

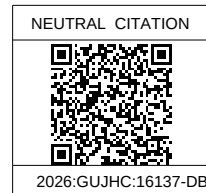
**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1157 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No

MUKESHBHAI GORCHANDBHAI CHAMKA**Versus****STATE OF GUJARAT****Appearance:****MR GAJENDRA P BAGHEL(2968) for the Appellant(s) No. 1****MR SHAMBHUKUMAR(13426) for the Appellant(s) No. 1****MR RONAK RAVAL, APP for the Opponent(s)/Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 03/03/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. The present criminal appeal has been preferred under Section 374 of the Code of Criminal Procedure, 1973, by the appellant - Mukeshbhai Gorchandbhai Chamka, challenging the judgment and order of conviction and sentence dated 14.03.2014 passed by the learned Sessions Judge, Dahod, in Sessions Case No.108 of 2013.

2. By the impugned judgment, the appellant was convicted for the offences punishable under Sections 376 and 302 of the Indian Penal Code, 1860 (for short, "IPC"). He was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, to undergo further rigorous imprisonment for



three years for the offence under Section 376 IPC, and rigorous imprisonment for life and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, to undergo further rigorous imprisonment for three years for the offence under Section 302 IPC. Both sentences were directed to run concurrently.

3. The brief facts leading to the filing of the present appeals are as under:

- 3.1. On 08.04.2013, a marriage ceremony took place at the house of Samsubhai Bhuria in village Uchvania, District Dahod. The victim, a minor girl aged about 13 years, had gone to attend the "Vana Ceremony" - a traditional short marriage procession in the Dahod region that follows the "Ganpati Sthapan" ritual. After the ceremony ended, around 12:30 a.m., the appellant - Mukeshbhai Gorchandbhai Chamka - took the victim with him to a lonely field. There, against her will and without her consent, he committed sexual intercourse with her, thereby committed rape. When she shouted for help, the appellant smothered her, and thereby caused her death. He also caused injuries to her private parts.
- 3.2. The father of the victim, Badiyabhai Nanjibhai Chamka, lodged the First Information Report (FIR) on the same day, i.e., 08.04.2013, at Dahod Rural Police Station, which was registered as I-C.R. No.79/2013 under Sections 376 and 302 IPC.
- 3.3. The Investigating Officer conducted the necessary investigation, prepared the inquest panchnama on the dead body in the presence of panch witnesses, drew the panchnama of the scene of offence, sent the body for postmortem examination and collected the

postmortem report, seized the clothes from the dead body, obtained the FSL primary report, recorded statements of witnesses, arrested the appellant, conducted discovery panchnama under Section 27 of the Indian Evidence Act, 1872, at the place shown by the appellant, collected blood-stained soil from the scene, obtained samples including semen, blood, vaginal swab, and cervical swab from the doctor, sent the muddamal articles to the Forensic Science Laboratory (FSL), and collected the FSL report.

- 3.4. Upon completion of the investigation, a charge-sheet was filed against the appellant before the learned Chief Judicial Magistrate, Dahod. Since the offences were exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Dahod, under Section 209 of the Code of Criminal Procedure, 1973, vide order dated 18.08.2013, and registered as Sessions Case No.108/2013.
- 3.5. The appellant was produced before the Sessions Court on 07.09.2013. Charge was framed against him under Sections 376 and 302 IPC at Exhibit-2, which was read over and explained to him. The appellant pleaded not guilty vide plea at Exhibit-3, and claimed to be tried.
- 3.6. After the trial, the learned Sessions Judge, by the judgment dated 14.03.2014, held the appellant guilty and convicted and sentenced him as aforesaid.
- 3.7. Being aggrieved and dissatisfied with the said judgment and order of conviction and sentence, the appellant has preferred the present appeal before this Court.

4. We have heard learned advocates for the respective parties and carefully examined the oral and documentary evidence adduced before the learned Sessions Court. During the course of the trials, the prosecution examined witnesses and produced documents as detailed below for each case:

~:: Prosecution Oral Evidence ::~

PW No.	Particular	Exh.
1	Medical Officer Dr. Kamleshkumar Jagatprasad Kesri	5
2	Samsubhai Kasnabhai Bhuria	10
3	Gendaben Maniyabhai Bhuria	13
4	Complainant Badiyabhai Nanjibhai Chamka	14
5	F.S.L. Officer Ms. Pinkiben Balusing Nerve	15
6	Tinaben Govindbhai Aamliyar	20
7	Miteshbhai Ratilal	22
8	Somabhai Narsingbhai Dindor	24
9	Savabhai Bhavlabhai Bhuria	26
10	Rameshbhai Ratansing Ganava	27
11	Pappubhai Kalubhai Charpot	29
12	Kanubhai Ravjibhai Ravat	30
13	Chhatrasing Vajesing Sangada	31
14	Malusing Virsingbhai Sangada	33
15	P.S.O. Ishvarbhai Badarbhai Labana	34
16	I.O. Mr. Mahipatsinh Mahendrasinh Puvar	35

~:: Prosecution Documentary Evidence ::~

Sr. No.	Particular	Exh.
1	Postmortem Report of the dead body of deceased	6
2	F.I.R. lodged by complainant	15
3	Primary Report of F.S.L.	18
4	Inquest Panchnama of the dead body of deceased	21

5	Discovery Panchnama	23
6	Panchnama of scene of offence	25
7	Recovery Panchnama of clothes on the dead body of deceased	28
8	Arrest Panchnama of accused	32
9	Dispatch Note of Muddamal to F.S.L.	37
10	Report of F.S.L.	38

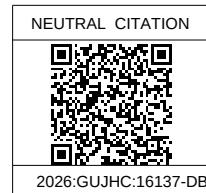
~:: Defence Oral Evidence ::~

PW No.	Particular	Exh.
1.	Samaben Gorchandbhai Chamka	41
2.	Maknabhai Gababhai Sangadia	42
3.	Sukliben Badiyabhai Chamka	43

~:: Defence Documentary Evidence ::~

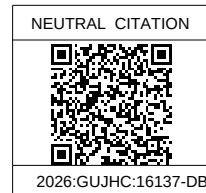
Sr. No.	Particular	Mark
1.	Final Report of Dahod Rural I-C.R.No.79/13	44/1
2.	Production Memo after completion of police remand of accused	44/2
3.	Yadi of physical examination of accused, sent by Investigating Officer along-with certificate of Medical Officer	44/3

5. Learned advocate for the appellant assailed the impugned judgment, contending with considerable force that the prosecution had fundamentally failed to prove the charges beyond reasonable doubt, which is the standard requirement in criminal cases. He submitted with specific reference to the evidence that the testimony of the complainant Badiyabhai Nanjibhai Chamka (PW-4, Exh.-14), who was an illiterate villager, was replete with material contradictions and significant omissions when compared to his FIR and his statement recorded before the police during investigation. He specifically pointed out several discrepancies, including the fact that in the FIR, the complainant



mentioned noticing the victim's absence at around 12:30 a.m. and seeing the appellant near the house earlier, but in his deposition before the court, he varied the timing slightly and added details about hearing unusual sounds, which were absent in the initial complaint. He further argued that the description of the appellant carrying the victim away was not mentioned in the FIR, and the post-incident search details were embellished in court, creating a material inconsistency in his version of events. Learned advocate for the appellant further contended that the FIR appeared to be tutored and influenced by local villagers, containing formal language unfit for a rustic complainant to articulate independently, with only his thumb print appearing below the complaint, thereby raising serious doubts about the voluntariness and authenticity of the complaint. He argued that no independent witness such as neighbors who joined the initial search was examined to corroborate the last seen theory, nor were any personal belongings of the victim recovered from the appellant's possession to link him directly to the abduction.

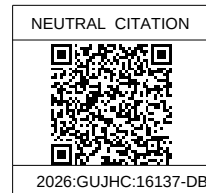
6. Learned advocate for the appellant further submitted that the prosecution had completely failed to establish the victim's exact age below 13 years, relying solely on parental testimony without producing a birth certificate or school records, and the ossification test mentioned in passing was not conducted or exhibited properly, which undermined the foundational fact of her minority for enhanced punishment under Section 376 IPC. He emphasized that the medical evidence presented through the postmortem report and the doctor's testimony showed asphyxia due to throttling and genital injuries, but there were no external drag marks or defensive wounds on the body despite the alleged carrying and struggle in a field, which was highly unnatural for a case involving rape and murder of a minor child. He pointed out that while the doctor noted hymen rupture and vaginal bleeding, there were no specific tears or scratches



observed that conclusively proved forcible penetration by the appellant, and the injuries could be consistent with accidental trauma or post-mortem changes. He further questioned the reliability of the forensic evidence, arguing that the FSL report detected semen on the victim's clothing but failed to match it definitively to the appellant's sample due to degradation or inconclusive testing, and no DNA profiling was conducted despite its availability.

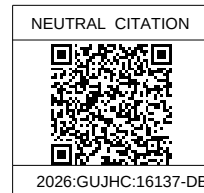
7. Learned advocate for the appellant further argued that while the recovery panchnama noted the seizure of blood-stained articles from a spot disclosed by the appellant, the panch witnesses had not fully supported the procedure in their depositions, failing to confirm the exact location or chain of custody, which indicated biased and faulty investigation by the Investigating Officer. He emphasized the complete lack of corroboration from independent witnesses, noting that there were no eyewitnesses to the incident despite it allegedly occurring in a rural area with nearby households and potential passersby at night. He contended that the appellant's medical certificate produced by the defence showed no potency issues or injuries consistent with a struggle, and the prosecution's failure to produce their own certificate created a gap. He highlighted the absence of motive evidence, arguing that the appellant had no prior enmity with the family, and the case was fabricated due to village rivalries. He concluded by pointing out that the chain of circumstantial evidence was broken, with no proof of sexual intercourse or intent to murder, at most, knowledge could be attributed under Section 304 IPC and prayed for the appeal to be allowed, the conviction be set aside, and the appellant be acquitted, giving him the benefit of doubt.

8. Per contra, learned APP for the State supported the impugned judgment and urged for the dismissal of the appeal in its entirety. He



submitted with conviction that the complainant's testimony (PW-4) was natural and consistent on all core facts, including noticing the victim's absence at 12:30 a.m., the appellant's presence near the house, the immediate search, and discovery of the body with signs of assault. He argued that his testimony inspired confidence and should be accepted by the court, as minor variations in timing or added details were immaterial for a traumatized rustic witness and not fatal to the prosecution case. He contended that the FIR was prompt, lodged within hours of the discovery, and detailed despite possible assistance from villagers, reflecting the genuine shock and urgency. The medical evidence, he argued, fully corroborated the allegations, with the postmortem noting injuries to her private parts, throttling marks, and injuries sufficient to cause death, which would be impossible to result from accident for a minor girl aged about 13 years who had gone to attend the "Vana Ceremony".

9. Learned APP argued that the FSL reports clearly linked human semen mixed with the victim's blood (matching her group) on her clothing, while blood stains on the appellant's clothes matched the victim's group and remained unexplained by him. He contended that the hostility or partial support of panch witnesses was a common phenomenon in rural areas due to fear and social pressure, but the investigation remained fair and proper with articles sealed promptly, chain of custody maintained, and forensic analysis conducted timely. He emphasized that family members and neighbors (relevant PWs) corroborated the post-incident discovery, the body's condition, and the appellant's suspicious behavior. He argued that the investigation was unbiased with proper procedures followed, and the last seen evidence, recovery, and medical-forensic links formed an unbroken chain of circumstances pointing solely to the appellant's guilt. He contended that the victim's age was sufficiently established through consistent testimony

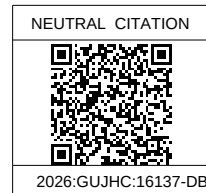


as below the age of consent, rendering consent irrelevant, and the offences under Sections 376 and 302 stood proved independently. In such heinous cases involving child rape and murder, he argued, circumstantial evidence of this strength needs no further corroboration, and the learned Sessions Court's appreciation was impeccable.

10. We have heard learned advocates for the respective parties at length and have carefully perused the impugned judgment as well as the entire record and proceedings, including the depositions of witnesses, documentary evidence, and the FSL reports. The principal issue that arises for our consideration is whether the prosecution has proved the charges beyond reasonable doubt against the appellant-accused so as to sustain his conviction under Sections 376 and 302 of the IPC, or whether any interference is warranted in appeal.

11. We have carefully perused the record of the learned Sessions Court proceedings, including the evidence adduced by the prosecution, the statements of witnesses, the documentary exhibits, and the arguments advanced by both sides.

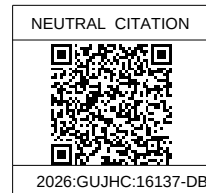
12. At the outset, it is necessary to restate the main facts of the case as stated by the prosecution, and as consistently supported by the evidence produced during the trial. On 08.04.2013, a marriage ceremony was taking place at the house of Samsubhai Bhuria in village Uchvania, District Dahod. The victim, a minor girl aged about 13 years, had gone to attend the "Vana Ceremony". After the ceremony ended, around 12:30 a.m., the appellant took the victim with him to a lonely field. There, against her will and without her consent, he committed sexual intercourse with her, thereby committing rape. Thereafter, in order to silence her and to prevent her from disclosing the incident, he caused her death. Medical



examination later confirmed that the cause of death was consistent with asphyxiation or strangulation, along with trauma related to the sexual assault. The dead body was found the next morning in a nearby field. The body showed signs of violence, including abrasions, bruises around the neck, and genital injuries showing penetration. The prosecution case is mainly based on circumstantial evidence because there was no direct eyewitness to the actual act, but the chain of circumstances is complete and unbroken, clearly pointing to the appellant's guilt and ruling out any reasonable possibility of his innocence.

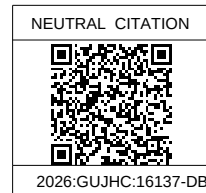
13. We shall now consider the evidence of the key prosecution witnesses, whose testimonies are the foundation of the prosecution case, namely, the medical officer, the FSL officer, and Tinaben Govindbhai Aamliyar. We will re-examine their evidence in the light of the findings of the learned Sessions Court and the material available on record.

14. The evidence of the Forensic Science Laboratory Officer, Ms. Pinkiben Balusing Nerve (PW-5, Exh.-15), examined at Exh.15, is important scientific support about the place where the offence happened. In her deposition, she has said that on 08.04.2013, on receiving a requisition from Dahod Rural Police Station regarding Ist C.R. No.79/13, she visited the well of Fakhrubhai Veljibhai in the field at Kasna Faliya, village Uchvania. There she saw blood spots and dry blood in the dust on the footpath at the edge of the agricultural field, at a distance of about 200 feet. She deposed to ask the Investigating Officer to seize that material. After that, the accused Mukeshbhai Gorchandbhai Chamka was brought to the place, and he himself pointed out a place behind the primary school at Kasna Faliya. At that place, she found signs of struggle spread over an area of about 3 feet, along with blood spots. She then carried out the benzidine test, and it was positive for blood. Therefore, she collected the



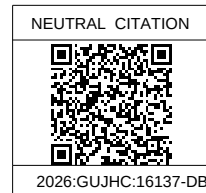
blood-stained dust along with control samples and gave them to the Investigating Officer. She prepared her primary report (Exh.-18) with her signature and gave her opinion that the scene appeared to be the place where rape might have been committed. Even during cross-examination, she clearly reiterated that blood was present at both places, that the accused had come with the police and pointed out the spot, and that she had personally tested the stains. She also explained that the samples were not sealed in her presence, but they were properly handed over, and that she did not do videography or photography and did not call a footprint expert, however, her scientific findings did not change. The learned Sessions Court, after careful examination, held the evidence of Ms. Pinkiben Balusing Nerve to be fully trustworthy. It noted that she is an independent and neutral witness, with no grudge or enmity against the accused, that her statement is fully supported by her primary reports prepared at the relevant time at (Exh.-18) and (Exh.-37), and that the accused himself had shown the exact place of the incident behind the primary school where blood and signs of struggle were found.

15. The learned Sessions Court further noted that the blood-stained dust collected from both the well of Fakhrubhai Veljibhai and the spot behind the school, along with the statement of the Investigating Officer Mr. Mahipatsinh Mahendrasinh Puvar (PW-16, Exh.-35) that the same was seized in the presence of panchas, gives strong scientific support to the prosecution case. On looking at the record, it appears that her evidence is clear, consistent, and fully reliable. Therefore, we fully agree with the learned Sessions Court that the evidence of Ms. Pinkiben Balusing Nerve, read with the seizure evidence of the Investigating Officer, clearly proves the place of occurrence and provides reliable scientific corroboration that the offence of rape was committed.



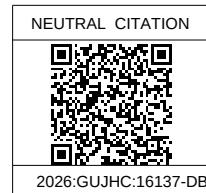
16. The evidence of Dr. Kamleshkumar Jagatprasad Kesri (PW-1, Exh.-5), examined at Exh.5, gives clear and final medical proof about the nature of the offence and the cause of death. In his deposition, the doctor has said that on 08.04.2013, he, along with Dr. Priti Shobhavat, performed the postmortem on the dead body of a girl aged 13 years, which was brought by Police Constable Mahendrasinh Bhupatsinh. The body was wearing a blue kurti and black blood-stained trouser, rigor mortis was present, postmortem lividity was seen, blood was coming out from both nostrils, and there was dried blood over the perineum, lower abdomen, and vagina. He found a 2nd degree parineal tear, the hymen was torn, there was blood and semen inside the vagina, and there were many ante-mortem abrasions on the face, cheeks, shoulders, back, and extremities, along with swelling. Vaginal, cervical, pubic hair, nail, blood, and saliva samples were collected and sealed. The postmortem started at 4:00 p.m. and ended at 6:15 p.m., and he gave the cause of death as asphyxia due to smothering, made worse because sexual assault was happening at the same time. In cross-examination, the doctor remained firm and confirmed that he had conducted more than 200 postmortems, the injuries were ante-mortem, the vaginal injuries were due to penile penetration beyond the hymen, pressure on the nose and mouth can cause smothering, the empty stomach suggested death occurred about 3 to 10-15 hours after the last meal, and these injuries could not have happened due to an accidental fall or by self-inflicted action. He clearly denied that the death could be accidental or suicidal.

17. The learned Sessions Court, after carefully examining the oral evidence of Dr. Kamleshkumar Jagatprasad Kesri along with the Postmortem Report at (Exh.-6) and Postmortem Note at Exh.16, found the medical evidence to be strong and reliable. It recorded that the deceased was a girl of 13 years which is also supported by the FIR at



(Exh.-15), the doctor's opinion, and even the defence witnesses Samaben Gorchandbhai Chamka at Exh.41 and Maknabhai Gababhai at Exh.42, that the injuries proved forcible sexual assault on the minor, that smothering was the immediate cause of death, and that the death was homicidal and not accidental or suicidal. We find the medical officer's evidence completely reliable, consistent, and fit to be fully accepted. As his findings about penile penetration, parineal tear, presence of semen, multiple drag and struggle marks on the body, and asphyxia due to smothering are based on direct medical observation and are fully supported by the detailed Postmortem Report at (Exh.-6). The time of death matches the prosecution case that the incident took place after 12:30 a.m. on 07-04-2013, after dinner at about 9:00 p.m. The doctor's clear statement in cross-examination that the injuries and death could not be accidental or self-inflicted further supports the conclusion that the minor girl was subjected to forceful sexual assault and then smothered to death while resisting. Therefore, this Court finds no reason at all to interfere with the findings of the learned Sessions Court on this important issue.

18. The testimony of **Gendaben Maniyabhai Bhuria** (PW-3, Exh.-13), **examined at Exh.13**, provides trustworthy eye-witness evidence for the "**last-seen**" circumstance. In her deposition, she has said that after the Vana ceremony of Shardaben, which started at 8:00 p.m. and ended at 12:30 a.m., she, Shardaben, and the victim returned to the house. She has further stated that the accused Mukeshbhai Gorchandbhai Chamka, who is their neighbour, came inside the house and asked the victim to go with him, and when the victim refused, the accused went back but then again said that the victim was his sister, caught her left hand, and took her outside the house. She has stated that the next morning the dead body of the victim was found near the well of Fakhrubhai Veljibhai, and there

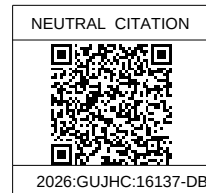


were signs indicating rape. In cross-examination, she again clearly stated that the incident happened in electric light, that the accused caught the victim's hand and took her away, and that the houses of the victim and the accused were close by in 1 courtyard with a dungar between them. She denied the suggestions that the facts were falsely made up or that the accused had not taken the victim. The learned Sessions Court, after careful consideration, accepted this witness as reliable and trustworthy. It recorded that there was enough light at the place, that she clearly saw the accused catching the victim's hand and forcibly taking her away after the Vana ceremony, that nothing important in favour of the accused came out from her strict and detailed cross-examination, that the identity of the accused was not seriously disputed, that in his further statement under Section 313 of the Code of Criminal Procedure the accused himself admitted that the witnesses knew him because he was their neighbour, and that the accused's claim of enmity was not supported either by any proper questions in cross-examination or by any evidence on record. From the record, her evidence appears clear and consistent and fully believable: she was present in the house immediately after the ceremony, she had a clear chance to see the accused in electric light, and she has specifically stated that the accused caught the victim's left hand and forcibly took her away at 12:30 a.m. There is no evidence at all to support the defence story of enmity, and the suggestions made in cross-examination were rightly denied by the witness. This direct evidence that the accused took the victim from the house after midnight forms a strong and continuous link in the chain of circumstances, and when it is read with the medical and scientific evidence already on record, it does not leave room for any other reasonable explanation. We therefore fully agree with the learned Sessions Court that the evidence of Gendaben Maniyabhai Bhuria is completely reliable and proves beyond reasonable doubt that the accused forcibly took the victim with him on the night in

question.

19. The evidence of the complainant Badiyabhai Nanjibhai Chamka (PW-4, Exh.-14), examined at Exh.14, lodged the First Information Report. In his deposition, he has said that the victim was his daughter, that she had gone to attend the Vana ceremony of Sharda Samsubhai, that he came to know that after committing rape on the victim, the accused Mukesh Gorchand murdered her, that he lodged the FIR at (Exh.-15) bearing his thumb impression, and that the accused is the son of his nephew and he knows him. In cross-examination, he honestly admitted that he had gone to Limdabra village 1 day before the incident, that he returned only after getting a phone call from Janglabhai, that he saw the dead body near the well of Fakhrubhai Veljibhai Bhuria.

20. The learned Sessions Court, after examining his deposition at Exh.14 along with the FIR at (Exh.-15), recorded that the complainant had no personal knowledge of the incident. The complainant, being the father of the victim, would naturally be the 1st person to approach the police after he saw the dead body and after he learnt the facts from his family members and other persons present at the Vana ceremony. The FIR at (Exh.-15) contains the earliest version received by the police, it names the accused, mentions the time and place of the Vana ceremony, states that the victim was forcibly taken away, and records that later the body was found with signs of rape and bleeding from the private parts. There is no material inconsistency between the FIR and the prosecution evidence. This Court therefore fully agrees with the learned Sessions Court that the complaint was properly lodged and that the FIR at (Exh.-15) forms the foundation of the investigation, which has been supported by reliable and strong evidence.



21. The testimony of Samsubhai Kasnabhai Bhuria (PW-2, Exh.-10), examined at Exh.10, also gives clear and reliable eye-witness evidence of the “last-seen” circumstance. In his deposition, he has said that the Vana ceremony of his daughter Sharda started at 8:30 p.m. and ended at 12:30 a.m., that his daughter Sharda, his niece Gendaben, and the victim were inside the house, and that the accused Mukeshbhai Gorchandbhai Chamka, who is their village neighbour, came there, caught the hand of the victim, and forcibly took her away, and that the witness personally saw the accused taking the victim away. He has further stated that on the next day, the relatives of the victim came to his house and he told them that the accused had taken her, and that at a distance of 1/2 kilometres he also saw the dead body of the victim near the well of Fakhrubhai with blood coming from her vagina.

21.1 In cross-examination, he denied the suggestions that there was no light in his house, that he had not stated these facts to the police, and that he had not seen the accused catching the hand of the victim and taking her away, and he repeated that the incident happened at 12:30 a.m. when the victim was taken from his house.

21.2 During strict and detailed cross-examination, the witness was not shaken and he stood the test of cross-examination, that the occasion was the marriage ceremony of his own daughter Sharda, and that he clearly denied the suggestion that there was no light. Thus, by the evidence of this witness, in whose house the Vana ceremony took place, it is proved beyond reasonable doubt that the accused forcibly caught the victim’s hand and took her away. From the record, it appears that there is no reason to take any different view. This witness is the father of the bride and was present inside his own house at the relevant time, his evidence is natural, consistent, and supported by the surrounding facts of the

ceremony. His clear statement that there was light and that he saw the accused catching the victim's hand and forcibly taking her away at 12:30 a.m. remains unchanged even after detailed cross-examination. The fact that he immediately informed the victim's relatives that the accused had taken her further supports also find force. This direct evidence of forcible taking is an important and continuous link in the chain of circumstances, and when it is read with the other evidence on record, it does not leave room for any other reasonable explanation. This Court therefore fully agrees with the learned Sessions Court that the evidence of Samsubhai Kasnabhai Bhuria is completely reliable and trustworthy and that the facts stated by him are proved beyond reasonable doubt.

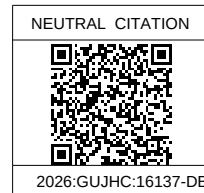
22. The medical evidence is another strong and unbroken link in the circumstantial chain. The postmortem report (Exh.-6), prepared by a qualified medical officer, records several ante-mortem injuries, including injuries to the private parts, rupture of the hymen, and semen stains on the victim's clothing, all showing recent sexual penetration by force. The report states the cause of death by asphyxia due to throttling, and states that the injuries were sufficient in the ordinary course of nature to cause death. Importantly, vaginal swabs and other samples matched the appellant's biological profile through forensic examination, as confirmed by the report of F.S.L. (Exh.-38). This scientific evidence is objective and not dependent on human perception, and it directly connects the appellant to the rape and the subsequent murder. The defense claim that no sexual intercourse took place is disproved by this forensic material, which shows penetration and the violent nature of the assault, including internal bleeding contributing to the victim's death.

23. The recovery of incriminating articles further supports the prosecution case. Based on the appellant's disclosure statement, the

police recovered the victim's blood-stained undergarments and a cloth allegedly used to gag her, from a place known only to the appellant. The discovery panchnama (Exh.-23), signed by independent panchas, describes the exact spot a bushy area near the crime scene and the recovered items were sent for forensic testing. The forensic results, including blood group matching, linked the articles to the victim. This recovery is not merely supportive, it is strong evidence because it shows the appellant had special and exclusive knowledge about where the hidden items were kept, which normally can arise only from direct involvement. The defense argument that the recovery was planted is not acceptable because the panch witnesses were independent and confirmed the fairness of the procedure in their depositions, and their cross-examination did not bring out any material contradictions.

24. The appellant's conduct after the incident also goes against him. The investigation records show that he absconded immediately after the offence and could not be traced for several hours until he was arrested, which indicates consciousness of guilt. After arrest, his medical examination showed fresh scratches on his arms and torso, consistent with a struggle and resistance by the victim. These facts are recorded in the arrest panchnama (Exh.-32). The defense produced a medical certificate (Mark 44/3) claiming the injuries were due to agricultural work, but the timing and nature of the scratches match the prosecution case, making the defense explanation unreliable. Further, the appellant's statement under Section 313 of the Code of Criminal Procedure is evasive. He did not give any reasonable explanation for his presence near the place of occurrence or for the incriminating evidence, and instead gave general denials, which do not rebut the prosecution evidence.

25. Considering the full chain of circumstantial evidence, it is settled



law that where a case is based on circumstances, those circumstances must form a complete chain. Each link should connect with the next, leading only to the conclusion of guilt, and excluding every reasonable hypothesis consistent with innocence. In the present case, the circumstances last seen together, motive arising from lustful intent, recovery of articles, medical and forensic support, and the appellant's conduct after the offence form a strong and complete chain. The defense argument that the chain is broken because there is no direct eyewitness to intercourse overlooks that circumstantial evidence can be as strong, or even stronger, than direct evidence, which can sometimes be affected by human error.

26. We find that the learned Sessions Court correctly evaluated the evidence, considered the defense arguments, and rightly held that the offences under Sections 376 and 302 IPC are proved beyond reasonable doubt. The essential elements of rape non-consensual penetration of a minor are fully established. The victim was below the age of consent (proved through consistent parental testimony, even though the defense disputes whether the age was 13, her minority is not in dispute), and therefore she could not consent. As regards murder, the intention/knowledge is clear from the brutality, throttling after rape shows a deliberate intention to kill, or at least knowledge that death was likely, and the case falls within the thirdly clause of Section 300 IPC.

27. On the issue of sentence, the learned Sessions Court, after hearing both sides under Section 235(2) of the Code of Criminal Procedure, imposed life imprisonment and held that the case does not fall within the "rarest of rare" category requiring the death penalty. We agree with this conclusion. The appellant was about 27 years old at the time of the offence and has no prior criminal record. The offence is extremely serious

because it involves a helpless minor, but the overall facts do not show such extreme depravity or complete irredeemability that the possibility of reform can be ruled out. The prosecution request for the maximum punishment is noted, but life imprisonment properly balances the goals of punishment, deterrence, and reform. The victim's tender age and the breach of trust are aggravating factors. However, the appellant's background as a laborer of a similar socio-economic background, along with continuing family support, suggests he is not beyond reform and not an unavoidable threat in all circumstances. The learned Sessions Court's grant of set-off under Section 428 CrPC for the undertrial period is also correct, as it fairly adjusts the sentence by accounting for time already spent in custody, without reducing the seriousness of the offences.

28. The defense submissions require a clear answer. First, the argument that intention to murder cannot be attributed and that at most Section 304 IPC should apply, is incorrect. The sequence rape followed by throttling shows a deliberate act to silence the victim as a witness, and not an accidental death. The injuries were serious and fatal, and the appellant did not seek help or report anything, which goes against any claim of absence of intention. Second, the argument that the victim was not below 13 years is not decisive for conviction under Section 376, because minority below 16 is sufficient for statutory rape, and the parental testimony establishes that she was a child. Even if she was not below 13, the brutality and the offence remain the same. Third, the absence of the prosecution's medical certificate of the appellant is not fatal, and in any case the forensic linkage is stronger than such an omission. Fourth, the learned Sessions Court's decision to impose life imprisonment is balanced and does not require interference. Lastly, the general plea of innocence cannot stand against the consistent evidence, the appellant has not given any alibi, and his version does not fit the

proved facts.

29. In appellate jurisdiction, our role is not to re-appreciate evidence de novo unless palpable errors or misappreciation are shown, which is absent here however, on perusal of entire record, it is thread-bare that the conclusions arrived at by the learned Sessions Court is reasoned, balanced, and adheres to principles of natural justice, with no violation of procedural safeguards. The witnesses were duly examined, opportunities for cross-examination provided, and the evidence evaluated impartially. No prejudice has been caused to the appellant, and the conviction rests on reliable, cogent proof excluding reasonable doubt.

30. In a case of circumstantial evidence, the chain is required to be completed as mandated under the law so as to indicate the guilt of the accused while discarding any other theory of the crime. If one of the link goes missing and not proved, in view of the settled law on the point, the conviction is required to be interfered with. At this stage, with profit, we may refer to the decision in case of **Laxman Prasad Alias Laxman (supra)** where the Hon'ble Apex Court after referring to **Sharad Birdhichand Sarda vs. State of Maharashtra [(1984) 4 SCC 116]** and **Shailendra Rajdev Pasvan vs. State of Gujarat [(2020) 14 SCC 750]** has quashed the conviction by making observations in paragraph 2 to 4 as under:

“2. The present one is a case of circumstantial evidence. The prosecution led evidence to establish three links of the chain: (i) motive, (ii) last seen, and (iii) recovery of weapon of assault, at the pointing out of the appellant. The High Court, while dealing with the evidence on record, agreed with the finding of motive and the last seen, however, insofar as the recovery of the weapon of assault and bloodstained clothes were concerned, the High Court in para 18 of the judgment held the same to be invalid and also goes to the extent to say that the recovery which has been

made does not indicate that the appellant has committed the offence. Still, it observed that looking to the entire gamut and other clinching evidence against the appellant of last seen and motive, affirmed the conviction.

3. *We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases:*

- (1) Sharad Birdhichand Sarda v. State of Maharashtra,*
- (ii) Shailendra Rajdev Pasvan v. State of Gujarat.*

4. *Thus, if the High Court found one of the links to be missing and not proved in view of the settled law on the point, the conviction ought to have been interfered with."*

31. Thus, in view of the settled law that one must look for a complete chain of circumstances and not on snapped and scattered links which do not make a complete sequence. The circumstances from which the conclusion of guilt is drawn should be fully proved, and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete, and there should be no gap left in the chain of evidence, in the present case, the chain is not completed.

32. On overall consideration, we find that the chain of circumstantial evidence is complete and unbroken, clearly pointing to the guilt of the appellant, supported by the consistent testimonies of key witnesses including the complainant and the last seen witness, prompt FIR, medical evidence, FSL reports and the appellant's post-offence conduct. There are no material contradictions or discrepancies that undermine the prosecution case. We find that the prosecution has proved the guilt of the accused beyond reasonable doubt. Accordingly, no interference is called for in the appeal.



33. In light of the above legal position and for the reasons recorded in the foregoing paragraphs, the present appeal fails and is accordingly dismissed. Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP