

SC/221/2008

JUDGEMENT

Exhibit : 140

IN THE CITY SESSIONS COURT AT AHMEDABAD

13

SESSIONS CASE NO. 221 OF 2008.

Complainant:

STATE OF GUJARAT

VERSUS

Accused:

1. LOKESH

S/O. RAJARAM JAGDISHPRASAD SHARMA
A/4, MANSAROVAR APARTMENT,
NR. GALAXI CINEMA, NARODA, AHMEDABAD.

2. PANKAJ

S/O. GOVINDBHAI BHAKTIBHAI CHAVDA
I/84/1375, GUJARAT HOUSING BOARD,
KRUSHNANAGAR, SAIJPUR BOGHA,
NARODA, AHMEDABAD.

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Appearance:

Smt. Varshaben K. Rao, Learned APP for the State.
Mr. N. R. Lodha, Learned Advocate, for the accused No. 1
Mr. N. R. Parikh, Learned Advocate, for the accused No. 2

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J U D G E M E N T

1. The accused persons have been booked for the offences under sections 363, 365, 366, 376, 328, 120-B, 34, 506(1) of the Indian Penal Code, the same being registered by the Naroda police station vide, First C R number 404 of 2006 on 29/10/2006.

2. The factual matrix of the complaint as lodged by the complainant in a nutshell is :-

The complainant, a student of S.Y.B.Com. in Bhavans Sheth R A College, Shahpur, Ahmedabad, is aged 19 years and residing at, I/82/1330, Krishnanagar, Gujarat housing board, Saijpur-Bogha, Naroda, Ahmedabad, along with her parents. Her date of birth is 29/8/1987. Her college timings are from morning 7.30 to 11.30 and she attends her Tuition classes at Gurugroup Tuition classes, which is situated at Nayannagar, next to, Ramanand school from morning 9 o'clock to afternoon 12 O' clock. The said tuition classes are conducted by teacher Lokeshbhai R. Sharma, who is the accused no. 1. It is the say of the complainant that she goes to the college to attend lectures on some days, whereas she goes for her tuitions on other days. She is acquainted with one Pankajkumar Govindlal

Chavda, the accused no. 2, since last four years, who is residing opposite to her house in block number I/84/1375. He happens to be her brother Amit's friend.

On the morning of 5/10/2006, the complainant left her home to attend her tuition classes at Guru group tuition at 8 o'clock and when she reached her tuition class, the accused no. 1, who was her teacher, was present there. Students except her, had not yet arrived in the class. As per her say, while she was removing her footwear near the door, her teacher i.e. the accused no. 1, came from behind and placed a handkerchief on her mouth and pressed the same for a while. The complainant could smell some kind of odour coming from the handkerchief and as such she became unconscious. Thereafter, at around 9:30 a.m. when she regained her consciousness, she found herself lying naked and her clothes besides her, and there was nobody in the class. As such, being frightened she dressed up and went home. However, because of her prestige, she did not narrate this incident to her parents.

As per the complaint, on 7/10/2006 when she boarded the AMTS bus no. 123 from her home at Krishnanagar to go to her college, the accused no.2 came and sat besides her and tried to enter into a conversation with her, but she did not talk with him. Thereafter, she went to the

college and noted her seat number and returned to the college gate, where she found the accused no.2 waiting. The accused no.2 then told her to accompany him to Parimal garden, but she refused. Hence the accused no. 2 told her that, it would be better if she accompanied him or else, it would not be good for her. The complainant being threatened by the accused no. 2, accompanied him to Parimal garden where he asked her whether she would marry him, to which she had replied in negative, hearing which the accused no.2, told her that, he was in possession of the photographs of the incident that had happened with her on 5/10/2006 at her tuition class and if she refused to marry him, he would upload these photographs on the internet and publish them in the newspaper, and also show the same to everybody in her house. By saying so, the complainant was put in a helpless situation to marry the accused number 2. As such, she was taken to Meghaninagar court on 9/10/2006 and the marriage was solemnized in Hanuman temple. None from her side attended the marriage ceremony, however, friends of accused no. 2 and advocate Bhavesh Barot were present. She was threatened that, she should not mention about the marriage to her family and thereafter, she was asked to return to her home, hence she did.

As per the complaint, on 14/10/2006 while the complainant was standing at the Krishna Nagar bus stand to go to college to appear for her exams, the accused no.2 had come there and told her to accompany him, as such she did so. The accused no.2 took her to a lawyer and asked her to sign the documents pertaining to their marriage ceremony, to which she refused. Once again, the accused no.2 threatened to defame her, hence being frightened she succumbed to the threat of the accused no.2 and signed. Thereafter, at around 12 o'clock in the afternoon, she was taken to Memco from where she was made to board a luxury bus and taken to Udaipur and Jaipur where they stayed at the Gujarati Samaj. The accused no.2 physically exploited her, though she was not keeping in good health and used to threaten her that she should not inform anyone.

As per the complaint, both of them returned to Kalupur, Ahmedabad on 25/10/2006 and stayed at Kalupur dormitory. On 27/10/2006, the complainant called up her mother Lata ben, and asked her to come to meet her at Gayatri Mandir, Shahibaug, as such, her mother and her brother Amit came to Gayatri mandir, Shahibagh, to meet her, where in (loneliness) she narrated to them, everything that had happened to her and told them to take her back home. As such, her mother and her brother told the accused no.2

that, they would be taking her back home to which the accused no.2 refused, however, on being requested by her brother and her mother, the accused no.2 conditionally - that she would return after 2-3 days - allowed the complainant to go with her mother. After going home, the complainant narrated everything to her family members, however, as the accused no.2 constantly kept on calling and threatening, she had come to lodge the complaint.

It is the say of the complainant that, the accused no.1 and no.2 together had entered into a conspiracy and on 5/10/2006, the accused no.1, at around 8.30 in the morning, by pressing a handkerchief on her mouth, which contained poisonous substance made her unconscious and naked and raped her and thereafter on 7/10/2006, the accused no.2 accompanied her from Krishnanagar in bus no.123, by threatening her with dire consequences as he was in possession of the photographs of the incident of 5/10/2006 at Guru group tuition classes and asked her to accompany him to Parimal garden and forced her to marry him and thereafter, on 14/10/2006 took her to Meghaninagar court and Hanuman temple where he solemnized the marriage with the complainant victim. Further, on the same day he forcibly took the complainant and made her sign the documents pertaining to marriage. Thereafter, he took her to Udaipur and Jaipur from where they returned to Kalupur dormitory on

25/10/2006, where he raped her against her wish, as such, the complaint against both the accused persons.

3. Upon receiving the complaint from the complainant-victim, the Investigating Officer, Naroda Police station, started investigation and arrested both the accused persons. During the course of his investigation, the report under Sec.157 of Cr.P.C was duly forwarded which is produced vide Exh.86. Thereafter, the Investigating Officer made a panchanama of the local scene of offence in the presence of two panch witnesses which is at Exh.30. The victim as well as both the accused persons were also taken to the Civil Hospital at Ahmedabad for physical examination and the said certificates given by the Medical Officers of the Civil Hospital were received by the Investigating Officer.

4. The Investigating Officer has also made panchanama of clothes of the victim and the accused No.2 that they had worn at the time of the incident. The necessary samples of both victims as well as accused No.2 were sent to the FSL for examination and upon receiving the report the same was also made part of the charge-sheet. The Investigating Officer also recorded statement of witnesses and carried out all other formalities pertaining to the offence, which ultimately culminated into filing of the

charge-sheet against the present accused persons.

5. The Lower Court Committed the Accused Persons for Trial to the Sessions Court As the Offenses Were Exclusively Pertaining to the sessions court. The then additional sessions judge had framed charges vide Exh.3 against both the accused persons under sections 365, 366, 376, 506(1) read together with section 114 of the Indian Penal Code. The accused persons denied the charge, hence the trial.

6. The prosecution to substantiate and prove the charges against the accused persons have examined the following witnesses :-

1	PW-1	The complainant - victim,	Exh.23
2	PW-2	Lataben Jivatram Natani (mother of the victim)	Exh.27
3	PW-3	Nileshbhai Soudeshbhai Rajput (panch witness)	Exh.29
4	PW-4	Sarveshwarrai Lehrirai Thakur (Panch witness)	Exh.31
5	PW-5	Satyendranath Sinh Rampratap Singh Khastriya (Witness - Airtecl Company)	Exh.34
6	PW-6	Dr. Nileshbhai Ramanlal Chauhan (Medical Officer, Government Medical College)	Exh.37
7	PW-7	Kanaji Dahyaji Parmar (Panch witness)	Exh.38
8	PW-8	Jivatram Lakhimal Natani (Father of the victim)	Exh.39

9	PW-9	Dr.Bhavnaben Chanakyakumar Patel (Medical Officer, Civil Hospital)	Exh.40
10	PW-10	Dr.Ramlakhan Nurman Banva (CMO, Civil Hospital)	Exh.43
11	PW-11	Dr.Alpesh Gordhabhai Gangani (Medical Officer, Civil Hospital)	Exh.45
12	PW-12	Chinubhai Motiram Raval (witness)	Exh.47
13	PW-13	Devendrabhai Bhupendrabhai Bhatt (witness)	Exh.48
14	PW-14	Dr. Rohitbhai Harichandra Pandya (Pandya Hospital, Jaipur)	Exh.52
15	PW-15	Meenaxiben Chandrakant Mehta (witness)	Exh.55
16	PW-16	Hanif Rahim Shaikh (panch witness)	Exh.58
17	PW-17	Maheshbhai Gordhanbhai Rathod (panch witness)	Exh.64
18	PW-18	Vijaybhai Ramprasad Gupta (panch witness)	Exh.66
19	PW-19	Maganbhai Jethabhai Rathod (PSI)	Exh.85
20	PW-20	Kishorsingh Narshi Gelda (IO)	Exh.93

7. The prosecution has submitted important documentary evidence which was collected by the Investigating Officer at the relevant time and has produced the same vide list Exh.7 which includes :

No.	Particulars	Date	Exhibit
1	Original Complaint	29-10-2006	24
2	Report under Sec.157 of Cr.P.C.	29-10-06	86
3	Panchnama of local scene of offence	29-10-2006	86

4	Panchanama done in view of the specimens collected as regards the victim	29-10-2006	32
5	Panchanama done in view of the specimens collected as regards the accused No.1	30-10-2006	94
6	Panchnama of the clothes which the accused No.1 had worn at the time of the incident	30-10-2007	59
7	Panchnama of the specimens of the accused No.1	1-11-2006	95
8	Panchanama of Revabai Darmashala, Ahmedabad	1-11-2006	103
9	Panchnama of clothes of accused No.2 and the victim which they had worn at the time of incident	15-11-2006	67
10	Panchnama of the specimen of accused No.2	15-11-2006	65
11	Certificate given by Dr.Rohit Pandya of Jaipur	7-11-2006	53
12	Medical Certificate of the victim given by the Civil Hospital	10-11-2006	41
13	Medical Certificate of accused No.1	9-11-86	44
14	Medical Certificate of accused No.2	17-11-2006	46
15	Letter sent by the PI to the Manager, Airtel Company seeking call details of incoming and outgoing calls of Mobile No.9898004826 (of accused No.2)	30-10-2006	35
16	Details of the specimen sent by the PI of Naroda Police Station to FSL	17-11-2006	96
17	Receipt of FSL	18-11-2006	97
18	Letter written by PI,	18-11-2006	101

	Naroda Police Station to Hutch Company asking for details of the incoming and outgoing calls details of mobile No.9879800362 (of the victim)		
19	Letter written by PI, Naroda Police Station to the Manager to Airtel Company asking for the details of incoming and outgoing call details of mobile number 9898004826 (accused No.2)	18-11-2006	102
20	Forwarding letter sent by the FSL to the PI, Naroda Police station	19-2-2007	98
21	FSL report	17-2-2007	99
22	Report of the Serology Department		100
23	Certificate given by the Airtel Company produced during the deposition of PW-5 along with the incoming and outgoing call details of mobile number 9898004826 (accused No.2)	20-4-2011	36
24	Copy of the register of Revabai Shankar Hindu Dharmashala, Ahmedabad.	26-10-2006	49
25.	Receipt as regards amount given by Revabhai Shankar Hindu Dharmashala, Ahmedabad	26-10-2006	50
26	Receipt given by the Gujarati Samaj Trust, Jaipur	26-3-2006	57

8. Apart from the aforesaid documentary evidence produced by the prosecution, the accused No.2, during the course of statement recorded under

Sec.313 of Cr.P.C had produced a list along with y69 documents, which were not exhibited on 13-9-2012 hence he has given an application Exh.111 whereby he has requested to consider his production application and the list together with the 69 documents. As such, his production application is at Exh.112 and the list is at Exh.113, of which this Court has ordered only 26 documents to be exhibited and to be read in evidence, which are as follows :

No.	Particulars	Date	Exhibit
1	Certified copy of HMP No.584/07	25-5-07	114
2	Certified copy of the affidavit of the applicant in support of Exh.1 in HMP No.584/07	25-5-07	115
3	Certified copy of the rejoinder filed by the applicant in HMP No.584/07	5-9-07	116
4	Certified copy of the stay application given by the opponent in HMP No. 584/07	23-6-09	117
5	Certified copy of the reply against the stay application in HMP No.584/07	13-8-09	118
6	Certified copy of the deposition of the applicant vide Exh.21 in HMP No.584/07	27-8-10	119
7	Certified copy of the complaint under Sec.107 of the Cr.P.C. Given by the accused No.2 (Chapter Case No.106/07)	11-2-07	120

8	Certified copy of the bond executed by the victim's brother in view of Chapter case No.106/07	15-10-2007	121
9	Bond executed by the mother of the victim in Chapter Case No.106/07	15-10-2007	122
10	Original forwarding letter written by PI, Naroda Police station to the accused No.2 in view of RTI application	15-6-12	123
11	Certified copy of the letter written by the Head Constable to PI, Naroda Police Station	12-12-06	124
12	Certified copy of the letter written by the victim to PI, Naroda Police station	14-10-06	125
13	Certified copy of the certificate given by the Jaishri Dada Hanuman Charitable Trust, Ahmedabad	9-10-2006	126
14	Certified copy of the affidavit of the victim	14-10-06	127
15	Certified copy of the Memorandum of Marriage of accused No.2 with the victim	9-10-2006	128
16	Certified copy of the school leaving certificate of the victim	31-5-2004	129
17	Certified copy of the School Leaving Certificate of accused No.2	17-6-97	130
18	Certified copy of the statement of Saduram Dholrama Sindhi recorded by the Head Constable of Naroda Police Station	12-12-06	131
19	Original letter written by	14-7-12	132

	the Naroda police station to the accused No.2 as regards information under RTI Act		
20	Certified copy of the statement of Nirmalaben Bhanushankar, Unarmed Women Police Constable	29-10-06	133
21	Certified copy of the statement of Somabhai Mangabhai, Unarmed Constable	1-11-06	134
22	Certified copy of Statement of Unarmed Police Constable Nilendrasinh Mayabhai	30-10-06	135
23	Certified copy of the letter written by PSI, Krishnanagar Police chowky to the prosecution Namadar of Court No.2, Gheekanta, Ahmedabad	11-2-07	136
24	Certified copy of complaint against the victim's family members filed by accused No.2 to PI, Naroda Police Station	29-10-06	137
25	Certified copy of the statement of accused No.2	29-10-06	138
26	Certified copy of the Chapter Case No.106/07	11-2-07	139

9. After examining of all witnesses, the prosecution has given a closing purshis vide Exh.94. Thereafter, the statements under Sec.313 of the Cr. P.C were recorded wherein accused No.1 has denied the charges levelled against him and stated that he has been wrongly

framed in the present offence. So far as accused No.2 is concerned, he too has denied and has stated that he has married the victim but since he belongs to the Hindu Chamar community, the parents of the victim have framed him in the present case. He has also submitted his written submissions vide Exh.108 in support of the statement which is a detailed one, wherein he has stated the history of relationship with the victim, they being married on 9-10-2006, he being in communication and conversation with the victim since January 2006 upto 28-10-2006, she being of Sindhi upper caste and he being a Harijan, lower caste, the disapproval of the parents of the victim about their love marriage and as such he has been framed in the present offence. It is his further say that, the Investigating Officer has deliberately not produced the important documents along with the charge-sheet and so also during his deposition. It is his further say that, the priest who solemnized their marriage and the advocate who got their marriage registered were intentionally and deliberately not examined by the prosecution and more importantly, the prosecution witness No.19 - Maganbhai Jethabhai Rathod has deliberately not come with the Courier which was sent by the victim to her parents. He has further mentioned that the victim has filed HMP No.584/07 on 25-5-2007 before the Family Court at Ahmedabad to get decree of nullity as regards their marriage and he has been falsely

implicated and framed by the victim and her parents and that he has not committed any offence.

10. The learned APP has given a Memorandum of arguments under Sec.314 of the Cr.P.C. Vide Exh.104, wherein it has been stated that the accused No.1 and 2 are guilty of the offences and that the prosecution has succeeded in proving the charges against the accused persons. It has been further mentioned in the Memorandum that in view of the deposition and particularly, the cross-examination of the victim, it has been proved that the accused No.1 and 2 both are guilty for the offence of rape and it was the accused No.2 who kept on blackmailing the victim. It was under this guise that he married her and thereafter committed rape upon her. It has been further mentioned that looking to the evidence of the victim, there is no trace of consent on her part and because of the blackmailing by the accused No.2, the victim was put to constant fear, as such he had to follow the accused No.2 like a shadow wherever she went and the prosecution witnesses apart from the victim have also supported the say of the victim and as such the accused persons should be convicted and the victim should be awarded compensation.

11. As against this, on behalf of the accused No.1, written arguments have been submitted vide

Exh.107 wherein it has been stated that the accused No.1 has been wrongly framed in the offence. There is no mention of rape in the complaint which is at Exh.24 and further in her deposition she has not stated as to who has committed rape on her. It has been further mentioned that though the victim is attending a tuition class at Gurugroup Tuitions, she is ignorant about the geography of the class, the teachers of the class and the students of the class which is rediculous. It has also been stated that the victim was unable to prove that she attended tuition classes run by the accused No.1 and the incident as said by the victim has never happened at the tuition class. It has been stated that though the incident had happened on 5-10-2006 at Gurugroup tuition class, she had again, gone to the tuition class on 10-10-2006 which is utterly absurd. If at all rape is committed on 5-1-2006 on her in the tuition class then what was the necessity to once again go to the same tuition class on 10-10-2006. It has been further stated that, it can be clearly inferred that such an incident as per the victim's say, had never occurred, hence she continued going to the tuition class.

12. Learned Advocate for the accused No.1 has also stated that the call details that have been produced also throw light upon the innocence of the accused No.1 and the parents of the victim have never stated that the accused No.1 had

committed rape on her in his tuition class. The victim's mother in particular has stated that she had gone to meet the accused No.1 only on 14-10-2006. Learned Advocate has relied upon the following judgements :

[1] 1995 SCC (Cri) 826 : *Jagannivas Vs. State of Kerala.*

[2] 2009(1) SCC Cri 70 : *Lilaram and others Vs. State of MP*

[3] 2003(1) GLH pg. 244 : *Tarasingh Vs. State of M.P.*

Learned advocate for the accused No.1 has stated that in view of these discrepancies and falsity of the version of the victim, it can be clearly concluded that that the prosecution has failed to prove the charges against the accused No.1 and he should be acquitted.

13.On behalf of the accused No.2, the learned Advocate Mr.N.R.Parikh argued at length and has stated that the victim is the legally wedded wife of accused No.2. The relationship between the victim and the accused No.2 was a love relationship prior to the date of the incident and the marriage between the victim and the accused No.2 was solemnised with the consent and free will of the victim who of her own accord, left her home and went along with the accused No.2. Learned Advocate for the accused No.2 has

argued that, there was constant communication between the victim and the accused No.2 prior to 5-10-2006 and subsequently also. Since the victim was aware that her parents would never give consent for her love marriage with the accused No.2, she eloped with the accused No.2, and thereafter, after her married was solemnised sent all the relevant documents by courier to her parents informing them that, she had married the accused No.2. As per the say of Mr.Parikh, important witnesses have been not examined who could have thrown light in this case and though both the victim and the accused No.2 were staying together in Jaipur and Udaipur, she did not once complain about her abduction or rape by the accused no.2 as alleged to anyone. He has also further argued that, the call details that have been produced provides crystal clear evidence as regards the innocence of th accused No.2. Mr. Parikh has further stated that it was because of the consent of the accused No.2 that the victim went with her mother and brother to her house on 29-10-2006. He has further stated that the victim has never stated the name of the accused No.2 so far as the incidents of the tuition classes are concerned and which had occurred on 5-10-2006, and that she had repeatedly kept on saying that she was being blackmailed by the accused No.2 on that count. There is no evidence as regards the same. Looking to the evidence of the victim, she cannot be called a trustworthy witness who can

be believed, leave aside to the hilt, not even remotely also. Mr. Parikh has further argued that there is no corroboration as regards medical evidence is concerned, there are no injuries on her private parts which goes to suggest that she was consenting party and if the entire evidence is looked upon, the same does not inspire confidence. The investigation is also doubtful and dishonest and there is suppression of material facts, as such the charge against the accused No.2 has not been proved.

14. Mr. Parikh has vehemently argued that the present offence is a conspiracy, more particularly by the parents of the victim against the accused No.2, to divorce him from the victim as he is a Harijan, whereas the victim belongs to an upper caste.

15. Mr. Parikh has also submitted written submissions vide Exh.108 which also reflects the comparison and mention of the depositions of the witnesses and along with as many as 182 authorities of the Hon'ble Supreme Court as well as other High Courts, of which, this Court considers a few to be relevant to be mentioned here :

- (1997) 3 SCC 41 : Pratap Misra Vs. State of Orissa

Criminal Trial - Appreciation of Evidence -- Accused not bound by his pleading - open to

accused to prove his defence even from the admissions made by the prosecution witnesses or the circumstances proved in the case.

- 2011 Cr.L.J. 663(1) : Paramjeet Singh @ Pamma Vs. State of Uttarkand.

Evidence Act (1 of 1872), S.101, S.102, S.103, S.104 - Criminal Trial - Burden of Proof - Is on prosecution - More serious the crime more stricter proof is required.

AIR 2012 SC pg. 3157

Evidence Act (1 of 1872), S.3 - Sterling witness - qualities - witness should be of high quality and calibre - His version should be unassailable and acceptable on its face value.

2008(2) Crimes 255 : Jharkhand

Indian Penal Code - IPC 366 and 376 - Though prosecutrix claimed that she accompanied accused against her will but admitted that throughout journey to several places and during period of about three months she had opportunity to protest and free herself, she never protested nor complained to members living in the house - Her evidence that she was under threat or duress was not reliable - Logical inference reasonably could be drawn that she voluntarily accompanied appellants and allowed appellant No.2 to maintain sexual relations with her - Conviction could not be sustained.

16. In view of the above the following **points of determination**, have been raised :-
- (1) Whether the prosecution proves that the

accused No.1 committed rape on the victim on 5-10-2006 in his tuition class and the said act was abetted by accused no.2?

- (2) Whether the prosecution proves that the accused no.2 intimidated, threatened and blackmailed the victim in view of the incident dt. 5-10-06 and thereby compelled her to marry him and for the said purpose kidnapped and/or abducted her from her home and thereafter married her and took her to Jaipur and Udaipur and frequently committed rape on her without her consent and against her will and these acts were abetted by accused No.1?
- (3) What order?

My findings on these issues are thus :

- (1) In the Negative
- (2) In the Negative
- (3) As per final order

R E A S O N S

17. Before embarking upon the evaluation and discussion on the evidence that has come on record, it would be appropriate to quote the sections under which charges were framed against the accused persons :

"365. Kidnapping or abducting with intent secretly and wrongfully to confine person :-
Whoever kidnaps or abducts any person with intent to cause that person to be secretly and

wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

"366. Kidnapping, abducting or inducing woman to compel her marriage, etc.: - Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid."

"376. Punishment for rape. - (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with 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 unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both".

506. Punishment for criminal, intimidation :-

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both. If threat be to cause death or grievous hurt, etc.- and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

And

"Section 114 IPC. Abettor present when offence is committed. - Whenever any person, who is absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence."

18. At the outset, though the prosecution has examined as many as 20 witnesses to prove the charges against the accused persons, out of them, PW-3 - Nileshbhai Soudeshbhai Rahput at Exh.29 is a panch witness who has turned hostile, PW-4 Sarveshwarrai Lehrirai Thakur who is examined at Exh.31 is also a panch witness, PW-7 - Kanaji Dahyaji Parmar, examined vide Exh.38 is a panch witness who has turned hostile, PW-12 - Chinubhai Motiram Raval who is the Administrative Officer of Revabai Dharmashala examined vide Exh.47 has also turned hostile, PW-16 - Hanif Rahim Shaikh examined vide Exh.58 is also a panch witness who has turned hostile. PW-17 - Maheshbhai Gordhanbhai Rathod, is also a panch witness, examined at Exh.64 who has turned hostile and PW-18 Vijaybhai Ramprasad Gupta, also a panch witness examined vide Exh.66 has turned hostile. As such the depositions of all these witnesses does not carry any evidentiary value in the eyes of law, hence in the humble opinion of this Court the same neither needs to be dissected and discussed nor evaluated.

19. PW-1 the victim is the complainant examined vide Exh.23, PW-2 Lataben Jivatram Nathani - the mother of the victim has been examined vide Exh.27 and PW-8 - Jivatram Lakhimal Nathani - the father of the victim has been examined vide Exh.39, are the three legs of the prosecution tripod upon which the whole case rests. All

these three witnesses and more particularly, the version of the victim - complainant, if believed, will send the accused persons to the gallows and if not will result in their acquittal. It is true that a victim's deposition in sexual offences and particularly in an offence of rape needs no corroboration, but at the same time, if the same is impregnated with doubts, falsity, concoction and infirmities, the same cannot be accepted as gospel truth.

20. This is a case where the victim has filed a complaint after almost 24 to 25 days of the incident, which for the sake of convenience can be divided into two parts, the former wherein the accused No.1 is involved and the latter wherein accused No.2 is involved.

21. At the outset, the victim in her examination-in-chief in para 1 has clearly stated that her date of birth is 29-8-1987, hence on the date of the incident i.e. on 5-10-2006 she was more than 19 years or to be more precise, she was in her 20th year running, hence the issue of victim being a minor does not arise and the same needs neither discussion nor appreciation.

In the same breadth, as regards her date of birth in her cross-examination conducted by the learned advocate for the accused No.2 in para 12 she says that "*I do not know whether my 20th birth day was on 29-8-2006*". If the victim

admits the date of birth in her examination-in-chief and chooses to give a vague reply in her cross-examination, suffice to say that she does not even know about her birthday, her intentions do not appear to be honest right from the word go.

22. The victim in her examination-in-chief in para 1 has stated that, "*she goes to the tuition in the morning from 9 am to 12 pm*". As regards the incident of 5-10-06 which has been alleged against the accused No.1, she has stated that "*she was unconscious and thereafter, at around 9.30 am when she regained her consciousness she was lying naked, with her clothes next to her and as such, she immediately dressed up*". Further in para 3 of her examination-in-chief, she states that, "*she went to the College on 7-10-2006 to enquire about her seat number for her exams and when she returned, accused No.2 was standing outside the gate, who told her to accompany him to Parimar Garden to which she told that if she did not accompany him, it would not be good for her, which according to her, was a threat and as such, she accompanied him to the Parimal Garden*". Thereafter in her examination-in-chief in para 5, she has stated that, "*on 27-10-2006 she had called her mother Lataben, as such, Lataben came to meet her at Gayatri Mandir*". Further in the same para, she has stated that, "*after they went to home, accused*

No.2 kept on calling her repeatedly and he was giving threat to her, hence she filed the complaint".

23. As against this her father Jivatram Lakhimal Nathani, PW-8 in his deposition at Exh.39, in his examination-in-chief in para 3 states that, "thereafter because of constant threat calls, the victim filed the complaint". If these statements given by the victim and her father are to be compared and evaluated, they clearly reflect that the complaint has been filed only because the accused No.2 was threatening the victim and not otherwise. Even in the complaint Exh.24, it has, been stated that by the victim that, "after they went home, the accused No.2 was calling her and was threatening her and as such they had come to lodge a complaint". However, after such a statement one more para has been added which speaks about the charge of rape against the accused persons.

24. The victim in her cross-examination has admitted that, "she is not aware as to how many floors the building has which houses the Gurugroup Tuition class. She is not aware of the restaurant and residential houses in the nearby vicinity". However, she has admitted that "the area around the tuition class is densely populated".

25. In para 10 of her cross examination, she has

clearly admitted that. "the incident had happened on 5-10-2006 and thereafter, because of exams she went to the tuition class again on the 10th and till the present complaint was filed she had not informed anybody as regards the incident that had happened at the tuition class".

As regards the incident on 5-10-2006 she has further admitted that, "in her complaint, it has not been mentioned that all of a sudden, she had realised that liquid was spilled on the table and she had developed pain in her private parts and also she had burning sensation and as such she had realised that rape had been committed on her". However in the same breadth, she also says that, "for the rape which was committed on her on 5-10-2006 she did not get herself treated in any Clinic till the complaint was given on 29-10-2006", which is utterly surprising, preposterous and shocking.

It is also important to note that PW-2 Lataben in her examination-in-chief has stated that, "the victim had returned at around 10 and gone to sleep and on being asked, she told that she had returned early because of headache". It is indeed unfathomable that a daughter would refrain to confide in her mother about such a gruesome incident.

26. In her cross-examination, in para 12, it is pertinent to note what she has stated : "it is true that in my statement dated 30-10-2006, I have stated that my parents are happy to take me

back, as such I am also happy to go along with them and hence you have given my custody to my parents". Here, the question that crops up is, at that juncture, what was the cause of the parents' happiness and why the victim had to say that the parents being happy, she was also happy and willing to go back home. This admission clearly reflects that she had married the accused no.2 against her parents' wishes and thereafter they went to Jaipur and Udaipur, but upon returning she might have been remorseful, hence her willingness to go with her parents.

27. In her cross-examination, in para 14, she has further stated that, "*she went with accused No.2 to Parimal Garden on 7-10-2006 but she does not remember how much time she spent there, though, it was around 8 o' clock in the morning that she along with the accused No.2 went to Parimal Garden from her college*". However, she says that, "*she does not remember whether the accused No.2 had called her up from his mobile and there was conversation between them in the morning at 8.52 am which lasted for almost 15 minutes and 15 seconds*". However, she has denied that, "*she had sent an SMS to the accused No.2 at 6.47 am in the morning*". Further she has also denied as regards the entire phone and text communication on mobile phone with the accused No.2.

28. It is pertinent to note that, she has denied all the details as regards the communication with

the accused No.2 on mobile phone. It is emphatic to note that the call details produced vide Exh.35, 101 & 102 belie her say. These call details are in respect of the mobile phones of the victim (mobile No.9879800362) and the accused No.2 (mobile No.9898004826) which clearly reflect that there was constant communication between both of them by way of calls and text messages prior to 5-10-2006, on 7-10-2006 and also thereafter. The prosecution has failed to explain the reason of such umpteen communication between the victim and the accused No.2. Instead the victim has tried in vain to dodge the issue by saying that, the phone in question belonged to her brother. Strangely her brother Amit has not been examined by the prosecution.

It is pertinent to note that in her cross-examination in para 16, she has stated that "*it is true that I appeared for my college internal exams from 11-10-2006 to 13-10-2006*". This Court is in utter disbelief and it is very much unpalatable that a girl aged 19 years of age who has been once raped in her tuition class, does not mention about the incident to anybody and again goes to the same tuition class on 10-10-2006 i.e. 5 days after the incident, also further as per her say - if at all she is to be believed - in spite of the fact that she was constantly blackmailed by the accused No.2 that he being in possession of the photographs of the rape committed on her on 5-10-2006, she appeared

for her internal exams from 11-10-2006 to 13-1-2006. These acts i.e. in spite of the rape being committed on 5-10-2006 and in spite of being blackmailed and threatened by the accused No.2 constantly, she appeared for her internal exams, speak volumes about her attitude - white lies. Can a victim upon whom such a heinous act has been committed, be in a state of mind so strong and so sound as to return and attend the same tuition class and also appearing for her exams and also not narrate anything about both these incidents to anybody in her home?

29. As against the victim stating in her cross-examination that she had been to the tuition class again on 10-10-2006, PW-2 Lataben who is her mother in her cross-examination on page 9, has supported and in addition to that has stated, 'she i.e. the victim had also attended a tuition class on 7-10-2006' An important fact which needs a mention here is, it is not the victim's case that she was either compelled by the accused No.1 or by the accused No.2 to attend the tuition classes even after the incident of rape on 5-10-2006. The victim's father PW-8 Jivatram in his cross-examination has clearly admitted that "*it is true that the exams of the victim had begun on 10-10-2006 and she appeared for her exams till 13-10-2006*".

Another aspect which the victim has stated in her cross-examination in para 17 is about the

Hindu Marriage Petition No.584/07, which she had preferred before the Family Court at Ahmedabad on 25-5-2007. The certified copies of the pleading of the said HMP have been produced by the accused No.2 during the course of his statement under Sec.313 of the Cr.P.C and the same have been exhibited vide Exh.114 to 139. It is interesting to note that, though the complaint was filed by the victim against the accused persons on 29-10-2006, she waited till 25-5-2007 to file the petition for seeking declaration of nullity of marriage. It clearly transpires that the victim and her parents wanted to pressurise the accused persons and particularly the accused No.2, by filing a complaint on the charges of rape. However, after waiting in vain, it seems she has filed the said petition after almost 7 months.

Another important aspect which needs a mention is about the courier of marriage photos, registration certificate, application etc. which the victim had sent to her parents after the solemnisation of her marriage with the accused No.2. As per her deposition in para 21 she denies that she had ever sent such a courier to her parents, however PW-2 Lataben, her mother clearly admits in her deposition on page 4 that "*it is true that I received a courier on 17-10-2006. It is true that when my statement was recorded by the police on 29th and 30th, I did not show the papers which had come in courier to the*

police. It is true that we had met an Advocate before we lodged the complaint and we went to our lawyer on the day we received the courier". In the same breadth, the victim's father - PW-8 in his examination in chief, he says that, "on 17-10-20067 courier was received from Bapunagar, wherein it was mentioned that the victim had married the accused No.2, who is their neighbourhood acquaintance but, as they were afraid about their prestige because of fear they did not lodge a complaint before the police". Further in his cross-examination in para 5, PW-8 Jivatram says that, "I read the papers that had come in courier on 17-10-2006. I do not remember whether those papers were bearing the victim's signature or not. I am in possession of the courier even today. I had accepted the said courier but, I had not informed the police about the same. I had met my lawyer on receipt of the courier and had deliberated with him about the documents of the courier". The possibility that the advocate who was consulted by the victim's parents appears to be in the back-stage, however the possibility that he seems to be the script-writer of the drama which was unfolded cannot be ruled out. In the same breadth, the PW-20 Kirshorsing Narshi Gleda who is the Investigating Officer in his cross-examination admits that, "it is true that during my investigation, Amit, the brother of the victim produced the papers which had come by courier and I had taken custody of the same".

However, on going through the charge-sheet, the same have not been produced along with.

30. From the cumulative appreciation of the deposition of these witnesses as regards the courier having been received by the victim's parents and also the same being produced before the I.O, it can be clearly inferred that the Investigating Agency has intentionally not produced the said documents, which according to the say of the accused No.2 are the documents viz., marriage photographs, copy of registration of marriage, application of the victim etc. It can also be inferred that the non-inclusion of these documents in the charge-sheet is a deliberate and malafide act on the part of the victim's parents and the Investigating Agency, to rope in the accused persons as regards the offences.

Another aspect which can be gathered from the evidence is that, the victim was constantly amidst people, right from the day she left her home till she returned. It is also not her case that she was ever confined by the accused No.2. As such she could have easily approached anybody or everybody whom she came across right from Ahmedabad to Jaipur, Udaipur and back but, strangely she has remained silent. Further, though she has stated in so many words that she was threatened by the accused No.2 as regards

the photographs about the incident of 5-10-2006, there is not a trace of evidence on record that, she had enquired or asked the accused No.2 even once about the said photographs, evenafter the solemnisation of their marriage, which according to her, was the motive of blackmailing her. Except stating that she was being threatened by the accused No.2, there is no iota of evidence to substantiate her charge. It is also highly improbable and absurd that a person would blackmail and threaten a girl to marry him. If at all the accused No.2 wanted to physically exploit the victim or to say rape her, would there be any need to solemnize marriage with her, is a question that has gone unanswered within the pages of the evidence that has come on record. Another aspect that would come to the mind of any prudent man would be, as to why would somebody marry a girl who has been deflowered by his friend or acquaintance or for that matter by a stranger? If at all the purpose of the accused no.2 was limited to physical exploitation or say rape, where was the need of solemnizing marriage with the victim? This aspect has also gone unanswered. The victim has further admitted in her cross-examination at para 14 that "*whenever I went for internal exams to the college, I used to carry book related to exams along with my pen and purse. It is true that on 14-10-2006 when I left home, I was carrying Rs.5000/= along with books of all the subjects, three Punjabi*

dresses, contact lens, bus pass, identity card and my mobile phone. It is true that on that day I went to the Notary instead of going to the college", and in the same breath she adds, "I say that accused No.2 threatened me and took me to the Notary".

31. It can be clearly gathered from this admission that the victim had made all the arrangements to elope with the accused No.2, and that was the sole reason that she left her home carrying along all these things with her. Merely saying that accused No.2 had threatened her would not suffice, because the same cannot be treated as cogent evidence to prove the charge of rape against the accused No.2. While evaluating the whole deposition, more particularly the cross-examination of the victim, it clearly transpires that wherever and whenever she was cornered by the defence side, she has all the time stated that "I do not know" or "I don't remember". Such vague, deliberate and evasive answers surely compels this court to cast aspersions upon the version of the victim - complainant.

The mother of the victim PW-2 Lataben in her cross-examination has admitted that, "*the victim had appeared for her exams from 10th to 14th from their home. The family members would all be awake, when the victim left the house for her exams. The victim would carry the book related to her exam along with her purse*". Whereas the father of the victim PW-8 Jivatram

says in his cross-examination that, "the victim, since it was Diwali time carried three dresses along with her for pattern and measurement". Hence, it was within the knowledge of the parents and in their presence that the victim left her home on 14-10-2006, with her belongings as aforementioned.

32. Even while evaluating the deposition of the victim, PW-2 her mother Lataben and PW-8 Jivatram Lakhimal, her father, it is really amazing when all of the three of them though admit that the accused No.2 is their next door neighbour, they seem to be unconcerned about the said accused. Another important aspect which needs to be noticed is that though PW-2 Lataben and PW-8 Jivatram were in receipt of the courier, they have not enquired from the house of accused No.2 about his whereabouts, which clearly goes to suggest that they were informed about their daughter's solemnization of marriage with the accused No.2, and they had accepted the said fact without any protest.

Hence, in the opinion of the court, in the light of these statements, when the victim had willingly left her home on 14-10-2006, and as discussed above that she was never in confinement, the question of kidnapping or abducting her with a secret intention to wrongfully confine does not arise. In the same manner the question of kidnapping, abducting or

inducing the victim to compel her for marriage also does not arise.

33. It is interesting to note that though the courier was received by the parents of the victim, they have chosen not to inform the police. PW-2 Lataben, the victim's mother in her cross-examination on page 5, clearly admits that "*it is true that on 28-10-2006 after we reached home we received frequent calls from the accused No.2 and used to converse with him on phone. I used to tell Pankaj that the victim is indisposed and as such after consuming medicine, she had gone to sleep*". It is really shocking and unbelievable that a mother of a victim who has been raped converses with the person, who has raped her daughter and also apprise him, about the condition of her daughter. This can only be possible, when the mother knows that her daughter is married to the person who is calling her, meaning thereby, the accused No.2.

Further, even after meeting the victim and the accused No.2 at Gayatri Mandir, Shahibaug on 28-1-2006, the mother has not cared to inform the police, if at all she was so sure that her daughter was abducted, kidnapped and raped by the accused No.2, or for that matter even after coming home on 28-10-2006. However, it is reflected from her deposition, wherein she has stated that "*it is true that on 27-10-2006 the accused No.2 and her daughter had called her up*

at around 8.30 in the evening, however they had not informed the police. It is true that on 28-10-2006 in the morning, she had not made any arrangement to inform the police to nab the accused No.2", and this confession is revealing and self-explanatory on her part, "*it is true that when I received the courier on 17-10-2006, I came to know about the marriage of the victim with the accused No.2*". She has further admitted in her cross-examination that, "*it is true that on 7-10-2006 I refused to re-charge the victim's mobile phone and as such in the evening, the victim had asked the accused No.2 to get her mobile phone re-charged*", which reflects the prior relationship, of the victim and the accused No.2 being in love.

The victim, in her cross-examination in para 27 admits that, "*we returned to Ahmedabad on 27th and I called up my home, but I do not remember the time. It was me who called up. I informed my mother that I wanted to meet her and she should come to Gayatri Mandir. My mother and brother came to meet me at Gayatri Mandir and at that time, the accused No.2 was present there*". In view of this deposition it can be clearly inferred that if the victim was able to call her mother and brother on 27th when the accused No.2 was in her company, then what prevented her from calling her home till 27-10-2006. If at all as per her say, the accused No.2 was threatening her, then why was she permitted all of a sudden on 27-10-2006 to call her mother. Hence,

inference can be drawn from the cumulative depositions given by the victim, her mother i.e. PW-2 Lataben and her father PW-8 - Jivatram that after the victim returned to Ahmedabad on 27-10-2006 and after she went back to her home on 28-10-2006, they wanted to undo the wrong, which according to them, their daughter had committed by marrying the accused No.2, who belongs to a Harijan caste, which they strongly disapproved.

34. The prosecution has examined PW-6 - Dr. Nileshbhai Ramanlal Chauhan who examined the victim has narrated the history that was given by the victim to him which is in relation to the complaint that was given by her. In his examination-in-chief, he states that there were no external injuries on the private parts of the victim and the hymen was old and ruptured. It is really shocking to note that in his cross-examination in para 5, he has audacity to say that, "*since he is not aware about Taylor's Principles and Practice of Medical Jurisprudence, he is unable to say whether it is reliable or not*". He further states that. "*he does not have any knowledge about Cox, Cooper, Lux and Webster's Medical Jurisprudence, being reliable authorities or not*". He further states that the victim has not stated that she was under the treatment of Gynecologist Dr. Renukaben Pandya on 10-10-2006 at Jaipur. He also admits that "*it is true that if the physical relationship is willing and*

consensual, external and internal injuries do not occur".

The prosecution has also examined PW-9 Dr. Bhavanaben Chanakyakumar Patel vide Exh.40 who had examined the victim on 29-10-2006. According to this witness, the victim narrated the history to her. As per her examination-in-chief, she has stated that injury marks were neither present on her person nor on her clothes. Semen and blood stains were neither present on her person nor on her clothes. She has also stated that the victim's hymen was old and ruptured.

35.The prosecution has also examined PW-10 Dr. Ramlakhan Nurman Banva who has examined the accused No.1. According to this witness, the accused No.1 had given him history stating that he was knowing the victim since last 1½ months as he was giving tuitions to her and that he has never indulged in any kind of physical relationship with her. He had received the phone call from Navrangpura Police Station on 29-10-2006, as such he went to the Police Station from where he was brought to the Civil Hospital.

36.The prosecution has also examined PW-11 Dr. Alpesh Gordhabhai Gangani vide Exh.45 who has examined the accused No.2. As per his say accused No.2 had given him history stating that "he was knowing the victim since last 4 to 5 and

who was residing in his neighbourhood. Their marriage was solemnised on 9-10-2006 in the Court as well as Meghaninagar Trust Temple with their willingness. Both of them willingly went to Udaipur and Jaipur and thereafter they returned to Ahmedabad on 26-10-2006 and on 28-10-2006 the victim's mother had come to meet her and thereafter, taking the victim alongwith her to their house, the present case was filed against him. We had our first sexual intercourse on 15-10-2006 and thereafter we of and on indulged in sexual intercourse, the last time being on 26-10-2006". In his cross-examination, this witness has stated that "it is true that if male organ is forcibly entered into the female organ, you can find swelling, abrasions and puss on it. It is true that if such kind of symptoms are not found on the body of the victim, it is important evidence to infer that rape has not been committed".

37. This Court is conversant with the recent judgement of the Apex Court, reported in **2013 Vol.8 SCC pg.83 : Virpal Singh Vs. Secretary, Ministry of Defence**, wherein the Hon'ble Apex Court has clearly observed thus: "what needs to be emphasised is that the opinion of the expert deserve, respect and not worship", which goes to suggest that, though the court examines the Medical Officers as expert witnesses, ultimately it is for the court to evaluate, appreciate and weigh the evidence that is tendered by them.

The Hon'ble Apex Court by observing thus, has in a way expressed the view that, the opinion of the experts should not be believed in toto and accepted as gospel truth.

38.The sum total of evidence of all these four doctors goes to suggest that, there was sexual intercourse between the victim and the accused No.2. Even the accused No.2 has stated so in his history given to the doctor. However, the said intercourse being consensual and willing or otherwise only remains to be decided. In the light of the aforesaid discussion of the evidence that is adduced by the victim and her parents, it becomes very clear that the act of sexual intercourse of the accused No.2 with the victim definitely falls within the **Exception of Section 375 of the IPC that, sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.**

So far as the depositions of the Medical Officers are concerned, the same does not go to suggest that the rape had been committed on the victim. More particularly, in light of the facts which have emerged from the evidence on record that she being the wife of the accused No.2, it was natural for both the victim and the accused No.2 to indulge in post-marriage sexual intercourse and which can surely be termed as consensual on part of the victim.

As per Sec.114A of the Indian Evidence Act "where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent". However, this presumption under Sec.114A of the Evidence Act cannot be blindly relied upon. It is true that the version of the victim has to be accepted at its face value, but at the same time, it should have a ring of truth, substance of honesty and the weight of reliability. If that is not so, then naturally the evidence has to be examined with utmost care and caution. By evaluating the evidence of the prosecutrix with utmost care and caution does not mean that, what she says is not to be trusted, but at the same time, if at all what she said is to be trusted, it has to have an element of truth in it. Here in this case, considering the evidence of the victim and her parents, the same does not seem to be intrinsically reliable, inherently, probable and wholly trustworthy.

So far as the incident of 5-10-2006 is concerned, which according to the victim, had happened at her tuition class, does not seem probable because, it can be inferred from the evidence that has come on record that to bring a case against the accused No.2, the victim has created a smoke screen by implicating the

accused No.1, who seems to be the friend of the accused No.2. Another important aspect which has come to light is that, except the mention about the accused No.1 having committed rape on the victim on 5-10-2006 in tuition class, there is nothing more on record to prove and substantiate the charge. The Investigating Agency has also not recorded the statements of any witnesses of the neighbourhood or surrounding vicinity of the tuition class. In the same breadth, this Court would also like to observe that the victim has time and again stated that the accused No.2 was threatening her and blackmailing her as regards he being in possession of the photos of the incident of 5-10-2006. However, there is nothing on record to show that the Investigating Agency has enquired or investigated about the said photographs. It is also pertinent to note that it was extremely essential and incumbent upon the investigating agency, when the allegations were levelled against the accused persons and more particularly against accused No.2 that because of the blackmailing and threats, that he was indulging in with the victim in view of the photographs, to investigate in this regard. Unfortunately, there is not a word on this aspect, neither from the victim nor her parents, nor from the Investigating Officer.

39. The other witnesses, viz., PW-12 - Chinubhai Motiram Raval examined vide Exh.47, PW-13

Devendrabhai Bhupendrabhai Bhatt examined vide Exh.48, PW-14 Dr. Rohitbhai Harichandra Pandya examined vide Exh.52, PW-15 Meenaxiben Chandrakant Mehta examined vide Exh.55, fail to throw any light on the charges that have been levelled by the victim.

40. It is important to appreciate the deposition of PW-20 Kishorsing Narshi Gelda, the Investigating Officer who has been examined vide Exh.93 who in his examination-in-chief has supported the prosecution version. However, it is the cross-examination which is interesting. In his cross-examination, he states that, "*during my investigation, it had come to light that the accused was running Gurugroup tuition classes. I had paid the visit to the said class. However, I do not remember whether Ramanand School is situated below the class and Satyam Study Centre is adjacent to the class. I cannot say as to how many teachers come to teach at Gurugroup class without going through my diary and so also without referring my diary, I cannot say that how many students were coming to the said classes. It is true that I have not recorded statements of independent witnesses from the Study Centre and the School which are adjacent to Gurugroup Class. It is true that during my investigation, I have not collected any photographs. It is true that during my investigation, the marriage between the victim*

and the accused No.2 at Hanumandada Temple had come on record. It is true that during the investigation, the marriage was registered before the Registrar of Marriage and the victim had made her affidavit before the Notary Mr.Raghavji Talavjia. However, I have not recorded their statement. During my investigation, I have not collected the bag, the photographs of Parimal garden and the photographs of marriage ceremony. It is true that Meghaninagar, Parimal Garden, Revabai Dharmashala are densely populated and residential areas and Krishnanagar police chowky is near to the residential houses of the victim and the accused. It is true that during my investigation, the victim having travelled on bike and public transport has come on record. It is true that the victim had in her statement before me on 30-10-2006 stated that they were going to the office of the Sandesh Press for giving an advertisement but upon her request, the accused No.2 took her to his brother-in-law's house and they had also gone to Aunty's house where they had stayed for a day. It is true that during my investigation, the victim's brother Amit had produced the papers which they had received through courier and the same were taken into possession, however, the said papers have not been produced along with the charge-sheet".

41.In view of the aforesaid, it clearly transpires

that the Investigating Officer had at the relevant time made investigation only to help the victim to substantiate her claim. For reasons best known to him, the Investigating Officer has neither collected or for that matter if collected, not produced all the evidence gathered by him during the course of investigation which ultimately compels this Court to cast serious doubts upon the nature of investigation. It is important to note that, the Investigating Officer has not investigated as to why the victim was blindly following the accused No.2 from 7-10-2006 to 28-10-2006, when he i.e. the investigating officer could not lay his hands upon the so-called photographs which were used as a sword to threaten the victim. Looking to the entire evidence, it seems that the Investigating Officer was acting on behalf of the victim only, instead of finding out what was the truth and if it was not, then by whom it was distorted.

42. Looking to the entire evidence, the prosecution has failed to prove the charge of Sec.365 of the IPC which relates to kidnapping or abducting any person with intent to secretly and wrongfully confined a person. Upon sifting through the evidence of the victim, the prosecution has failed to prove that she was either kidnapped or abducted or she was secretly or wrongfully confined. At the cost of repetition, the victim has admitted that she left her home on 14-10-

2006 and thereafter, there is no iota of evidence that from 14-10-2006 to 28-10-2006 she was ever confined either secretly or wrongfully. This Court is conversant with the photographs that have been produced by the accused No.2 vide list Exh.113, however, the said photographs not being exhibited, evidentiary value cannot be assigned to the same, but in the same breadth, this Court would like to state that the victim has admitted in her cross-examination in para 18 that the photographs that were shown to her were about the marriage ceremony. This Court would also like to take judicial notice of these photographs which speak volumes about the relationship between the victim and the accused No.2. Thereafter, in her cross-examination, in para 16, she has admitted that she left her home on 14-10-2006 with her bag and belongings, as such, the prosecution has failed to prove the charge of kidnapping, abducting and at the same time, in the absence of any positive evidence against the accused No.2 for inducing the victim to compel her for marriage. Presuming that the accused No.2 did threaten her and blackmailed her, however, as discussed earlier, there is no iota of evidence, except bare words of the victim and her parents. In absence of any kind of positive evidence about the accused No.2 having threatened and blackmailed the victim, to which she succumbed and was compelled to marry, the same would only pale into insignificance.

43. This Court cannot turn a blind eye towards the evidence of the victim which is inculpating but the Court is required to discover the truth from the evidence, by separating the grain from the chaff. It would be profitable to quote what the Apex Court has observed in the judgement of *Ritesh Tewari Vs. State of U.P., reported in 2010 Vol.10 SCC 677*. "...every trial is voyage of discovery in which truth is the quest... power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth".

44. In normal or usual circumstances, this Court would not, have had a second thought in believing the victims version, but when the same is devoid of the elements of honesty and truth, the Court will definitely seek corroboration even when the Sec.114A of the Evidence Act speaks otherwise. This is one more story where, it seems that love has gone sour between the victim and the accused No.2. The discrimination of caste, it seems, is still going to prevail for many more years to come. If at all had it been for the prestige of the family, that the victim did not utter a word after the incident of 5-10-2006 and so also after the threats and blackmailing by the accused No.2 on 7-10-2006,

she would have chosen to remain silent even thereafter. Further all of a sudden, for the reasons for which she had refrained from complaining, the same vanished into thin air, when the complaint was filed against accused persons on 29-10-2006.

45. Once again before summing up, at the cost of repetition, the Court has addressed itself with the following questions :

- (1) Why did the victim immediately not complain to her parents about the incident of rape committed by the accused No.1 in her Tuition Class on 5-10-2006 and ultimately she did complain about the incident on 29-10-2006 and if, according to her was it only because of prestige, then how come the same was not the issue subsequently?
- (2) If at all the victim did not have any relationship with the accused No.2, why did she indulge in constant and frequent communications through calls and text messages as is reflected from the call details that are on record as part of the evidence?
- (3) Why did the victim never enquire from the accused No.2 about the photographs, which

were in his possession as regards the incident of 5-10-2006 and why did the investigating officer also not enquire as regards the same?

- (4) Why did the victim's parents suppress the documents that they received through courier and so also why did the Investigating Officer followed in their foot steps?
- (5) During the entire period from 14-10-2006 to 28-10-2006, if the victim could call her mother on 289-10-2006, why did she not call her parents in the intervening period or for that matter, why did she not inform anybody even though she had umpteen opportunities?
- (6) In spite of the accused No.2 being the next door neighbour, why did the victim's parents not enquire about his whereabouts?
- (7) Why did the victim filed the petition for annulment of marriage after almost 7 months of her complaint?
- (8) What compelled the victim to once again go to the same tuition class after a couple of days after rape was committed on 5-10-2006?

46. All the aforesaid questions and many more have sadly remained unanswered. In cases such as these, the prosecution is entrusted with heavy duty to prove the charges against the accused persons by leading the best evidence. It is also one of the basic canons of criminal jurisprudence that more serious the offence, more reliable and trustworthy, the evidence should be. Quality and not quantity of evidence is the settled principle of law. In the light of the above discussion, the prosecution has miserably failed to prove the charges against both the accused persons. Hence, my findings on the Issues Nos.1 & 2 is in the negative.

47. A woman who is subjected to physical exploitation and to rape in particular dies a thousand deaths every day, however, here in this case, the victim unfortunately has become a puppet in the hands of her parents and relatives it seems. To separate her from the accused No.2, the parents and relatives of the victim rightly could not find a better way out, than to level charges so grave. Normally it is a state of turmoil for the victim in such cases, however, in this case, it seems like it has been for the accused persons. Rape causes greatest distress and humiliation to the victim, but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well.

48. As a parting note, this Court is mindful about what ***Lord Denning had observed in the case of Jones Vs. National Coal Board [1957] 2 QB 55*** (as quoted by the Hon'ble Apex Court in AIR 2012 SC Pg. 1727. *Maria Margarida Sequeria Fernandes & Ors. Vs. Erasmo Jack de Sequeria (dead) through Lrs.*)

"It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see, which way lies the truth".

49. In view of the aforesaid discussion, final order as thus :-

O R D E R

The Accused No.1 - Lokesh, S/o. Rajaram Jagdishprasad Sharma and Accused No.2 - Pankaj, S/o. Govindbhai Bhaktibhai Chavda are hereby acquitted under Sec.235(i) of the Criminal Procedure Code of all the charges as framed against them.

Both the accused persons are on bail, hence, are discharged from the liability of their respective bail-bonds.

Muddamal articles to be destroyed after the appeal period is over.

As per Section 437-A of the Criminal Procedure Code, both the accused persons are hereby directed to furnish bail bonds to the tune of Rs.5000 and one surety of like amount, in the event of filing of an appeal.

Pronounced in open court today this 25th day of October, 2013.

(Utkarsh T. Desai)
Addl. Sessions Judge
CITY SESSIONS COURT No.13
Ahmedabad

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