohanlal Amraji Marvadi and other co-accused persons viz., Natubhai Gulabbhai Gadhvi; Nathubhai Karandan Gadhvi and Dilipdan Gulabsinh Gadhvi are also ordered to be set at liberty forthwith unless their presence in jail is required in connection with any other proceedings pending against them. Fine if paid, to be refunded.

12. Registry is directed to forward a copy of this judgment to (i) Chief Secretary, Government of Gujarat, (ii) Secretary, Finance and (iii) Legal Secretary, Gandhinagar by inviting their specific attention to para-2 where facts of the prosecution case is stated and thereafter to para-9 where observations /suggestions made in the overall public interest for information and necessary action by Government.

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Prakash*