

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 530 of 2003****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE SANJEEV J.THAKER****and****HONOURABLE MR.JUSTICE L. S. PIRZADA**

Approved for Reporting		
Yes	No	
		✓

STATE OF GUJARAT

Versus

CHANDUBHAI SENDABHAI PATANI

Appearance:

MR. RONAK RAVAL APP for the Appellant(s) No. 1

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

CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER

and

HONOURABLE MR.JUSTICE L. S. PIRZADA**Date : 09/01/2026****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE L. S. PIRZADA)**

1. The present acquittal appeal has been preferred by the State under Section 378 of the Criminal Procedure Code, 1973 (In short "The Cr.P.C") challenging the judgment and order dated 10.01.2003 passed by learned Special Judge, City, Civil & Sessions Court No.20, Ahmedabad in Atrocity Criminal Case No.11 of 2002 by way of the impugned judgment and order, the present

respondent no.1 - original accused has been acquitted for the charge under Sections 363, 366, 376 of the Indian Penal Code (Hereinafter referred as the 'IPC') and Sections 3(1), 3(11) and 3(12) of the Scheduled Castes and Scheduled Tribes (Prevention of the Atrocities) Act, 1989 (Hereinafter referred as the 'Atrocity Act').

2. The short facts of the prosecution case reads as under:
3. It is the case of the prosecution that on 21.10.2001, at around 01:30 A.M., the accused has kidnapped Parvatiben, minor daughter of the complainant - Gopalbhai Viththalbhai Parmar from his lawful guardianship and by giving false temptation and promise of marrying with her and with intention to seduce her, took the victim away and kept her in a guest house at Palanpur and at Jantanagar from 21.10.2001 to 07.12.2001 and during that period, he had sexual intercourse with the victim and thereby committed the offence under Sections 363, 366, 376 of the IPC and Sections 3(1), 3(11) & 3(12) of the Atrocities Act and for that, the complaint came to be given by the complainant - Mr. Gopalbhai Parmar before the Odhav Police Station on 07.12.2001 vide first C.R. No.430 of 2001.
4. The investigation was subsequently started, and the statements of the concerned witnesses were recorded, along with the necessary documents and Muddamal

articles. After completion of the investigation, the chargesheet came to be filed before the learned Court, and thereafter, it was registered as Special Atrocity Criminal Case No. 11 of 2002 before the Special Court. Thereafter, the learned Trial Court framed the charge against the accused vide Exhibit-1 for the offence punishable under Sections 363, 366, and 376 of the IPC and Sections 3(1), 3(11) and 3(12) of the Act. The accused denied the contents of the charge, and the entire evidence of the prosecution was recorded by the learned Trial Court.

5. To bring home the charge against the accused, the prosecution has examined the following oral and documentary evidence.

Oral evidence:

PW	Name of the witness	Exhibit
1	Complainant - Gopalbhai Vithhalbhai	7
2	Parvatiben Gopalbhai Parmar	9
3	Laxmanbhai Somabhai Chauhan	11
4	Chhaganbhai Shivabhai	12
5	P.I. - Bhupendra Jayantilal Kansara	15
6	Assistnat Police Commissioner - Chandrakant Lallukant Vora	21
7	Devidan Ravidan Gadhvi	23
8	P.S.I. - Pratapbhai Nishabhai Damor	25
9	P.S.I. - Dasharathsinh Karansinh Chudasama	26
10	Ranchhodbhai Karshanbhai Patel	30

The following documentary evidence has been produced by the prosecution:

Sr.No.	Particular	Exhibit
1	FIR	8
2	Report under Section 157 of the Cr.P.C	27
3	Panchnama to recover the cloth of the victim	13
4	Panchnama to recover the cloth of the accused	13
5	School Leaving Certificate of the victim	16
6	Certificate of the caste of the victim	10
7	Medical Certificate of the victim	17
8	Medical Certificate of the accused	18
9	Muddamal Ravanagi note	28
10	Receipt issued by FSL	29
11	Report of the FSL	19
12	Serological Examination	20

6. Thereafter, the learned prosecution has closed the evidence of the prosecution by giving the closing pursis and further statement of the accused under Section 313 of the Cr.P.C. was recorded, wherein the accused has denied the evidence of the prosecution on record and the accused refused to step into the witness box for examining any witness on his behalf and stated that a false case has been filed against him and stated that he voluntarily appeared before the concerned police station and the victim is ready to marry with him but because of the society, they will not be able to marry and the accused denied marriage, that is why a false case is filed against him. Thereafter, learned APP for the State has submitted his arguments and learned advocate for the accused has also stated his arguments and after hearing

the rival submissions of the learned advocates for the respective parties, the Trial Court, by the impugned judgment and order, was pleased to acquit the accused from all the charges levelled against him.

7. Being aggrieved and dissatisfied with the said judgment and order of the acquittal, the appellant - State has filed the present appeal mainly stating that the impugned judgment and order passed by the learned Trial Court is contrary to the evidence available on record of the case as well as to the provisions of law.
8. Heard the learned APP Mr. J. K. Shah for the State. He submitted that the impugned judgment and order passed by the learned Trial Judge is contrary to the evidence available on record of the case as well as the provisions of the law and requires to be quashed and set aside. Further, he submitted that the learned trial Judge has erred in coming to the conclusion that the prosecution has failed to prove the charge against the accused person that on 21.10.2001 at about 01:30 A.M., the accused has kidnapped the victim who is aged about 17 years, the minor at the time of the incident, is the daughter of complainant - Govindbhai Viththalbhai Parmar and from his lawful guardianship, he kidnapped the victim by giving the inducement of marriage with an intention to seduce to have illicit intercourse. Further, he submitted that the learned trial Judge has also erred in holding that the prosecution failed to prove that during

the period from 21.10.2001 to 07.12.2002, accused has illicit intercourse with minor victim at Palanpur guest house, at Jantanagar and various other places without consent of the victim and committed rape on her. Further, the learned Trial Judge has also erred in holding that the prosecution has failed to prove beyond reasonable doubt that the accused has committed an act to outrage the modesty of the victim and exploited her sexually without her consent and thereby, committed the offence under the provisions of the Act. Further, he submitted that the learned trial Court has also not considered the fact and erred in holding that the prosecution failed to prove the offence committed under Sections 363, 366, 376 of the IPC and Section 3(1), 3(11) and 3(12) of the Act. Further, he stated and submitted that the prosecution has examined 8 witnesses in support to prove the charges against the evidence and all the witnesses have fully supported the case of the prosecution. Further, he submitted that the prosecution also proved the documentary evidence produced in the trial before the Court and the evidence like FIR, Report under Section 157 of the Cr.P.C, Panchnama to recover the cloth of the victim, Panchnama to recover the cloth of the accused, School Leaving Certificate of the victim, Certificate of the caste of the victim, Medical Certificate of the victim, Medical Certificate of the accused, Muddamal Ravanagi note, Receipt issued by FSL, Report of the FSL, Serological Examination and it has been established by the prosecution, the age of the victim at

the time of incident, was 16 years and 8 months. Further, he submitted that all other documentary evidences have fully supported the version of the prosecution. Further, it has been established by producing the certificate of the caste of the prosecutrix at Exhibit-17 established that the prosecutrix (minor) belonging to the SC community and she was minor and offence was committed against her consent by the accused person but this aspect has not been appreciated by the learned trial Court. Further, he submitted that the prosecutrix has been examined before the learned trial Court vide Exhibit-9 and she has specifically submitted that her date of birth is 02.01.1985. It has been supported by the Birth Certificate produced at Exhibit-16 by the principal of the school who has examined at Exhibit-30 and the prosecutrix has clearly stated in her evidence that the accused has given her threat that if he is not acting as per his say, then he has raped later to her after and her threatened in case of failure as per the direction, he would commit the murder of the brother of the victim and on the date of incident, when the accused entered to the house of the victim, the victim tried to shout but the accused has threatened her with the point of knife and also told her that she disclosed anything to anyone, he would commit the murder of her brother and because of threat, the prosecutrix accompanied the accused and she has also specifically on oath, stated that how the incident took place and when the accused took her and also narrated

the place of the incident and the accused has committed offence against her consent and also stated that she was forced to sign the marriage registration form by the accused under the threat. Further, he stated and submitted that the learned Trial Court has not appreciated the fact that the since the age of the prosecutrix is about 16 years and 8 months, there is offence of rape against her but while coming to the said conclusion, learned Trial Judge has not properly appreciated the evidence of the prosecutrix. She has very specifically stated all those acts were committed against her will and consent and in spite of the fact that she was minor and she accompanied the accused, the accused has threatened the victim that if she will not accompany, he will murder his brother. Therefore, the findings of the learned Trial Court that there is no offence committed by the accused under Section 376 of the IPC is not correct, legal, valid and proper and the judgment is required to be quashed and set aside. Further, learned Trial Judge has also failed to appreciate the fact that it has been proved that the prosecution is minor girl below the age of 18 years and she had no money or any of the resources with her and in such situation, it is not possible for the prosecutrix at that age to believe trust on outside person even she informed anybody else or tried to escape from the accused person then, there is a chances of her victimization by other person. This aspect has not also been considered by the learned Trial Court. Further, he submitted that as per

the medical evidence and also the FSL report, it clearly supported the oral version of the prosecution case and submitted that considering this, learned Trial Court has not appreciated the evidence produced by the prosecutrix before the learned Trial Court and not properly appreciated the oral deposition or oral testimony of the prosecutrix before the Court. Hence, the present appeal is required to be allowed and the judgment passed by the learned Trial Court is required to be quashed and set aside.

9. Respondent - original accused is concerned, as per the report, notice has been duly served but nobody has appeared on behalf of the respondent no.1 - original accused.
10. We have gone through the records and the judgment passed by the learned Trial Court after appreciating the evidence and keeping in mind the ratio laid down by the Hon'ble Apex Court while deciding the acquittal appeal. In that parameters, we deem it appropriate to decide the said appeal.
11. Before dealing with the merits of the appeal, at this stage, it is required to consider the decision of the law settled by the Hon'ble Apex Court in various decisions whereby, it has laid down several criteria while deciding the acquittal appeal.

12. It would be apt to refer the recent decision of the Hon'ble Apex Court in the case of ***Babu Sahebagauda Rudragoudar and Others Vs. State of Karnataka*** reported in ***(2024) 8 SCC 149*** wherein, it has been held as under:

“39. This Court in *Rajesh Prasad v. State of Bihar* encapsulated the legal position covering the field after considering various earlier judgments and held as below:

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (*Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]*)

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its 42. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial

and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

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

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

40. Further, in the case of *H.D. Sundara & Ors. v. State of Karnataka* this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: (SCC p. 584, para 8)

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

41.1 That the judgment of acquittal suffers from patent perversity;

41.2 That the same is based on a misreading/omission to consider material evidence on record;

41.3 That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

13. Now, keeping in mind the aforesaid ratio and after re-appreciating the evidence, the serious contradictions and improbable story of the prosecution noticed by the learned Sessions Court are required to be considered while deciding the present appeal.

14. As per the case of the prosecution, the accused has kidnapped the victim girl prosecutrix on 21.10.2001 and subsequently, a complaint came to be given by the father of the prosecutrix before the Odhav Police Station on 07.12.2001 and subsequently, the prosecutrix and the accused were appeared before the concerned police station and the accused was arrested. So far as the main evidence is the deposition of the prosecutrix is required to be considered as the prosecutrix has been examined as PW-2 vide Exhibit-9. As per the deposition before the Court, it is admitted by the prosecutrix that the Birth Date is 02.01.1985 and she studied up to standard 8 but she does not remember the name of the school and she knew the accused Chandubhai as he was residing at Bhavaninagar Tekara. Initially she had affair with the accused, subsequently, she stopped it and thereafter, she went to her uncle's home at Ahmedabad and thereafter, as per the deposition before the Court, she stated that she was threatened by the accused that if she will not come with him then, she will murder his brother and because of that, she accompanied the accused and during that period, she was subjected to the sexual intercourse without her consent. This is the deposition

before the Court but certain fact which has been stated in the deposition, which has not been stated in the statement recorded under Section 161 of the Cr.P.C before the police and for the first time, she stated that she was subjected and threatened by the accused as he came with the knife and threatened the prosecutrix that if she will not accompany with him, he will murder his brother.

15. In this regard, the said contradiction and the addition has been proved by defence counsel by putting her question to the Investigating Officer. So, before the Trial Court, original complainant has already been examined and the complainant who has been examined as PW - 1 Exhibit - 7 with the father of the prosecutrix has stated that he knew accused - Chandubhai Sendhabhai and as her daughter was eloped with the accused on 21.10.2001 but they are in search of the daughter and that is why they have not filed any complaint and the age of the daughter is about 16 years and 8 months. In this regard, it is required to consider the findings recorded by the learned Trial Court. The learned Trial Court, in his judgment, mainly recorded the finding that looking to the overall evidence of the prosecutrix and the father of the complainant, it is coming on record or it has been established that initially that there was love affair between the accused and the prosecutrix and it has not been established by the prosecution that the accused has forcefully taken the prosecutrix.

16. On the contrary, it has been coming in evidence that before the police, when the statement of the prosecutrix victim was recorded, she specifically stated that on 21.10.2001, victim herself has voluntarily left her parental home and met the accused at CMC where he was there and she willfully and with the consent, has gone with the accused and in the statement, it has been stated that she initially went to the Sidhdhpur thereafter, they went to the Ambaji and thereafter, Palanpur and they also stayed at one guest house and they have given their wrong identity in this guest house also and they have stayed in the guest house in the name of one - Pujaben and Ajaybhai thereafter, they went to Palanpur and residing at Jantanagar and subsequently, they had sexual intercourse. In this regard, the findings recorded by the learned Sessions Court that it is not established by the prosecution that accused has lured the victim by giving false promise or anything and the accused has been having sexual intercourse with the victim against her will and accused has taken the victim from the lawful guardianship of the father of the victim by giving false temptation and promise of bearing her and with an intention to seduce the victim. The findings recorded by the learned Sessions Court is found to be just and proper as for the first time, certain facts have been stated before the Court and the said fact has never been disclosed before that even before the police. So, learned Sessions Judge has rightly come to the

conclusion that the evidence of the prosecution cannot be relied upon and even considering that there was sexual intercourse with the consent of the victim even before the amendment in the IPC before Criminal Amendment Act, 2013, if the age of the victim is between 16 to 18 years then, accused can take the defence of the consent. So, learned Sessions Judge has rightly come to the conclusion that the prosecution has miserably failed to establish that the victim - accused has raped the victim.

17. So far as another findings recorded by the learned Trial Court regarding the age of the victim is concerned as the birth date has been stated is 02.01.1985 and to prove that, she produced School Leaving Certificate vide Exhibit-16 and to prove the School Leaving Certificate, they have examined one witnesses - Ranchhodbhai Karsanbhai Patel vide Exhibit-30 as PW-10 vide Exhibit-30. As per his deposition, he stated that he is working as Clerk in the Dr. N. N. Patel Sarasvati Vidyalaya and he came with the O.C. book of the school from which the School Leaving Certificate has been issued by the school and stated that the victim was studying in their school and School Leaving Certificate which has been produced vide mark Exhibit-16 has been issued by the school and it was signed by the Principal - Nagarbhai Shakarabhai and he identified that signature and has stated that as per the school register, the date of birth is 02.01.1985 and the said witness was thoroughly cross-examined by

the learned advocate for the accused and cross-examined the said witness and admitted that the victim had taken the admission in their school from other school and they have written the date of birth as per the earlier School Leaving Certificate of earlier school and on the basis of that, they have mentioned the date of birth and he has not seen the Birth Certificate and even no Birth Certificate has been produced in their school. So, considering this, learned Trial Court has found that the School Leaving Certificate has not been proved by the prosecution and the age of the victim has not been proved. In this regard, now, it is required to consider the judgment of the Hon'ble Apex Court in the case of *Birka Shiva Vs. State of Telangana* arising out of *SLP (Criminal) No.1445 of 2025* reported in 2025 INSC 863, Hon'ble Apex Court held as under:

“7. The prosecution has relied primarily on Ex.P11, the birth certificate issued by the Zilla Parishad High School, to establish that the victim was below the age of sixteen years on the date of the alleged offence, i.e., 4th August 2012. According to Ex.P11, the victim's date of birth was 3rd November 1996, which, if accepted, would make her approximately 15 years 9 months old at the relevant time.

8. The evidentiary value of such an entry made in public or official registers may be admissible in evidence under Section 35 of the Indian Evidence Act, 1872. However, admissibility is distinct from probative value. While such documents may be admitted into evidence, their evidentiary weight depends on proof of their authenticity and the source of the underlying information. Mere production and marking of a document as exhibited

by the Court does not amount to proof of its contents. Its execution has to be proved by leading substantive evidence, that is, by the 'evidence of those persons who can vouchsafe for Hereinafter referred to as the 'Evidence Act' the truth of the facts in issue'. [See: *Narbada Devi Gupta v. Birendra Kumar Jaiswal*] We may refer to a few judicial pronouncements of this Court in this regard:

8.1. This Court, in ***Birad Mal Singhvi v. Anand Purohit***, held that the entries contained in the school register are relevant and admissible but have no probative value unless the person who made the entry or provided the date of birth is examined. It was observed:

"14. ... If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value. ... The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value, but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. ...

15. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is (2003) 8 SCC 745 1988 Supp SCC 604 relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to the date of birth made in the school register is relevant and admissible under Section 35 of the Act, but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. ... The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made is examined..."

(Emphasis Supplied)

This decision has been consistently followed by this Court in ***Pratap Singh v. State of Jharkhand***; ***Babloo Pasi v. State of Jharkhand***; ***Murugan v. State of T.N.***; ***State of M.P. v. Munna***; ***C. Doddanarayana Reddy v. C. Jayarama Reddy***; and ***Manak Chand v. State of***

Haryana.

8.2. A coordinate Bench of this Court in **State of Chhattisgarh v. Lekhram**, through S.B. Sinha, J., clarified that though entries in school registers are admissible under (2005) 3 SCC 551 (2008) 13 SCC 133 (2011) 6 SCC 111 (2016) 1 SCC 696 (2020) 4 SCC 659 2023 SCC OnLine SC 1397 (2006) 5 SCC 736 Section 35 of the Evidence Act, their evidentiary value improves only when corroborated by oral testimony of persons who are aware of its content, such as parents or the person who made the entry at the time of admission. It held as under:

“12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. The father of the prosecutrix also deposed to the said effect.

13. ...The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive, but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix.”

8.3. Similarly, this Court in **Satpal Singh v.**

State of Haryana, stated that though a document may be admissible, but to determine whether the entry contained therein has any probative value, may still be required to be examined in the facts and circumstances of a particular case. It held as follows:

“26. In *Vishnu v. State of Maharashtra* [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] while dealing with a similar issue, this Court observed that very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by unimpeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded.

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28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school

register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case.”

8.4. In ***Madan Mohan Singh v. Rajni Kant***, this Court held that the entries made in the official record may be admissible under Section 35 of the Evidence Act, but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded. It was held as follows :

“20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

21. ... For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc., the entry in the school register is to be

discarded. ...”

8.5. This Court, in *Alamelu v. State*¹⁹, while dealing with a similar factual matrix, held that the prosecution had failed to prove that the girl was a minor at the relevant date since the transfer certificate of a Government School showing age was not duly proved by witnesses. It observed as under:

“40. Undoubtedly, the transfer certificate, Ext. P-16 indicates that the girl's date of birth was 15-6-1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident i.e. 31-7-1993. The transfer certificate has been issued by a government school and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Evidence Act, 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person who made the entry or who gave the date of birth is examined.”

41. We may notice here that PW 1 was examined in the Court on 9-8-1999. In his evidence, he made no reference to the transfer certificate (Ext. P-16). He did not mention the girl's age or date of birth. PW 2 was also examined on 9-8-1999. She had also made no reference either to her age or to the transfer certificate. It appears from the record

that a petition was filed by the complainant under Section 311 CrPC seeking permission to produce the transfer certificate and to recall PW 2. This petition was allowed. ... In her cross-examination, she had merely stated that she had signed on the transfer certificate, Ext. P-16 issued by the school and accordingly her date of birth was noticed as 15-6-1977. She also stated that the certificate has been signed by the father as well as the Headmaster. But the Headmaster has not been examined. Therefore, in our opinion, there was no reliable evidence to vouchsafe for the truth of the facts stated in the transfer certificate.”

(Emphasis supplied)

9. In the attending facts, we find that the evidentiary value of Ex.P11 is significantly undermined in the absence of corroborating material. We say so for the following reasons:

(i) PW-13, who is the Headmaster of Zilla Parishad High School, Chandanapur, Peddapalli District (erstwhile Karimnagar District), stated that the victim studied in his school from 2007 to 2013, i.e., 6th Class to 10th Class and that the Admission Register records her date of birth as 3rd November 1996. However, in his cross-examination, he admitted that he had no personal knowledge as to the source or basis on which the date of birth was recorded therein or if the recorded date of birth was correct or not. The relevant part of his testimony is extracted hereunder:

“...In our school there is not clerk to maintain records. I did not produce any certificate pertaining to earlier school I, In which P.W.3 studies up to 5th Class. There must be basis for entering date of birth of a student in our school such as her earlier school record. I do not have

personal knowledge as to what record was produced by parents of P.W. 3 as basis to enter her date of birth in our school as I was not Head Master in 2007.

I cannot say in which school P.W.3 studied up to 5th Class. In the nominal roll register of our school, the signature of P.W.3 was obtained. I do not have personal knowledge whether the said date of birth of P.W.3 was correct or not and I am giving evidence only on the basis of record.”

(Emphasis Supplied)

(ii) The prosecution has failed to examine the person who had made the entry in the Admission Register to ascertain on what basis such an entry was made. More so, the entry in respect of the date of birth of the victim in the primary school register, i.e., 1st Class to 5th Class, has not been produced and proved before the Courts below to verify the age as per its records. It is also not possible to ascertain from the records as to whether the date of birth was provided by the parents or simply entered at the behest of another party, without verification, at the time of admission to Zilla Parishad High School.

(iii) The testimonies of PW-1, PW-2 and PW-3 are also telling that none of them mentioned the victim's age with specificity. There is no reference to Ex.P11, and no attempt was made by the prosecution to adduce corroborative testimony regarding the victim's date of birth from her family members.

Thus, while examining the issue at hand, on the anvil of the principles elucidated above, it is essential to notice that the prosecution has failed to toe the line of legal requisites. There is nothing

on record to corroborate the date of birth of the victim as recorded in the birth certificate (Ex.P11) issued by the school. Therefore, it cannot be relied upon to definitely determine the age of the victim and held with certainty that the victim was below sixteen/eighteen years of age.

10. All three of the I.Os. are curiously silent on the aspect of age of the alleged rape victim. This, in itself, raises credible questions about the investigation since a charge of rape is involved in which the age of the victim is an essential factor. PW-11, the I.O. who registered the FIR, categorically states that the mother (PW-1) and brothers (PWs 2 and 4) of the victim did not give him particulars of her year of birth and age. PW-12, who was the 3rd I.O., in his cross-examination admitted to not having pursued the aspect of the victim's age sufficiently. The relevant portion of his testimony is as under:

“As per Ex.P1 complaint P.W.3 was studying in S.R.K. Junior college, Godavarikhani. I have not visited the said college. I did not examine her classmates to enquire as to how P.W.3 was going to college. I did not enquire as to the birth place of P.W.3. It is true every Grampanchayath will maintain births and deaths register. I did not verify whether the date of birth of P.W.3 was got registered in the Grampanchayath. I did not enquire as to where P.W.3 completed her primary education. I did not investigation as to who got filled in the form of admission of P.W.3 in the school.”

11. Furthermore, none of the victim's family members, i.e., her mother and brothers have said anything about the age of the victim in their depositions made in the Court. Even the victim is effectively silent on this aspect, only stating that she and her siblings were born approximately two years apart and thereby making an estimation of their ages as well as her own. Throughout her

deposition, the victim has remained silent with regard to her particular date of birth.

12. Well, suffice it to say that Courts of law cannot make a determination of guilt in thin air, based on estimations. In the present facts and circumstances, the proof submitted by the prosecution in the form of Ex.P11 (birth certificate issued by the school) was not sufficient to arrive at a finding that the prosecutrix was less than sixteen/eighteen years of age, especially when such a document was not sufficiently corroborated. Therefore, it was neither safe nor fair to convict the appellant based on it, particularly in the context where the age of the victim was such a pivotal factor.”

18. Considering this, learned Trial Court has rightly come to the conclusion that the prosecution has not proved the date of birth of the prosecutrix or the victim as from the deposition of the witness who has been working as a Clerk is concerned, the date of birth has been stated in the School Leaving Certificate issued by the school only on the basis of that, earlier School Leaving Certificate from which the victim has been earlier studying and thereafter, she took the admission in the school merely on the basis of that, in the School Leaving Certificate, date of birth of the victim has been stated. So, the findings recorded by the learned Trial Court that the age of the victim has not been proved by the prosecution, is just and proper.
19. So, considering this, the findings recorded by the learned Trial Court that the victim has accompanied the accused as she was under threat, is not been

established. On the contrary, it has been recorded by the learned Trial Court that there was a love affair between the accused and the victim and the victim has voluntarily left the parental home and went with the accused and the victim has also, with her free will and consent, has made sexual intercourse with the accused. So, there is no question that the prosecution has failed to establish that the accused has taken the victim from the lawful guardianship and the accused has kidnapped the victim and thereafter, committed a rape on her. Further, the learned Court has also recorded that the victim has stayed with the accused at guest house on the wrong name also. Considering this, as she has all the opportunity, if she was forcefully taken by the accused as the victim has left her home on 21.10.2001 and have found on 07.12.2001. So, in this period, the prosecutrix has never shouted anything as they have been travelling in the ST Bus and the findings recorded by the learned Trial Court that the prosecution has also failed to establish that the age of the prosecutrix is below 18 on the date of an incident.

20. After re-appreciating and re-examining the evidence of the Court, we could not find that there is an error of law committed by the learned Trial Court and acquitting the accused and as such findings recorded are neither perverse nor erroneous whereby, no interference as such is required by this Court while exercising its appellate power under Section 378 of the Cr.P.C.

21. After coming through the evidence and re-appreciation as well as reasons assigned by the learned Sessions Court, the prosecution has failed to prove the charges against the accused which are just and proper and we are in complete agreement with the reasons assigned by the learned Sessions Court while acquitting the accused.
22. Considering the fact on record and light of the judgment of the Hon'ble Apex Court, more particularly, while dealing with the appeals on acquittal, we are of the opinion that no error has been committed by the learned Special Judge, Court No.20, City, Civil & Sessions Court, Ahmedabad in Atrocity Criminal Case No.11 of 2002 by order dated 10.01.2003 acquitting the present respondent - original accused for the offence punishable under Sections 363, 366 and 376 of the IPC and Sections 3(1), 3(11) and 3(12) of the Act.
23. The appeal is accordingly dismissed. Resultantly, the impugned judgment and order of the learned Sessions Court is hereby confirmed. Bail bond, if any, shall stand discharged. If any Record & Proceedings has been called for, be sent back to the concerned Trial Court forthwith. Rule is discharged.

(SANJEEV J.THAKER,J)

(L. S. PIRZADA, J)

Jaimin