ABC 2016 (II) 426 GUJ
ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(G.B. Shah, J.)

Criminal Appeal (Against Conviction) No. 136 of 2016 With Criminal Appeal No. 975 of 2016 With Criminal Misc.Application No. 14445 of 2016 In Criminal Appeal No. 136 of 2016

Decided on 21 September, 2016

BHARAT RATILAL RATHOD ***- Appellant(s).***

Versus

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

Law Covered:- ***Indian Penal Code, 1860 — Sections 363, 365, 376 r/w. 511 and 114 — Conviction under —Place of incident — Public area having commutation of large number of people — Rout preferred by the victim where the accused was residing — was not usual rout — victim projects the case of visiting temple for preferring such route — odd hours — raises suspicion — Three accused forcefully made the victim to sit on the bike (in all 04 persons on the bike) — Hostile eye witness —Discrepancy as to who had rescued the victim — Discrepancy regarding the clothes worn by the victim — Previous acquaintance —between victim & accused —contradiction regarding — Victim and the accused were residing in the same locality —Version of accused — case of grabbing money against the victim put forth by the accused —Prosecution case doubtful — Indian Evidence Act, 1872 — Section 3 — Relevant fact. (Para 7.2)***

Facts:- *It was alleged that on the relevant day when the victim was going by walk, the accused persons came on a motorcycle and stopped her and caught hold her, since she started shouting, one of the accused gagged her mouth whereas other one caught her hands; third accused started the bike and forcefully got her to sit and thereafter, took her to a disused place, when the victim started shouting the people residing in the near vicinity gathered and caught the accused.*

A complaint was lodged pursuant to which, investigation was carried out. Accused persons were convicted u/ss 363, 365, 376 r/w. 511 and 114, IPC. In the present appeal the honourable Gujarat High Court observed contradiction and improvements in the version of the prosecutrix. Other discrepancies in the prosecution case were also pointed out. Finally it was held that the prosecution has not proved its case beyond reasonable doubt. The accused were acquitted.

Law of relief:- ***Not following the usual rout by victim without any substantial reason is fatal to prosecution.***

Held:- In the above backdrop, following points weighed with the Court:

7.2.1 the place of incident is a public area having commutation of large number of people;

7.2.2 the victim prefers a route of Ram colony, where the accused were residing and incident in question had occurred, though she had another route;

7.2.3 the victim projects the case of visiting Dashama temple for preferring such route, that too at such odd hours; 7.2.4 three accused forcefully made the victim to sit on the bike (in all 04 persons on the bike) and thereby, kidnap her and take her to a lonely place nearby Gandhi Ashram;

7.2.5 the place from where the victim was kidnapped and the place where she was taken and the route, were public places having commutation of large public;

7.2.6 on hearing the shouts of the victim, PW-9 Harishkumar reaches the spot and catches the accused along with the victim, however, said witness Harishkumar (PW-9) has turned hostile and not supported the case of the prosecution;

7.2.7 there is discrepancy as to who had rescued the victim i.e. Harishkumar and other society people or the passers by; 7.2.8 in her deposition, the victim stated to have put on black top and black legging, however, as per the deposition of the panch witness of panchnama of recovery of clothes of the victim, exh. 22 viz. PW- 4 Mukeshbhai Darghaji Marwadi, exh. 21, the colour of the top put on by the victim is yellow;

7.2.9 initially, the victim states she does not know the accused, however, then she changes her version;

7.2.10 it is undisputed that the victim and the accused were residing in the same locality.

7.2.11 the accused No. 1 has, in his Further Statement, put forth a case of grabbing money against the victim. (Para 7.2)

Counsel:- ***For Appellant(s):*** *Mr Umesh A Trivedi & Mr. Madansingh O. Barod, Advocates.*

October 2016

For Respondent(s): *Mr. K.L. Pandya, APP.*

Cases Referred:-

1. *Rajoo & Ors. Vs. State of M. P., reported in 2009 (1) GLH 600. (Para 7.4)*
2. *Raju Ram & Ors. Vs. State of of M. P. (1994) 2 SCC 568. (Para 7.4)*
3. *Arokia Thomas Vs. State of T. N. (2006) 10 SCC 542. (Para 7.4)*
4. *Suresh Chaudhary etc. Vs. State of Bihar (2003) 4 SCC 128. (Para 7.4)*
5. *Jasubha Bharatsinh Gohil & Ors. Vs. State of Gujarat, reported in 1995 (1) GLH 368. (Para 7.4)*

JUDGMENT

G.B. SHAH, J.: - 1. Present appeals assail the judgment and order dated 12/01/2016, passed by the learned Additional Sessions Judge, Court No. 14, City Sessions Court, Ahmedabad in Sessions Case No. 176 of 2014, whereby, the original accused came to be convicted for the offences punishable under Sections 363, 365, 376 r/w. 511 and 114 of the Indian Penal Code, 1860 (for brevity, 'the IPC') and sentenced as under:

Offence	Sentence
363, 114 IPC	5 years' RI with fine of Rs.5,000/- each i/d. RI for one year
365, 114 IPC	5 years' RI with fine of Rs.5,000/- each i/d. RI for one year
376, 114 IPC	7 years' RI with fine of Rs.5,000/- each i/d. RI for one year

2. Facts of the case in nutshell are that on 27/08/2012 at about 8:00 p.m., when the victim was going by walk to Gayatri Hospital where her mother was serving, for getting money, at that time, the accused, residents of Ram colony, near Nava Vadaj, allegedly came on a motorcycle and stopped her and since the victim did not stop as was not knowing them, they get down from the bike; the original accused No. 1 told her as to why she did not love him to which, the victim replied as to why you were harassing her although she was not knowing them and hence, the original accused Nos. 2 and 3 caught hold her and since she started shouting, the original accused No. 2 gaged her mouth whereas, the accused No. 3 caught her hands; the accused No. 1 started the bike and forcefully got her to sit and thereafter, took her to a disused place and told her that they were to kidnap her; they also told her that they were going to rape her and

accordingly, the original accused No. 2 caught her hairs, the original accused No. 3 caught her hands and hence, the victim started shouting due to which, the people residing in the near vicinity gathered and caught the accused. The accused thus committed the offence alleged against them, for which, a complaint came to be lodged.

2.1 Pursuant to the complaint, investigation was carried out. After investigation, charge-sheet was filed and as the case was triable by the Court of Sessions, it was committed to the City Sessions Court, Ahmedabad. The trial Court framed charge against the accused, which was read over to them. The accused pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution produced oral as well as documentary evidence. In order to bring home the charge against the accused, the prosecution has examined following witnesses and also produced several documentary evidence, as under:

	ORAL EVIDENCE	
S/n	**Name of Witness**	**Exh.**
1	PW-1 Manubhai Narsinhbhai Parmar, Panch	11
2	PW-2 Brahmanand Chhotelal Guatam, Panch	14
3	PW-3 Nathubhai Rameshchand Parmar, Panch	17
4	PW-4 Mukeshbhai Darghaji Marwadi, Panch	21
5	PW-5 Victim	23
6	PW-6 Sanjuben Chetanbhai Vaghela, mother of victim	25
7	PW-7 Rajendrabhai Dalpatbhai Kanada	26
8	PW-8 Piyushkumar Tribhovandas Solanki, owner of the motorcycle	28
9	PW-9 Harishkumar Dalpatbhai Padhiyar	29
10	PW-10 Tusharbhai Govindbhai Padhiyar	32
11	PW-11 Prahladbhai Pitamberdas Makwana	33
12	PW-12 Kishorsinh Dalpatsinh Champavat, IO	35
	DOCUMENTARY EVIDENCE	
S/n.	**Document**	**Exh.**
1	Panchnama of physical condition of the accused	12

2	Panchnama of place of offence	15
3	Panchnama of seizing of muddamal	18
4	Panchnama of seizing of clothes of victim	22
5	Complaint	24
6	Report under Section 157 of the CrPC	34
7	Report as to message from the control room	36
8	Birth Certificate of the victim	39

2.2 At the end of the trial, after recording the Further Statements of the accused under Section 313 of the Code of Criminal Procedure, 1973 (for brevity, 'the Code') and hearing arguments on behalf of prosecution and the defence, the learned trial Judge concluded as aforesaid, by the impugned judgment and order. Accordingly, Criminal Appeal No. 136 of 2016 has been preferred by the original accused No. 1, whereas, Criminal Appeal No. 975 of 2016 has been preferred by the original accused No. 3 against conviction. The original accused No. 1 has also filed the Criminal Misc. Application No. 14445 of 2016 under Section 389 of the Code praying for suspension of sentence pending appeal.

3. It is reported that original accused No. 2 - Kamlesh Shankarbhai Makwana has not filed any appeal against conviction.

4. Heard Mr. Umesh A. Trivedi, the learned advocate for the appellant - applicant - original accused No. 1 in Criminal Appeal No. 136 of 2016 and Mr. Madansingh O. Barod, the learned advocate for the appellant - original accused No. 3 in Criminal Appeal No. 975 of 2016 and Mr. K. L. Pandya, the learned Additional Public Prosecutor for the respondent - State. For the sake of convenience the parties are herein after referred as per their original status.

4.1 The learned advocates for the accused contended that the judgment and order of the Sessions Court is against the provisions of law; the Sessions Court has not properly considered the evidence led by the prosecution and looking to the provisions of law itself, it is established that the prosecution has failed to prove the whole ingredients of the offence for which the accused are convicted and sentenced and thereby, the learned trial Judge has erred in coming to such a conclusion. They took this Court through the oral as well as the entire documentary evidence.

4.2 So far as Criminal Appeal No. 136 of 2016 is concerned, Mr. Trivedi, the learned advocate for the original accused No. 1, submitted that the learned trial Judge has failed to appreciate that the whole incident as narrated and deposed by the victim is a got up one and unbelievable and only with a view to grab the money from the accused, they have been falsely implicated in the crime, as it also reflected in the Further Statement of the accused under Section 313 of the Code. He further submitted that if the facts of the incident is taken into consideration, it is alleged that the victim was abducted on a motorcycle by the three accused, that too from a public area, which is indigestible and unbelievable and suggestive of the fact that the story put forward by the victim is concocted one. The victim and her mother, in their depositions respectively at exhs. 23 and 25, have admitted in their cross-examinations that the areas in question were the public area having several commuters and police deployment and under the circumstances it is impossible to abduct the victim by the accused No. 1 along with other two accused on a bike. The learned advocate for the accused No. 1 further submitted that there is improvement in the evidence of the victim as to the way she had chosen for visiting her mother as she has no reason to chose the route via Ram colony, which creates doubt in the case of the prosecution. Moreover, the victim, at one point of time deposes that she was rescued by the passers by and on the other, she states that she was rescued by the people resided in the nearby society and accordingly, two different versions of the victim herself is coming on record.

4.3 The learned advocate for the accused No. 1 further submits that it was stated by the victim in her evidence that the accused No. 1 had applied force and when she tried to resist, her clothes had torn. However, surprisingly, no injury marks had been found on the body of the victim or on the body of the accused No. 1 and or any other accused persons.

4.4 The learned advocate for the accused No. 1 has further submitted that there is no eye-witness to show that the accused No. 1, along with other two accused, had abducted the victim. Moreover, in that regard, no witness from Ram colony area has been examined by the prosecution, which creates doubt in the prosecution case and substantiates the case of the defence that with a view to grab money from the accused, such false case has been lodged against them.

4.5 He further submitted that the mother of the victim, in her deposition at exh. 25 has stated that three accused persons, who

belonged to the same locality, had been harassing the victim since two years, however, she did not take any care to complain either to the parents of the accused or to the police. Thus, the conduct of the mother of the victim is also doubtful.

4.6 The learned advocate for the accused No. 1 further submitted that there is material contradictions as to the time of the incident. The victim has stated that the incident had taken place at about 20:30 hours whereas, her mother has deposed that police had called her about 20:00 or 21:00 hours when she was at hospital.

4.7 It is further submitted that PW-7 Rajendra Dalpatbhai Kanada in his deposition at exh. 26 has deposed that one Harishbhai (PW-9) had caught the accused and the victim had narrated the whole incident, however, PW-9 Harishkumar Dalpatbhai Padhiyar, exh. 29, has not supported the case of the prosecution. Moreover, from the deposition of PW-7 it appears that his statement was not recorded in his presence. Moreover, he was not sure about the identification of accused Nos. 2 and 3. Thus, believing the deposition of PW-7 on the point of apprehending the accused and the victim from the lonely place hearing the screaming of the victim, is without any substance. Thus, there are serious lacuna in the investigation also.

4.8 The learned advocate for the accused No. 1 further submitted that it was the case of the prosecuted that some one from the public had called for police help by dialing help number - 100 and the police reached and all were taken to the nearest police station, however, there is nothing on record to substantiate such facts. Moreover, there is no, even attempt on the part of the accused to commit the rape and accordingly, the conviction and sentence for the offence punishable under Section 376 r/w. 511 of the IPC is illegal. Moreover, for the conviction for the offence punishable under Section 363 of the IPC, except bare words of the victim, there is no evidence worth to convict the accused. Moreover, the conviction for the offence punishable under Section 365 of the IPC is apparently illegal for the reason that the victim was never confined secretly and/or wrongfully. 4.9 The learned advocate for the accused No. 1 further submitted that even there is contradiction as to the clothes put on by the victim at the time of the alleged incident as the victim has, in her deposition at exh. 23, deposed that she had worn black top and black legging, whereas, as per the deposition of the panch witness of panchnama of recovery of clothes of the victim, exh. 22 viz. PW-4

Mukeshbhai Darghaji Marwadi, exh. 21, it is clear that the colour of the top put on by the victim was yellow. This witness has also identified the clothes. Therefore, with a view to show that the force was used while abducting her clothes were torn off, falls to the ground as no such facts even have been narrated by the prosecution witness in whose presence the clothes were recovered. Moreover, looking to the deposition of PW-4 it is clear that the victim had never produced any clothes but a woman officer had brought out the clothes from the bag. He further submitted that as per the deposition of PW-4, no panch slips have been found from the clothes of the victim, recovered under a panchnama. Therefore, the theory of clothes of the victim which was torn of does not inspire any confidence. 4.10 Moreover, he submitted that the victim and the accused resided in the same locality and hence, the assertion of the victim that she did not know the accused since beginning does not inspire any confidence and only with a view to eliminate the possibility of victim might have gone voluntarily with the accused. In fact, as per the evidence on record, it appears that the victim was knowing all the accused by name since long.

4.11 Moreover, he submitted that assuming without admitting that the victim was below 15 years of age, however, looking to the tenor of her deposition it appears that she had voluntarily gone with the appellant and other co-accused from a busy locality and therefore, no offence under Sections 363 and 365 of the IPC can be attracted.

4.12 Making above submissions, the learned advocate for the accused No. 1 requested to allow the Criminal Appeal No. 136 of 2016 filed by the appellant - original accused No. 1, setting aside the impugned judgment and order as no ingredients of the said offence have been proved.

5. So far as Criminal Appeal No. 975 of 2016, filed by the original accused No. 3 against conviction is concerned, Mr. Barod, the learned advocate for the accused No. 3, as such, adopted almost all the submissions of the learned advocate for the accused No. 1. He submitted that the prosecution has failed to prove the whole ingredients of the offence alleged against the accused beyond reasonable doubt . He submitted that the learned trial Judge has failed to consider the fact of love affair between the accused No. 1 and the victim and hence, she willingly had gone to meet the accused No. 1. The learned advocate for the accused No. 3 further submitted that

even the panchas of recovery and discovery panchnama have also turned hostile and not supported the case of the prosecution. Moreover, in support of its case, the prosecution has not examined any independent witness. Eventually, he requested that looking to the aforesaid facts and circumstances of the case so also role attributed the accused No. 3, he submitted that it is clear case for interference at the hands of this Court and requested to allow the appeal filed by the accused No. 3 in the interest of justice.

6. Whereas, Mr. Pandya, the learned Additional Public Prosecutor for the respondent - State, supported the impugned judgment and order and submitted that the same having been passed in accordance with law, does not call for any interference. It is submitted that the prosecution has successfully proved the case against all the accused beyond reasonable doubt and the learned trial Judge, after taking into consideration all the aspects of the matter, has come to such a conclusion, which is just and proper. He, taking this Court to the entire oral as well as the documentary evidence on record, submitted that the prosecution has successfully proved its case beyond reasonable doubt as almost all the prosecution witnesses have supported the case of the prosecution and the documentary evidence also find corroboration with the same. He further submitted that there may be some contradictions in the evidence adduced by the prosecution, however, the fact remains that the offence had been committed by the accused, which is proved by the substantive evidence on record and accordingly, for minor contradictions, the whole case of the prosecution, which is otherwise proved beyond doubt, cannot be discarded or disbelieved. Moreover, he submitted that when the learned trial Judge has dealt with each and every aspect of the matter minutely and for coming to such a conclusion, plausible reasons have been given, this Court may not interfere in appeal. Making above submissions, he requested to dismiss the present appeals as having no merits.

7. I have considered the rival submissions made by the learned advocates for the parties and also gone through the evidence on record and re-appreciated and re-evaluated the same on the touchstone of the latest decisions of the Hon'ble Apex Court. I have also perused the impugned judgment and order.

7.1 It was the case of the prosecution that while the victim was going to his mother at the hospital where she was serving by walking,

the accused came on bike and stopped her; the accused No. 1 talked with her and then, forcefully made her to sit on the bike and kidnapped her; they took her to a barren place near the Gandhi Ashram where they made known their intention of rape and when the victim resisted and shouted, the people in the locality came and rescued her. If the facts of the case are taken into consideration minutely, the incident had occurred at night, between 8:00 p.m. and 9:00 p.m. near Ram colony, Nava Vadaj area from where, the victim allegedly was kidnapped. In this if the deposition of victim at exh. 23 is referred, she has supported her version in the complaint at exh. 24, however, if her evidence in cross-examination is perused, there appears some improvements in the same as for the first time the fact of visiting the Dashama temple by the victim has been coming, that too, at such odd time.

7.2 In the above backdrop, following points weighed with the Court:

7.2.1 the place of incident is a public area having commutation of large number of people;

7.2.2 the victim prefers a route of Ram colony, where the accused were residing and incident in question had occurred, though she had another route;

7.2.3 the victim projects the case of visiting Dashama temple for preferring such route, that too at such odd hours; 7.2.4 three accused forcefully made the victim to sit on the bike (in all 04 persons on the bike) and thereby, kidnap her and take her to a lonely place nearby Gandhi Ashram;

7.2.5 the place from where the victim was kidnapped and the place where she was taken and the route, were public places having commutation of large public;

7.2.6 on hearing the shouts of the victim, PW-9 Harishkumar reaches the spot and catches the accused along with the victim, however, said witness Harishkumar (PW-9) has turned hostile and not supported the case of the prosecution;

7.2.7 there is discrepancy as to who had rescued the victim i.e. Harishkumar and other society people or the passers by; 7.2.8 in her deposition, the victim stated to have put on black top and black legging, however, as per the deposition of the panch witness of panchnama of recovery of clothes of the victim, exh. 22 viz. PW- 4

Mukeshbhai Darghaji Marwadi, exh. 21, the colour of the top put on by the victim is yellow;

7.2.9 initially, the victim states she does not know the accused, however, then she changes her version;

7.2.10 it is undisputed that the victim and the accused were residing in the same locality.

7.2.11 the accused No. 1 has, in his Further Statement, put forth a case of grabbing money against the victim.

7.3 If the above aspects, much less the contradictions and improvements, are considered on the touch stone of the evidence on record, the prosecution case creates doubts as it denotes improbability and unbelievable due to contradictions and improvements in the same. For the first time the victim projects the case of visiting the Dashama temple, that too at such timings. Moreover, the conduct of the victim is also doubtful as the place from which she was lifted and the place where she was taken and the route she preferred, all were the public places and the victim could have resisted such happening besides shouting. Further, it appears highly improbable that three accused lift the victim on a bike and take her to a different place that too at a time when there is much public commutation. Moreover, in the route to Gandhi Ashram from the place from where the victim was lifted, besides public commutation, there remains police deployment. Moreover, there is contradiction as to the colour of the top put on by the victim. As per the victim, it was of black colour, whereas, as per the panch witness (PW-4) it was yellow. Moreover, as per the deposition of the victim, while the accused No. 1 tried to force her and commit rape, she had resisted, however, it has come on record that there were no marks of tearing of clothes and/or any injury marks on the body either of the victim or the accused.

7.4 Thus, on re-appreciation of the facts and circumstances of the case vis-a-vis the evidence on record in entirety, it appears that the prosecution has failed to prove the case against the accused beyond reasonable doubt as many contradictions have come to the fore, from which the prosecution has failed to come out and the learned trial Judge having failed to considered the aforesaid aspects and accordingly, has erred in coming to such a conclusion and the accused are required to be given the benefit of doubt. Moreover, the learned Additional Public Prosecutor is not in a position to show any evidence to take any other view than the above and accordingly, the

impugned judgment and order is required to be set aside by quashing and the accused are required to be acquitted by giving benefit of doubt. 7.5 At this juncture it is pertinent to note that the accused No. 2 has not preferred any appeal against conviction, however, the fact remains that the prosecution has failed to establish its case against all the accused and the impugned judgment and order is not tenable in the eye of law and all the accused persons are required to be acquitted. In this regard a decision of the Hon'ble Apex Court in the case of ***Rajoo & Ors. Vs. State of M. P., reported in 2009 (1) GLH 600*** would be beneficial. In the said decision, in para 16, it is held by the Hon'ble Apex Court that, 'As already noted above, Raju, son of M. Billya did not file an appeal in this court. In the light of the fact that we have found the prosecution story to be doubtful, Raju too must be given the benefit of doubt in the light of the judgments in ***Raju Ram & Ors. Vs. State of of M. P. (1994) 2 SCC 568; Arokia Thomas Vs. State of T. N. (2006) 10 SCC 542*** and ***Suresh Chaudhary etc. Vs. State of Bihar (2003) 4 SCC 128.*** We, accordingly allow the appeals and acquit the present appellants, as also Raju son of M. Billya'. Moreover, in the case of ***Jasubha Bharatsinh Gohil & Ors. Vs. State of Gujarat, reported in 1995 (1) GLH 368,*** the Hon'ble Apex Court has observed in para 7 that, '....These four appellants namely , A-2, A-3, A-6 and A-10, therefore, deserve to be given the benefit of the doubt and acquitted. We may hasten to add that A-10 has not filed any appeal in this Court but since the infirmities which attach to the cases of A-2, A-3 and A-6 are the same which attach to his case also, we cannot deny the benefit of our judgment to him also only because he has not filed any appeal against his conviction and sentence in the same manner as we set aside the conviction and sentence of A-2, A-3 and A-6 by giving them the benefit of the doubt'. Accordingly, though in the case on hand, the original accused No. 2 has not filed any appeal, however, since the infirmities which are attached to the case of appellants herein - original accused Nos. 1 and 3, the Court deems it proper to extend the benefit of the same to the accused No. 2 also i.e. Kamlesh Shankarbhai Makwana.

8. In view of the aforesaid discussion, present appeals succeed. The impugned judgment and order dated 12/01/2016, passed by the learned Additional Sessions Judge, Court No. 14, City Sessions Court, Ahmedabad in Sessions Case No. 176 of 2014, is hereby set aside. The appellants - original accused Nos. 1 and 3 as well as original accused No. 2 Kamlesh Shankarbhai Makwana are acquitted of the charge for

which they are convicted and sentenced. The accused are in jail and accordingly, they are directed to be set free forthwith if not required in any other offence. Registry to return the R&P to the trial Court forthwith. In view of main appeal is allowed, no orders are required to be passed in Criminal Misc. Application No. 14445 of 2016 and the same is disposed of accordingly.

Result:- Appeals allowed.

ABC 2016 (II) 438 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(G.B. Shah, J.)
Criminal Appeal No. 107 of 2002
Decided on 22 September, 2016

THAKOR NAGJIBHAI CHANDUJI ***- Appellant(s).***

Versus

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

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 326—Identification of the accused —vital contradictions regarding — no TI Parade—Arrest of the accused — manner of — no evidence regarding — Scene of offence— contradiction —Held, alleged eye-witness was not the eye-witness—prosecution has failed to prove its case against the present appellant - accused beyond reasonable doubt— Acquittal. (Para 5.2, 5.4 &5.5)***

(B) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Name of the accused — discloser to eye witness — by some other person — No Test Identification Parade conducted — Fatal to prosecution. (Para 5.1 & 5.2)

(C) Indian Evidence Act, 1872 — Section 3 — Relevant fact— Previous acquaintance —accused was not known to injured — Accused was produced by the police before the injured — No Test Identification Parade conducted — Fatal to prosecution. (Para 5.2)

Facts:- *As per the prosecution case accused allegedly came by his bicycle to injured witness and asked him to reset the chain of his bicycle for which the injured tried but failed and hence, the accused got excited and assaulted him by the knife on the upper side of the stomach and thereby, caused severe injuries to him.*