

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 870 of 2003**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.M.KAPADIA**

**HONOURABLE MR.JUSTICE K.A.PUJ**

=====

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, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
?

=====

**NAGJIBHAI VERSIBHAI RAVAL - Appellant(s)**

**Versus**

**STATE OF GUJARAT - Respondent(s)**

=====

**Appearance :**

MR PUSHPADATTA VYAS for Appellant(s) : 1,

MR KT DAVE ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

=====

**CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**

**and**

**HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 30/03/2007**

**C.A.V. JUDGMENT****(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)**

1. Instant appeal under Section 374 of the Code of Criminal Procedure ('the Code' for short) is directed against the judgment and order dated 15.7.2003 rendered in Sessions Case No.27 of 2000 by the learned Additional Sessions Judge, Second Fast Track Court, District Banaskantha at Deesa by which the appellant ('the accused' for short) has been convicted for the offences punishable under Sections 376 and 506 (2) of the Indian Penal Code ('IPC' for short) and sentenced to suffer RI for ten years and fine of Rs.10,000/- i.d., further imprisonment for six months for the offence under Section 376 IPC and RI for seven years and fine of Rs.2,000/- i.d., further imprisonment for three months for the offence under Section 506 (2) IPC. Both the sentences are ordered to run concurrently.

2. The prosecution case, in nutshell, as

disclosed from the FIR and unwrapped during trial, is as under:

2.1. On 18.11.1999 at about 1.30 P.M. P.W.1, prosecutrix-victim of the rape (hereinafter referred to as 'Miss X') had been to field for giving lunch to her father, Valambhai Lagdhirbhai Raval, who was tilling the land of Lalabhai Mevabhai Raval on half share basis. After taking lunch, her father had gone to adjoining field of Nai Lakhabhai Bijalbhai for some agricultural purpose. She was cutting grass at around 2 P.M. During that time, Nagjibhai Versibhai Raval (the accused) came from the adjoining field and suddenly clutched her tightly and pressed her mouth and started misbehaving with her. He threw her on the ground and told her that if she screams, he would give her a knife blow. He had kept a knife in the waist portion of his garment. Thereafter he committed rape upon her against her will and wish. As soon as her father came from the adjoining field, he ran away by jumping the

fence. She thereafter informed her father about the incident. She and her father thereafter went to their residence at Kasara. Her mother was at Jagmata's temple and she was called from there and thereafter she and her father informed her mother about the said incident. Thereafter they went to Jampur on foot and thereafter they left Jampur in a jeep and met her uncle Mehabhai Lagdhirbhai and informed him about the said incident. They thereafter went to Thara on foot by passing through the outskirt and stayed at Thara as it was very late. Her uncle informed the said fact to Bhavubha Darbar. Thereafter Bhavubha Darbar told that it was very late in the night and they will not get any vehicle therefore they should go to Shihori Police station for lodging complaint in the morning. Therefore all of them stayed at Thara at night and after taking breakfast at her uncle's place, by travelling in a private vehicle, they arrived at Shihori and lodged the complaint. The said complaint is at EX.40. In the complaint, delay for lodging the

complaint is also explained.

2.2. The complaint for the aforesaid incident was lodged by Miss X before PW.10, Lalsing Chhaguji, PSO of Shihori Police Station and he recorded the complaint as per the narration given by Miss X for commission of the offences under Sections 376 and 506 (2) IPC.

2.3. Thereafter the investigation was entrusted to PW 11, HB Chavda, PSI, Shihori Police Station. He recorded the statement of witnesses, drew the panchnama of the scene of offence, as well as recovery of petticoat of Miss X, sent Miss X for medical treatment to Civil Hospital, Palanpur. As HB Chavda PSI was transferred from Shihori to Deodar, the investigation was handed over to P.W.12, DC Joshi, PSI. He arrested the accused on 6.12.1999 and thereafter recovered his clothes as well as knife from him. The accused was sent for medical check-up. He thereafter sent the clothes of Miss

X as well as that of the accused for chemical analysis to FSL Ahmedabad.

2.4. On receipt of the report from the FSL Ahmedabad as well as certificate issued by the doctors who have examined Miss X as well as the accused and as incriminating evidence was found against the accused, he was charge-sheeted in the Court of learned JMFC, Shihori for commission of the offences under sections 376 and 506 (2) IPC and also under Section 135 of the Bombay Police Act ('BP Act' for short).

2.5. As the offence punishable under section 376 IPC is exclusively triable by a Court of Sessions, the learned JMFC, Shihori committed the case to the Sessions Court, District Banaskantha.

2.6. The learned Additional Sessions Judge, Second Fast Track Court, District Banaskantha at Deesa, to whom the case was made over for trial, framed the charge against the accused for

commission of offences under sections 376 and 506 (2) IPC as well as under Section 135 of the BP Act. The charge was read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried. Thereupon he was put to trial by the trial court in Sessions Case No.27 of 2000.

2.7. In order to bring home the charge levelled against the accused, the prosecution has examined in all 12 witnesses and relied upon their oral testimonies, the details of which have been given in paragraph 4 of the impugned judgment and order:

P.W. No.	Name	Ex. No.	Page Nos.
1	Miss X, complainant	13	20-28
2	Dr. P.K. Makwana	15	31-32
3	Valambhai Lagdhirbhai Raval	20	37-40
4	Mehabhai Lagdhirbhai Raval	21	41-42
5	Dr. R.B. Maheshwari	24	44-46
6	Shaktisinh Aniruddhsinh Gohil	30	52-54
7	Gandabhai Dhanrajbhai	33	58-59
8	Babubhai Karamshibhai Dhudhabhai	35	61-62

P.W. No.	Name	Ex. No.	Page Nos.
9	Karamshibhai Dhudhabhai	37	64-65
10	Lalsing Chhaguji, PSO	39	68-69
11	H.B. Chavda PSI	42	74-76
12	D.C. Joshi, PSI	43	77-78

2.8. To prove the culpability of the accused, the prosecution has also produced and relied upon the following documents as mentioned in paragraph 5 of the impugned judgment and order:

Sr. No.	Particulars	Ex. No.	Page Nos.
1	Complaint	14	29-30
2	Yadi	16	33
3	Medical certificate issued by doctor after examining the prosecutrix	17	34
4	Yadi sent by police to examine the accused	18	35
5	Certificate issued by doctor after examining the accused	19	36
6	Transfer chit	25	47
7	Yadi sent by police to Palanpur Hospital for Certificate	26	48
8	X-ray to prove the age of prosecutrix	27	
9	Certificate issued by doctor showing age of the prosecutrix	28	49-50



Sr. No.	Particulars	Ex. No.	Page Nos.
10	Forwarding letter prepared by Dr. Maheshwari	29	51
11	Panchnama of scene of offences	31	55-56
12	Panchnama recovering the clothes of the victim	32	57
13	Chit	44	79-81
14	Chit	36	63
15	Panchnama recovering the clothes of the accused	38	66-67
16	FIR	40	70-72
17	Index	41	73
18	Forwarding letter	44	79-81
19	Forwarding letter sent by FSL	45	82-83
20	FSL report	46	84-87
21	Serological report	47	88

2.9. After recording of the evidence of the prosecution witnesses was over, the trial court explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement as required under section 313 of the Code. In his further statement, the accused denied the case of the prosecution by saying that

he is innocent and he has not committed any offence. He has further stated that the betrothal of Miss X was arranged with his maternal cousin and Miss X is his niece. Miss X wanted to break the betrothal and they wanted to avoid the payment of penalty as per the social custom of their caste and therefore keeping this enmity in mind, he has been falsely entrapped by Miss X and her family members in the alleged case of rape.

2.10. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution, the trial court has held that the prosecution has successfully established that the accused, by showing knife, threatened Miss X and thereafter against her will and wish, by putting her in frightened position, committed rape on her. Therefore complicity of the accused for commission of offences under sections 376 and 506(2) IPC has been established and the trial court convicted the accused for commission of the said offences and sentenced him to suffer RI to

which reference is same in earlier paragraph of this judgment giving rise to instant appeal at the instance of the accused. It may be mentioned that the trial Court has acquitted the accused for commission of the offence under Section 135 of the BP Act.

3. Mr. Pushpadatta Vyas, learned advocate for the accused, has contended that defence of the accused is that he is innocent and he has been falsely implicated by Miss X and her family members because of the previous enmity on account of the breaking of betrothal of Miss X with his maternal cousin and in order to avoid penalty as it was the social custom in their caste, which is wrongly not believed by the trial court. It is also contended by him that Miss X is the niece of the accused, therefore, entire case of the prosecution is got up and the accused has been falsely entrapped in the said case just with a view to take revenge and also to pressurising him so that he can tell his maternal cousin not

to insist for penalty. It is also highlighted by him that there was material contradictions and improvements in the version of Miss X as she has improved her oral testimony and stated many things which were not mentioned in the complaint Ex.40. It is also pointed out by him that the oral testimony of the doctor who has examined Miss X does not support the prosecution case about the rape committed by the accused as there was no injury in the vagina nor any semen is seen in her vagina. If we except the version of Miss X, there must be some injury on her person because she was made to lie on the field and if we accept the evidence of the doctor, who is an independent witness, no such injury was found on her person and, therefore, because of this contradiction, the version of Miss X cannot be relied upon. It is also highlighted by him that version of the father of Miss X also suffers from material contradictions and improvements. All the panch witnesses have not supported the prosecution case. It is also empathetically

submitted by him that there is abnormal delay in filing the complaint. Therefore, on this ground also the prosecution version cannot be accepted.

3.1. On aforesaid premises, it is contended by him that the impugned judgment and order convicting the accused, deserves to be quashed and set aside by allowing this appeal and thereby acquitting the accused of the offences with which he was charged.

3.2. In support of the aforesaid contentions, Mr. Pushpadatta Vyas, learned advocate for the accused, has relied upon the following decisions:

- (i) Sudhansu Sekhar Sahoo v. State of Orissa,  
(2002) 10 SCC 743,
- (ii) Devinder Singh and others v. State of Himachal Pradesh, (2003) 11 SCC 488, and
- (iii) Aman Kumar and another v. State of Haryana, (2004) 4 SCC 739.

3.3. Alternatively it is submitted by him that if this Court comes to the conclusion that the prosecution has proved the charge levelled against the accused, then, so far as the quantum of punishment is concerned, leniency may be shown upon the accused looking to the family conditions that he has three minor children between the age group of three years and seven years, he is not having his father or any other male member in the family and he is having six sisters and he has to shoulder the responsibility of them. Therefore, according to Mr. Vyas, learned advocate for the accused, the sentence undergone by the accused so far, which is more than 3 ½ years, may be treated as substantive sentence for commission of the offences proved against the accused and the sentence may be suitably modified to the said extent and the accused may be set at liberty. He, therefore, urged to pass appropriate order with regard to quantum of sentence taking liberal and lenient view in the matter.

4. In counter submission, Mr. KT Dave, learned Addl.P.P. for the respondent, has submitted that there is reliable, clinching and trustworthy evidence to prove that the accused has committed rape upon Miss X. It is also highlighted by him that there is no reason for Miss X to falsely implicate the accused, who is her paternal uncle, in the rape case, therefore, there is no reason to discard the evidence of Miss X. It is also highlighted by him that the evidence of Miss X gets corroboration from the evidence of P.W.3, Valambhai Lagdhirbhai Raval, who is the father of Miss X and P.W.4, Mehabhai Lagdhirbhai Raval, who is the paternal uncle of Miss X. So far as the evidence of P.W.3, Valambhai Lagdhirbhai Raval is concerned, on seeing him, the accused ran away from the scene of offence, after committing rape. According to Mr. Dave, it is true that there are some contradictions in the evidence of the prosecution witnesses but they are not fatal to the prosecution case as they are hardly of any consequence. It is also highlighted by him that

panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase and this fact itself is not sufficient to throw the prosecution case overboard. The panchnamas are proved from the evidence of the police personnels. Therefore, they can be relied upon and acted upon. Therefore, according to him, there is no merit in the appeal which deserves to be dismissed.

4.1. So far as the alternative submission advanced by Mr. Vyas, learned advocate for the accused, with regard to showing leniency in the matter of sentence is concerned, according to Mr. Dave, learned Addl.P.P., no leniency or mercy can be shown to the accused who is the paternal uncle of Miss X. If leniency or mercy in the matter of sentence is shown, then it would give a wrong signal to the society. He, therefore, submitted that no leniency may be shown to the accused so far as sentence is concerned. In sum and substance, according to Mr. Dave, the appeal lacks merit and deserves to be dismissed. He,



therefore, urged to dismiss the appeal.

5. This court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of caution sounded by the Supreme Court while dealing with criminal appeals, this Court has examined the entire evidence on record for itself independently of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial court has rightly recorded the order of conviction and sentence.

6. In order to establish the charge levelled against the accused, the prosecution has mainly

relied upon the oral testimony of P.W.1, Miss X, Ex.13, pages 20-28 of the paper book. She has, inter alia, testified that on 18.11.1999, at about 1.30 P.M. she had been to the field for giving lunch to her father, Valambhai Lagdhirbhai Raval, who was tilling the land of Lalabhai Mevabhai Raval on half share basis. After taking lunch, her father had gone to adjoining field of Nai Lakhabhai Bijalbhai for some agricultural purpose. She has further testified that she was cutting grass at around 2 P.M. During that time, the accused came from the adjoining field and suddenly clutched her tightly and pressed her mouth and started misbehaving with her. He threw her on the ground and told her that if she screams, he would give her a knife blow. He had kept a knife in the waist portion of his garment. Thereafter he committed rape upon her against her will and wish. She has also testified that as soon as her father came from the adjoining field, the accused run away by jumping the fence. She thereafter informed her father about the

incident. She has further testified that thereafter she and her father went to their residence at Kasara. Her mother was at Jagmata's temple and she was called from there and thereafter she and her father informed her mother about the said incident. Thereafter they went to Jampur on foot and after that they left Jampur in a jeep and met her uncle Mehabhai Lagdhirbhai and informed him about the said incident. She has further testified that they thereafter went to Thara on foot by passing through the outskirts and stayed at Thara as it was very late. Her uncle informed the said fact to Bhavubha Darbar. Thereafter Bhavubha Darbar told that it was very late in the night and they will not get any vehicle therefore they should go to Shihori Police station for lodging complaint in the morning. Therefore all of them stayed at Thara at night and after taking breakfast at her uncle's place, by travelling in a private vehicle, they arrived at Shihori and lodged the complaint.

6.1. It may be noted that during her cross-examination by the learned advocate for the accused, lot many suggestions were made about the non-happening of the alleged incident and false case has been filed against the accused. She has repelled all the suggestions put to her with regard to non-happening of the said incident. Suggestions were also made to the effect that because of enmity, false case has been filed against the accused. That suggestion has also been repelled by her. She has successfully withstood the test of cross-examination and nothing substantial has been brought out from her evidence which would impeach her oral testimony.

6.2. On reappreciation of the evidence of P.W.1, Miss X, according to this Court, there is no reason for Miss X to falsely implicate her paternal uncle and that too in a case of rape. It is also required to be mentioned that in a society like ours, where the virginity of a girl

is considered to be very valuable and priceless asset, no female would ever make false allegation of rape upon her because the honour and prestige of that woman also would be at stake and she will be suffering a lot in the society the moment the incident of rape comes to the knowledge of public. In instant case, Miss X has categorically stated that the accused, who is her paternal uncle, has ravished her. If, in fact, the accused has not committed the offence of rape upon Miss X, there was no reason for her to implicate the accused, who is her paternal uncle, in such a heinous crime, as it will also leave an indelible stigma upon her character. Therefore, there is no reason for this Court to disbelieve the oral testimony of Miss X implicating the accused in the commission of offence of rape upon her as well as the commission of offence of criminal intimidation as the accused had given threat to Miss X to cause death or grievous hurt, by the knife he had with him, if she screams and thereafter forcibly, without her wish or will,

made prey to his lust.

7. In order to corroborate the evidence of P.W.1, Miss X, the prosecution has relied upon the oral testimony of P.W.3, Valambhai Lagdhirbhai Raval, Ex.20, pages 37-40 of the paper book. He has, inter alia, testified that he is the father of the victim of the rape- Miss X. At the relevant time she was aged about 17-18 years. He has testified as per the statement made by him before the police officer while recording his statement under Section 162 of the Code. He has also testified that while returning from the adjoining field, he saw the accused running away from his field and thereafter his daughter conveyed the incidence of rape committed by the accused upon her.

7.1. It is true that this witness has not seen the incident but he saw the accused running away from the field and immediately his daughter informed him that the accused committed rape upon

her and run away.

7.2. In cross-examination made by the learned advocate for the accused, lot many suggestions were put to him about non-happening of the incident. He has repelled all the suggestions and withstood the test of cross-examination and the defence could not get a slice of advantage in favour of the accused out of the cross-examination of P.W.3, Valambhai Lagdhirbhai Raval.

8. In order to corroborate the incident in question, the prosecution has also relied upon the oral testimony of P.W.4, Mehabhai Lagdhirbhai Raval, Ex.21, pages 41-42 of the paper book. He has, inter alia, testified that at the time of incident, the age of Miss X was about 18 years. She was betrothed at Masali village. At the relevant time, he was staying at Thara and was working on the bore well of Chandubha. Miss X and P.W.3, Valambhai Lagdhirbhai Raval, came to him

on 18.11.1999, at about 6 O'clock in the evening and informed him about the incidence. It is true that this witness is also not an eye witness. But he is the witness to whom the victim of the rape, Miss X and her father informed about the commission of offence by the accused.

8.1. This witness was also cross-examined at length by the learned advocate for the accused but he also withstood the test of cross-examination and nothing substantial could be brought out which would impeach the credibility of his testimony.

9. On overall reappraisal of the evidence of the above referred to three witnesses, according to this Court, it is established that the incident had taken place on 18.11.1999 at about 2 P.M. in the field of Lalabhai Mevabhai Raval, when Miss X was cutting grass. The accused came there from the adjoining field and suddenly clutched her tightly and pressed her mouth and



misbehaved with her. He threw her on the ground and threatening her that if she screams, he would give her a knife blow, he committed rape upon her against her will and wish. As soon as P.W.3, Valambhai Lagdhirbhai Raval came from the adjoining field, the accused run away from the scene of offence, jumping the fence and P.W.3, Valambhai saw the accused running away from the field and immediately on arrival of Valambhai in the field, Miss X told him about the rape committed by the accused on her. Thereafter Miss X and P.W.3, Valambhai went to Thara and informed P.W.4, Mehabhai Lagdhirbhai Raval, about the said incident.

10. The prosecution has thereafter examined and relied upon the evidence of P.W.2, Dr. P.K. Makwana, Ex.15, pages 31-32 of the paper book. He has, inter alia, testified that on 19.11.1999 he was on duty at Primary Health Centre at Shihori. At about 1.40 P.M. Miss X was brought by Shihori Police Station with yadi. He examined Miss X.

Miss X has stated before him about the incident which had taken place on 18.11.1999 in the field. Miss X has in unequivocal terms stated that she was ravished. He has referred Miss X to Civil Hospital, Palanpur for expert opinion and age confirmation. He has also issued certificate which is on record at Ex.17. A perusal of the certificate Ex.17, it is seen that no external injuries were found on the body of Miss X. Hymen was ruptured. This witness has also examined the accused on 6.12.1999 who was brought before him with police yadi. He had issued certificate which is on record at Ex.19. On perusal of the certificate Ex.19, no external injury was found on the body of the accused. The history given by the accused was about the rape committed by him upon Miss X, daughter of P.W.3, Valambhai.

11. The prosecution has thereafter examined and relied upon the testimony of P.W.5, Dr. Rekhaben Bansidhar Maheshwari, Ex.24, pages 44-46 of the paper book. She has, inter alia, testified that

on 20.11.1999 at about 3.30 P.M. she was on duty as Medical Officer at Palanpur Civil Hospital. At that time Miss X was brought by police with a refer note of Shihori Primary Health Centre. She examined Miss X and issued a certificate which is at Ex.28. She has also verified her age on the basis of ossification test and for that purpose she had taken X-ray. The X-ray plate is produced at Ex.27. A perusal of the certificate at Ex.28 shows that there was no external injury noted. There was old tear in hymen. No fresh tear or discharge was noticed. There was no bleeding.

11.1. By pointing out the evidence of P.W.2, Dr. PK Makwana and P.W.5, Dr. Rekha B Maheshwari, and the medical certificates issued by them, Mr. Pushpadatta Vyas, learned advocate for the accused, has contended that the medical evidence does not corroborate the oral testimony of P.W.1, Miss X and, therefore, the incident in question has never taken place and the accused has been falsely implicated in a case of rape because of

enmity. According to this court, the aforesaid submission of Mr. Vyas, learned advocate for the accused, is devoid of any merit as it has no substance. It is true that hymen of Miss X was ruptured and as per the medical jurisprudence, hymen can be ruptured for various reasons and rupture of hymen is not a decisive factor to come to the conclusion that rape was not committed by accused on Miss X. Merely because no external injury was noted on the body of Miss X that fact itself is not decisive to jump to the conclusion that rape was not committed by the accused upon Miss X. It has come in evidence that the accused had a knife with him and he gave threat to Miss X that if she screams he would give a knife blow to her and, therefore, there was no alternative for Miss X except to helplessly succumb to the lecherousness of the accused. It has also come in evidence that the accused satisfied his lust by threatening Miss X that if she screams he would give her knife blow. The fact that there was no external injury found on Miss X only goes to show

that she might not have put up any resistance and she might not have resisted because the accused had a knife kept on the waist portion of his garments and had threatened her with dire consequences. Moreover, it is settled by catena of decisions of the Supreme Court that if the evidence of the victim of rape is of sterling quality and no doubt is raised on her oral testimony, then reliance can be placed on her sole testimony to come to the conclusion that rape was committed on her and if the evidence of the victim of rape is trustworthy, then it does not require any corroboration from medical evidence and in such circumstances, the relevance of medical evidence pales into insignificance.

12. The prosecution has thereafter examined and relied upon the oral testimonies of P.W.6, Shaktisinh Aniruddhsinh Gohil, Ex.30, pages 52-54 of the paper book, P.W.7, Gandabhai Dhanrajbhai, Ex.33, pages 58-59 of the paper book, P.W.8, Babubhai Karamshibhai Dhudhabhai, Ex.35,

pages 61-62 and P.W.9, Karamshibhai Dhudhabhai, Ex.37, pages 64-65 of the paper book. These four witnesses are panch witnesses of various panchnamas i.e., panchnama of scene of offence, panchnama of recovery of clothes of Miss X, panchnama of recovery of clothes of the accused and panchnama of recovery of knife from the accused. All of them have turned hostile and have not supported the contents of the panchnamas and, therefore, they were declared hostile and were cross-examined at length by the learned A.P.P. In their cross-examination also they stuck to the same version that they have merely signed the panchnama but they did not know anything.

13. By referring to and relying upon the evidence of the above referred to panch witnesses, it is empathetically contended by Mr. Vyas, learned advocate for the accused, that the panch witnesses have not supported the prosecution case and, therefore, panchnamas are not proved and hence no reliance can be placed on

the prosecution witnesses and hence the impugned judgment and order deserves to be quashed and set aside by allowing the appeal and thereby acquitting the accused of the offences with which he was charged.

14. According to this court, the aforesaid submission of Mr. Vyas, learned advocate for the accused, is devoid of any merit. It is well settled that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown overboard as unreliable. It may be realized that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasized that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would

be giving a right to veto to the panchas so far as the question of culpability of an accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officer, if otherwise found to be true and dependable, cannot be discarded by court on the ground that he is a police officer. On the facts and in the circumstances of the case, this Court finds that testimonies of police officers and other witnesses are not only inspiring confidence, but, get corroboration from the other evidence on record and from the evidence of the police officers, the contents of the panchnama have been proved and it is given exhibit numbers as well. Therefore, according to this Court, the said panchnamas can be relied upon to decide the complicity of the accused. Therefore, there is no reason to discard the evidence of the police officers as well as other witnesses. According to this Court, the prosecution has successfully proved the panchnamas and, therefore, they can be read in evidence and relied upon to establish the



case of the prosecution against the accused.

15. On overall reappreciation, reanalysis and reevaluation of the evidence of the prosecution witnesses, according to this Court, there is evidence against the accused that on 18.11.1999 at about 1.30 P.M., Miss X who had been to field for giving lunch to her father, was forcibly ravished by the accused, against her will and wish, threatening her that if she screams, she would be done to death. The evidence of Miss X in this connection is of sterling quality and there is no reason to discard her evidence. Her evidence is of such a clinching nature that no corroboration is required to place reliance upon the same. If the evidence of the rape victim is doubtful then only corroboration in the form of medical evidence is required. In instant case, the evidence of Miss X is of such a sterling quality that no medical evidence is required to corroborate the same. The totality of the circumstances appearing on the record of the case

disclose that Miss X does not have any motive to falsely involve the accused, therefore, this Court has no hesitation in accepting her evidence. Therefore, complicity of the accused for commission of the offences punishable under Sections 376 and 506 (2) IPC is duly established beyond reasonable doubt.

16. On close scrutiny of the evidence on record, we find no infirmity in the findings, ultimate conclusion and the resultant order of conviction recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction passed by the trial court, as according to us, no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

17. This Court has also considered the judgments of the Supreme Court cited at the bar by Mr. Pushpadatta Vyas, learned advocate for the

accused. So far as the judgments relied upon by him are concerned, according to us, there cannot be two opinion with regard to the proposition laid down therein. But the facts of those cases are different from the case before this Court. Therefore, detailed reference to the said judgments is avoided for the sake of brevity. In those cases before the Supreme Court, the evidence of the prosecutrix was doubtful and medical evidence did not corroborate with the evidence of the prosecutrix and, therefore, in those facts situation, the Supreme Court has held that the offence of rape has not been proved. So far as the instant case is concerned, according to this Court, the evidence of Miss X is reliable, trustworthy and clinching and no doubt can be raised on the evidence of Miss X with regard to the accused committing rape upon her and, therefore, in the absence of even any corroborative medical evidence, her oral testimony is sufficient to come to the conclusion that the accused has committed rape upon Miss X after giving threat to her that he would give

knife blow to her if she screams.

18. This takes us to examine the alternative prayer canvassed by Mr. Pushpadatta Vyas, learned advocate for the accused with regard to showing leniency towards the accused in respect of sentence. Mr. Vyas has claimed leniency by contending that the accused is having a wife and three minor children in the age group of 3 to 7 years, his father has died and there is no male member in his family and he has got six sisters, whose responsibility has to be shouldered by the accused.

19. Mr. K.T. Dave, learned Addl.P.P. for the respondent - State of Gujarat has opposed the submission of Mr. Vyas by contending that the offence of rape is now on increase and punishment for rape shall be imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine. The trial court has

imposed the sentence of ten years and, therefore, no leniency should be shown towards the accused in the matter of sentence and, according to him, the impugned order of sentence imposed on the accused to suffer RI for ten years does not call for any interference of this Court.

20. This Court has given anxious and considerate thought to the rival submissions advanced by the learned advocates for the parties with regard to showing leniency towards the accused by reducing the sentence.

21. In view of the submission made by Mr. Pushpadatta Vyas, learned advocate for the accused to the effect that the accused is having a wife and 3 children, in the age group of 3 to 7 years, his father is not alive and he has got the responsibility of six sisters and, therefore, according to us, if the accused is sentenced to suffer RI for seven years, which is the minimum sentence for the offence of rape, and fine of Rs.5,000/- i.d., to suffer RI for a period of

three months for the offence punishable under Section 376 IPC and also to suffer RI for two years and fine of Rs.1,000/- i.d.,. RI for further period of one month for commission of offence punishable under Section 506 (2) IPC and both the substantive sentences are ordered to run concurrently, it would meet the ends of justice.

22. For the foregoing reasons, the appeal succeeds in part and accordingly it is partly allowed qua sentence only. The judgment and order dated 15.7.2003 rendered in Sessions Case No.27 of 2000 by the learned Additional Sessions Judge, Second Fast Track Court, District Banaskantha at Deesa by which the accused has been convicted for the offences punishable under Sections 376 and 506 (2) IPC is hereby confirmed and maintained. So far as sentence is concerned, the sentence imposed on the accused by the trial court to suffer RI for ten years and fine of Rs.10,000/- i.d., further imprisonment for six months for the offence under Section 376 IPC and RI for seven

years and fine of Rs.2,000/- i.d., further imprisonment for three months for the offence under Section 506 (2) IPC, is hereby reduced and the accused is hereby sentenced to suffer RI for seven years and fine of Rs.5,000/- i.d., to suffer further RI for three months for commission of offence punishable under Section 376 IPC and also sentenced to suffer RI for two years and fine of Rs.1,000/- i.d., to undergo further RI for one month for commission of the offence punishable under Section 506 (2) IPC. Both the substantive sentences are ordered to run concurrently.

If the accused pays the fine of Rs.5,000/- the same shall be paid to Miss X on due verification.

The appeal stands disposed of by partly allowing it to the aforesaid extent.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

. . .

(karan)