

GJBK230004062025



Received On : 13/05/2025

Registered On : 13/05/2025

Decided On : 17/08/2026

 Duration: : Y M D
 01 03 04
FORM - A

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, THARAD Present: P. M. Sayani (Special Judge (POCSO)) [Date of the Judgment : 17.08.2026] [Special POCSO Case No. 08/2025] (FIR No. 11195030250051/2025 registered at Mavsari Police Station punishable under Section 137(2), 87, 65(1), 64(2)M of the BNS and Section 4 and 6 of the POCSO Act)	
COMPLAINANT	State of Gujarat.
REPRESENTED BY	Ld. APP Mr. R. D. Joshi
ACCUSED	1. Bharatsinh Kajaji Rajput (Dod) 2. Dilipkumar Lavjibhai Parkhabhai Joshi
REPRESENTED BY	Mr. P. K. Varan, Ld. Advocate for the Accused No.1 Mr. U. A. Joshi, Ld. Advocate for the Accused No.2

PART - B

Date of Offence	12.03.2025
Date of FIR	27.03.2025
Date of Chargesheet	13.05.2025
Date of Framing of Charges	01.09.2025
Date of commencement of evidence	15.09.2025
Date on which judgment is reserved	03.08.2026
Date of the Judgment	17.08.2026
Date of the Sentencing Order, if any	17.08.2026

Accused Details :

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release of Bail	Offence charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of section 428, Cr.PC
1	Bharatsinh Kajaji Rajput (Dod)	17.04.2025	In J.C.	137(2), 87, 65(1), 64(2)M of the BNS and Section 4 and 6 of the POCSO ACT	Convicted	As per Final Order	As per Record
2	Dilipkumar Lavjibhai Parkhabhai Joshi	03.04.2025	In J.C.	137(2), 87, 65(1), 64(2)M of the BNS and Section 4 and 6 of the POCSO ACT	Convicted	As per Final Order	As per Record

FORM - C**LIST OF Prosecution / Defence / COURT WITNESSES****A. Prosecution**

Rank	Exh.	Name	Nature of Evidence
PW-1	15	Victim	Victim/Complainant
PW-2	20	Father of the victim	Witness
PW-3	23	Jaydeepsinh Danaji Rajput	Medical Witness
PW-4	25	Vijaybhai Jivabhai Odedara	Medical Witness
PW-5	29	Sanjaybhai Khetabhai Patel	Medical Witness
PW-6	31	Chelji Balubha Vaghela (Sub-Registrar, Tharad Nagar Palika)	Age Witness
PW-7	34	Danabhai Gangabhai Avra	Panch Witness
PW-8	55	Alpeshkumar Somalal Modi	Panch Witness
PW-9	57	Raghudan Shankardan Gadhvi	Police Witness
PW-10	60	Rajendrakuma Jivrambhai Chaudhary	I.O.
PW-11	109	Vishal Ravindra Solanki	Witness
PW-12	110	Mridul Upendrabhai Bhatt	Witness

B. Defence Witnesses, if any : Defence has not examined any witness.

LIST OF Prosecution / Defence / COURT EXHIBITS**A. Prosecution :**

Sr. No.	Exhibit	Description
1	16	Complaint of the complainant
2	24	Medical certificate of the victim
3	26-27	Medical certificate of the accused
4	30	Medical certificate of the victim vide MLC No. 310/2025
5	33	Birth Certificate of the victim
6	35	Certificate with regard to physical condition of victim
7	52	Spot Panchnama
8	53	Panchnama regarding recovery of mobile of victim
9	56	Muddamal Recovery Panchnama
10	58	Suchi Patrak
11	61	Yadi for appointment of Government Panchas
12	62	Yadi for presence of government Panchas
13	63	Yadi regarding recording of statement of victim under Section 183 of the BNSS
14	64	Yadi regarding issuance of medical examination certificate of the victim
15	65	Yadi regarding issuance of medical examination certificate of the victim sent to Referral Hospital, Tharad
16	66	Yadi regarding issuance of medical examination certificate of the accused
17	67	Yadi regarding issuance of certificate after medical examination of the accused
18	68	Ravanagi Patrak-003
19	69	Ravanagi Patrak-004
20	70	Ravanagi Patrak-005
21	71	Ravanagi Patrak-008
22	72	Ravanagi Patrak-007
23	73	Ravanagi Patrak-0010
24	74	FSL Yadi
25	75	FSL Receipt
26	76	FSL Report
27	77	FSL Yadi

28	78	FSL Receipt
29	79	FSL Report
30	80	FSL Yadi
31	81	FSL Receipt
32	82	FSL Report
33	83	FSL Yadi
34	84	FSL Receipt
35	85	FSL Report
36	86	FSL Report
37	87	FSL Extraction Report, Annexure-A
38	88	FSL Extraction Report, Annexure-B
39	89	FSL Yadi
40	90	FSL Receipt
41	91	FSL Report
42	96	Yadi for bringing call details
43	97	Form No.2 for bringing call details
44	98	Annexure-IX
45	99	Call details of victim's mobile
46	100	Call details of accused Bharatsinh's mobile No.9537343884
47	101	Call details of accused Dilip Joshi's mobile No. 9510194470
48	102	Call details of accused Bharatsinh's mobile No. 8487836918
49	103	Yadi regarding sending of CDR and Certificate
50	104	Certificate under Section 63(4)(c) issued by Airtel
51	105	FSL Receipt
52	106	FSL Report
53	107	FSL Certificate under Section 63(4)(c) of BSA
54	108	FSL Annexure-A

-::JUDGEMENT::-

1. In view of the Section 33(7) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act), the name of the victim child, her family members

and any other person or place, capable of identifying the victim child, are not stated herein as her identity not to be disclosed. Therefore, during the discussion of evidence, it is discussed as according.

Brief Facts:-

2. The brief facts giving rise to the present case are that on 27.03.2025, the complainant who is the victim had made a complaint at P. S. Mavsari. It is stated in the complaint by the complainant that while she was sitting at her grandfather's aforesaid kirana shop, accused Bharatsinh Kajaji Rajput, who was working on road construction in her village, came to her shop and gave her his mobile number 9537343884, and both of them were having conversations of love with each other. It is further stated in the complaint that after few days, accused Bharatsinh came to the kirana shop and informed the victim/complainant that he would come to meet her that night and would also bring a mobile phone and on that day, at around 12 o'clock in the night, the accused Bharatsinh called her outside her house and took her to the open space adjacent to her house, where the accused gave the victim an Android phone with a SIM card bearing the number 8780238544 and told the victim that he loved her very much and had loving conversations with the victim. It is further stated that at that time, against the will of the victim, the accused established physical relations with her. It is further stated by the complainant that in this manner, accused Bharatsinh, by stating that he loved her, lured and enticed her, and for approximately one year, he forcibly established physical relations with her against her will and this continued for about

one year. It is further stated by the complainant/victim that during this one year period, about four months ago from the date of complaint, accused Dilip Lavjibhai Joshi, also met the victim at her shop and gave her his Instagram ID and an Android phone with a SIM card and for two days, he had loving conversations with the victim on the ID given by him and thereafter, accused Dilip Lavjibhai Joshi, under the pretext of loving the victim, lured and enticed her and at night, at around 12 o'clock, the accused Dilip called the victim outside her house, took her to the open space adjacent to her house, and against her will, established physical relations with her for three to four times at night. The complainant has further stated in the complaint that thereafter, accused Bharatsinh used to meet her occasionally and against her will, established physical relations with her and one day prior to 12.03.2025, accused Bharatsinh called the victim and said that he loved her very much and could not live without her and would come outside the house of victim at 1 o'clock at night, so the victim should come out, and both of them would elope and thereafter, on 12.03.2025, at around 1 o'clock in the night, accused Bharatsinh came to her house on his bike and victim took her bag of clothes, and sat on accused Bharatsinh's bike, and both of them proceeded from Dheriyana to Dhima, and from there via Vav, Suigam, to Radhanpur, and reached Khawda in Kutch and upon reaching Khawda, accused Bharatsinh received a phone call from his home, due to which he left his bike at Khawda and both of them started returning by bus and accused Bharatsinh got down at Radhanpur, and the complainant got down at Tharad and called her father, who came to take her from

Tharad, and she returned home. It is further stated in the complaint by the complainant that at that time, she was very scared and did not understand anything, so she did not inform her mother and father about the aforesaid incident at that time, however, one day before filing of complaint, she informed her mother, father, and her maternal uncle about the aforesaid incident that happened with her and thereafter, she has filed the present complaint against both the accused persons at Mavsari Police Station.

3. On the basis of the complaint, the FIR No. 11195030250051/2025 was registered at Mavsari Police Station for the offences punishable under Section 137(2), 87, 65(1), 64(2)M of the BNS and Section 4 and 6 of the POCSO Act against both the accused persons.

4. After completion of the investigation, the charge-sheet had been filed in this court and it was registered as Special (POCSO) Case No. 08/2025. The copy of the charge-sheet was supplied to the accused persons, and the Ld. A.P.P had opened the case of the Prosecution against the accused. On 01.09.2025 a charge for the offences punishable under sections 137(2), 87, 65(1), 64(2)M of the BNS and Section 4 and 6 of the POCSO Act was framed against the accused persons at Exh.12, to which the accused persons pleaded not guilty and claimed trial.

5. The Prosecution has examined 12 witnesses and thereafter, the Ld. A.P.P. for the state closed the Prosecution evidence vide purshish at Exh.111. The statement of the accused persons were recorded under Section 313 of the Cr.P.C (Section 351 of the BNSS) wherein they denied the allegations and stated that they

had been falsely implicated in the present case. The accused persons have not lead any Defence evidence. This court has heard the final arguments on behalf of Prosecution as well as the Defence.

6. The Ld. APP for the State has argued that the Prosecution has successfully proved its case beyond the reasonable doubt. It is further argued by the Ld. APP for the State that during the trial, the birth certificate of the victim which is produced by the Prosecution at Exh.33, shows that the date of birth of the victim is 08.06.2010 and the birth certificate at Exh.33 proves that the victim was less than 18 year of age on the date of incident i.e. 12.03.2025 and she falls within the definition of child as described under section 2(d) of the POCSO Act. It is further argued by the Ld. APP for the State that during the trial, the Prosecution has examined the victim/complainant as PW-1 at Exh.15 and in her testimony, the victim has categorically stated that the accused Bharatsinh came to meet her, called her and said that he was outside and when the victim went to the outer side, the accused took her to the neighbouring house and established physical relations with victim. Ld. APP has further argued that the victim has categorically stated that the accused Bharatsinh continuously raped the victim for one year and he used to come to victim every week or fifteen days and establish physical relations with victim. It is further argued that there are also clear allegations against the accused Dilipbhai Lavjibhai Joshi that he gave the mobile to the victim and said on the phone that he would come to meet the victim and went outside the house of the victim and after called out the victim outside her house, he took

her to the neighbouring house and established physical relations with the victim six times in three days. It is further argued that the allegations against the accused persons are clearly established from the CDR available on record. Ld. APP for the state has further argued that the testimony of the PW-1/victim establishes that the accused persons had forcibly made sexual relations with her and her testimony is also corroborated by the testimony of other Prosecution witnesses. It is further argued by the Ld. APP for the State that it is settled position of law that in the offence of sexual assault and rape, the accused can be convicted on the basis of sole testimony of the victim. It is further argued that the Prosecution has proved its case against the accused persons and therefore, presumption under Section 29 & 30 shall be drawn against the accused persons and accused persons have not brought any material on record to rebut the presumption. The Ld. A.P.P. for the state has further argued that in view of the evidence led by the Prosecution, the offences punishable under section 137(2), 87, 65(1), 64(2)M of the BNS and Section 4 and 6 of the POCSO Act are successfully proved against the accused beyond reasonable doubt and the accused be convicted for these offences with the strictest of punishment.

7. On the other hand, the Ld. Defence Counsel has argued that Prosecution has miserably failed in proving its case against the accused no.1 and over and above oral arguments, Ld. Advocate for the accused no.1 has also filed written arguments at Exh.118. It has been submitted by the Ld. Counsel for the accused no.1 that the FIR in the present case has been lodged approximately after 15 days, and no reason for the delay in

lodging the complaint has been mentioned in the complaint and in the said FIR, the exact time at which the incident occurred has not been mentioned anywhere. It is further argued that in the present case, the testimony of the victim in this case has been recorded at Exhibit-15 and the perusal of her testimony shows that there are contradictions in the circumstances of the FIR, her testimony before the court and her statement under Section 183 of the BNSS and as per the FIR, one day prior to 12/03/2025, accused Bharatsinh called the victim and said that he loved her very much and could not live without her, and that the accused would come outside the victim's house at 1 o'clock at night and the victim should come out and both of them would elope and thereafter, on 12/03/2025, at around 1 o'clock at night, the accused Bharatsinh came in front of the house of the victim with his bike and the victim took her bag of clothes, came out of her house and sat on Bharatsinh's bike but the victim has stated in her testimony that she does not remember the exact the date but she had a conversation with Bharatsinh and he told her that he would come to take her after two days and that both of them would elope. It is further submitted that thereafter, after two days, Bharatsinh came to victim's village with a bike and told the victim to come out of the house and to write a chit and place it on the cot and the accused Bharatsinh came near the temple in front of victim's house at 2 o'clock at night and honked, so the victim went out and sat on the bike. It is further argued that looking at these facts, as per the statements of the victim, no specific and factual information is being presented by the prosecution side, and contradictions arise, therefore, as per the complaint and the

court statements, the prosecution's allegations regarding the alleged offence do not get any support. It is further argued that the victim shows the place of the alleged incident in the offence, but in the FIR, the statement under Section 183 of the BNSS, and the testimony before this Court, different places have been shown, therefore, no such incident has occurred at all, resulting in contradictions in showing the place of the alleged incident. Ld. Advocate for the accused no.1 has further argued that regarding the age of the victim in the alleged incident, it is primarily necessary to obtain the birth record but the prosecution has produced the birth certificate in which the name of the child is not mentioned and the date of birth is shown as 08/06/2010, with the place of birth shown as Dharanidhar Hospital, Tharad, however, the victim has also produced her school leaving certificate in which the date of birth is shown as 31/05/2010 and the place of birth is shown as Phangdi, Taluka Vav, District Banaskantha and there is a contradiction therein, which raises doubt regarding the age of the victim. It is further argued that the victim, in her cross-examination, admitted that during the period of the so-called incident, she used to talk on the phone with Dhengabhai Dajabhai Prajapati. It is further argued that the victim has stated the fact of accused no. 1 giving a mobile, but in the special statement dated 29/03/2025, she has stated that the accused no.1 had not given her any mobile phone or SIM card and the perusal of all the statements of the victim shows that there are contradictions in all matters, from which it prima facie appears that the said incident is false and fabricated. Ld. Counsel for the accused no.1 has further argued that the victim's father

has been examined as PW-2 at Exhibit-20, in which there are mainly contradictions between his police statement and his court statement and in the cross-examination, it is mainly stated that it is true that in the application they gave at Palanpur, there were seven to eight names as accused and before lodging the complaint, all the family members gathered at home, discussed and deliberated, and then the complaint was lodged. It is further argued that as per the testimony of the victim's father, it has never happened that the victim, used to sit in the shop on any day, therefore, there are contradictions in the complaint, facts and statements. It is further argued that the FSL report have also not supported the Prosecution case and in the statements of the Medical Officer examined, no evidence has come against the accused no.1, nor does it emerge that the accused no.1 committed any such offence. It is further argued that in the cross-examination, the Medical Officer has stated that it is true that after examining the body of the victim, he had not formed any opinion that any rape had been committed upon her and also admitted that there were no visible marks of injury on the body of the victim and he had not seen the victim's birth certificate at that time, thus, none of the statements of the Medical Officer are in accordance with the alleged incident against the accused no.1. It is further argued that the Investigating Officer who has been examined as PW-10, has stated in his cross-examination that it is true that the complaint of the victim was forwarded from the D.S.P. Office to its Police Station and before this complaint was forwarded, the victim had already lodged her complaint in Mavasari Police Station and the I.O. has admitted that he found

contradictions in these two complaints. It is further argued that the prosecution has not been able to prove its case beyond reasonable doubt.

7/1. The Ld. Advocate for the accused persons have relied upon the judgments of 1. Hon'ble Supreme Court in Debraj Dutta vs. The State of West Bengal & Anr (Slp (Crl.) No. 16838/2025), 2. Hon'ble Bombay High court in Mohan Ambadas Meshram vs. State of Maharashtra (Criminal Appeal No. 606/2017) and 3. Hon'ble Sikkim High Court in Anish Rai vs. State of Sikkim (Crl. A. No. 35/2017) and have submitted that considering the ratio laid down in these judgments, the accused persons may be acquitted. The Ld. Counsels for the accused persons have submitted that in view of the cumulative inconsistencies, absence of corroborative medical and doubtful age proof, the Prosecution has failed to prove the charges beyond reasonable doubt. The accused persons are therefore entitled to the benefit of doubt. It is further argued that the Prosecution has failed to prove the foundational facts of the case and therefore, presumption under Section 29 & 30 cannot be drawn against the accused persons. With these arguments, Ld. Advocate for the accused persons have submitted that the Prosecution has miserably failed to prove its case against the accused persons and they deserve to be acquitted in the present case.

8. In view of the aforesaid evidence and arguments, the following issues are raised for determination of this case:

- (i) Whether the Prosecution has successfully proved that the victim was a minor and a child below the age of 18 year, on 12.03.2025?

- (ii) Whether the Prosecution has successfully proved that on 12.03.2025, the accused no.1 had kidnapped or abducted the victim in order to compel her to marry or to have sexual intercourse and he had committed the offences under sections 137(2), 87 of the BNS?
- (iii) Whether the Prosecution has successfully proved that the accused persons had committed the aggravated penetrative sexual assault / rape with the victim, and committed the offence under section 65(1), 64(2)M of the BNS and Section 4 & 6 of the POCSO Act?
- (iv) What order?

9. My findings to the above issues are as follows.

- (i) In the Affirmative.
- (ii) In the Negative.
- (iii) In the Affirmative.
- (iv) As per final order.

:-REASONS:-

Issue No. i :-

10. In this issue, the Prosecution required to prove that the victim was minor child below the age of 18 years on the date of incident. In the cases of Protection of Children from Sexual Offences Act, 2012, one of the foundation fact is that the victim should be below the age of 18 years and as per Section 2(d) of the Act, child means any person below the age of 18 years. Therefore, the age of the victim is one of the important factor for foundational fact. In this case, the Defence has seriously disputed the age of the victim with reference to the birth certificate relied upon and has argued that the name of the child is not mentioned in the said certificate. The Defence has further argued that the

medical evidence also does not conclusively establish minority of the victim. Therefore, the age of the victim is very much important with reference to the material available on record.

10.1. Section 35 of the POCSO Act provides the manner in which, the age of the victim can be determined and ascertained and as per Section 34 of the POCSO Act, it can be determined as per the provision of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 94 should be referred for ascertainment of age of victim. It is also relevant to consider Section 35 of the Evidence Act which provides provisions related to entry in public record or to electronic record made in performance and duty and these provisions are reproduced and it reads as under :-

Section 35. Relevancy of entry in public record or an electronic record made in performance of duty. -

An entry in any public or other official book, register or record or an electronic record stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record is kept, is itself a relevant fact.

“Section 34 : Procedure in case of commission of offence by child and determination of age by Special Court

(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

XXXX

XXXX

XXXX

XXXX

“Section 94 of the J. J. Act -Presumption and determination of age

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining --

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

10.2 The Hon'ble Supreme Court, in 2013 (0) AIJEL-SC 54136 SUPREME COURT OF INDIA Jarnail Singh Vs State Of Haryana has observed in para-20 & 21 that :-

20. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

"12. Procedure to be followed in determination of Age.-

(1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be the Committee referred to in Rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

4. If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

5. Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub- rule (3) of this rule.

6. The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub- rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.

21. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW - PW6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied upto class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW-PW6, on the next available basis, in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW4), to prove the age of the prosecutrix VW - PW6. Satpal (PW4) was the Head Master of the Government High School, Jathlana, where the prosecutrix VW - PW6 had studied upto class 3. Satpal (PW4) had proved the certificate Exhibit- PG, as having been made on the basis of the school records indicating, that the prosecutrix VW - PW6, was born on 15.5.1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the view, that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW - PW6. It would also be relevant to mention, that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW-PW6. The deposition of Satpal-PW4 has not been contested. Therefore, the date of birth of the prosecutrix VW - PW6 (indicated in Exhibit P.G., as 15.7.1977) assumes finality. Accordingly it is clear, that the prosecutrix VW-PW6, was less than 15 years old on the date of occurrence, i.e., on 25.3.1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW - PW6 was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix VW-PW6 had accompanied the accused-appellant Jarnail Singh of her own free will, and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.

10.3 The Hon'ble High Court of Gujarat, in 2018(o) AIJEL-HC 239688 in the case of Naranlhai Shantilal Tadvī vs. State of Gujarat has laid down in para-7.3 to 7.6 as under:

56 The Hon'ble High Court of Gujarat, in 2018(o) AIJEL- HC 239688 in the case of Naranlhai Shantilal Tadvī vs. State of Gujarat has laid down in para-7.3 to 7.6 as under:POCSO/159/2023.

7.3 In the instant case, it could be noticed from the deposition of both the parents, (Mother PW8) Madhuben Rameshbhai Vaghri and

(father PW-11) Rameshbhai Kabyanbhai Vaghri that they had five children and out of five children, two sons had died. At the time when they deposed, they had three children and the prosecutrix is the eldest of these three. Her date of birth is 02.03.1999, of course the father had admitted in the cross-examination that he had not got her birth registered with the Panchayat and when he went to the school for admitting the girl, he had entered her birth date on presumption only. She was studying in 7th standard at the time the incident in question happened and therefore it was almost before 7-8 years of the same, her birth date in the School was registered as 02.03.1999. It would not have been contemplated that she would be victim at any point of time of such crime and there may be a need of any manipulation of her birth date.

7.4 The decision in the case of *State of Madhya Pradesh vs Anoop Singh* reported in (2015) 7 SCC 773, which speaks of determination of the age of the prosecutrix of rape deserves reference at this stage. The Apex Court has held that ossification test is not a must for determination of the age when birth certificate and school leaving certificate are available. It was the case where there were two certificates and the theory of consent was propounded by the accused. The Court referred the decision of *Mahadeo S/o Kerba Maske versus State of Maharashtra and Another* reported in (2013) 14 SCC 637 to hold that it is applicable in determining the age of victim of rape, which speaks about Rule 12(3) of the juvenile Justice (Care and Protection of Children) Rules, 2007.

7.5 The findings and observations are reproduced as "14. This Court in the case of *Mahadeo S/o Kerba Maske Vs. State of Maharashtra and Anr.*, (2013) 14 SCC 637, has held POCSO/159/2023 that Rule 12(3) of the juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under:

"12(3): In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. and, while passing orders

in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

15. This Court further held in paragraph 12 of Mahadeo S/o Kerba Maske (*supra*) as under:

"Under rube 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rube 12(3)(a) (i) to (iii), the medical opinion can be sought for. In the light of such a statutory rube prevailing for ascertainment of the age of POCSO/159/2023 the juvenile in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of the ascertaining the age of a victim as well." (Emphasis supplied) This Court therefore relied on the certificates issued by the school in determining the age of the prosecutrix. In paragraph 13, this Court observed:

"13. In light of our above reasoning, in the case on hand, there were certificates issued by the school in which the prosecutrix did her V standard and in the school leaving certificate issued by the school under Exhibit 54, the date of birth has been hereby noted as 20.05.1990 and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20.05.1990. the reliance placed upon the said evidence by the Courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of occurrence was perfect by justified and we do not find any grounds to interfere with the same."

16. In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rube 12(3) (l). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P/5 and P/6 cannot be discarded. Therefore, the Trial Court was correct in relying on the documents.

17. The High Court also relied on the statement of PW-11 Dr. A.K. Saraf who took the X-ray of the prosecutrix and on the basis of the ossification test, came to the conclusion that the age of the prosecutrix was more than 15 years but less than 18 years. Considering this the High Court presumed that POCSO/159/2023 the girl was more than 18 years of age at the time of the incident. With respect to this finding of the High Court, we are of the opinion that the High Court should have relied firstly on the documents as stipulated under Rube 12(3)(l) and only in the absence, the medical opinion should have been sought. We find that the Trial Court has

also dealt with this aspect of the ossification test. The Trial Court noted that the respondent had cited *Lakhan Lal Vs. State of M.P.*, 2004 Cri.L.J. 3962, wherein the High Court of Madhya Pradesh said that where the doctor having examined the prosecutrix and found her to be below 18 years, then keeping in mind the variation of two years, the accused should be given the benefit of doubt. Thereafter, the Trial Court rightly held that in the present case the ossification test is not the sole criteria for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her medical examination had been enclosed.

7.6 The prosecutrix herself had stated her age to be of 12 years. This version is being supported by the school leaving certificate of victim, which of course has been proved through father of the victim and it is not challenged at all either in the cross examination or subsequently before the trial Court. It has been duly exhibited and at no stage, there was any dispute of the said document or fact of age. As held in this judgment referred to herein above, the ossification test would not be necessary once the birth date is proved by way of certificate and as per the said decision also, when school leaving certificate is providing the age of victim and when there was no challenge at any point of time, there does not arise the question of doubting her age. Again also considering the parents' oral version and chronology of birth of siblings of the prosecutrix, we hold that the trial Court has rightly held the age of victim as 12 years 8 months. It is also to be remembered that the Court is dealing with the girl of 12 years and it is not the case of the appellant being tried due to technical reason where girl is averred to be a major.

Moreover, relationship of appellant with the prosecutrix also cannot be lost sight of while considering such submissions. It is noticed from the version of both the parents that custody of the prosecutrix had been entrusted to maternal uncle as all of them were supposed to attend the marriage of son of her another maternal aunt. The parents were not in position to attend the marriage because of their poor financial position. Therefore, the daughter was sent with maternal uncle i.e. the appellant on 08.11.2011. The maternal aunt had insisted on prosecutrix reaching early so that she would get some help in the marriage. The appellant had left with the prosecutrix on 08.11.2011 and she returned only on 20.11.2011. The marriage was on 10.11.2011. The appellant and the prosecutrix had reached on 09.11.2011 for wedding and they had left that place on 11.11.2011 after attending the marriage. It is also confirmed by PW-9 Ramilaben Arjunlhai Parmar who is the maternal aunt at whose place, she attended the marriage.

10.4. The Hon'ble High Court of Gujarat, in **2020(0) AIJEL – HC 241889** in the case of **Prajapati Shaibeshkumar Naranlhai vs. State of Gujarat**, has observed in para-7 to 10 that:-

"7 Ld. APP submitted that the certificate of ossification cannot be considered when the school leaving certificate is on record which is issued by the Prakash Vidhyalaya. Birth certificate issued by Gram Panchayat is also on record. To support her submission, the Ld. APP has referred to and relied upon the judgment of the Hon'ble Apex Court reported in (2018) 17 SCC 658 in case of State of Madhya Pradesh v. Preetam and submitted that the Hon'ble Apex Court in para 10 and 11 has observed as under:

"(10) In our considered view, the answer elucidated in the cross-examination of Dr. Vasnik (PW-6) cannot be taken as a final opinion on the age of the prosecutrix (PW-1). It is to be relevant to note that before the trial court the prosecution has examined Bhaulal (PW-8), Head master/Head teacher of Primary School Chor Pind Ke Par, District Balaghat. In his evidence, Bhaulal (PW-8) has stated that the date of birth of the prosecutrix (PW-1) was 16th May, 1981 which means that on the date of the occurrence i.e. 6th March, 1993, the prosecutrix (PW-1) was only aged about 12 years. The trial court has neither acted upon the evidence of Bhaulal (PW-8) nor on the school certificate on the ground that the person who has admitted the prosecutrix in the school was not examined.

(11) In our considered view, the approach of the trial court was not correct. In each and every case the prosecution cannot be expected to examine the person who has admitted a student in the school. The school registers are the authentic documents being maintained in the official course, entitled to credence of much weight unless proved otherwise. In our view, considering the evidence of head master, Bhaulal (PW-8), and the school certificate produced by him i.e. Ex.P/13-A, age of the victim has to be taken as 12 years at the time of occurrence."

8 The prosecution has examined PW-8 Babubhai Purshottamdas Patel at Exh.31. This witness is Talati- cum-Mantri of the Vamaj Gram Panchayat. He has deposed on oath that he is working as Talati- cum- Mantri at Vamaj Gram Panchayat. He has brought the birth and death register of the year 1984 with him. He has further deposed that at Sr No.46 of Page No.9 of the birth and death register, the birth was registered on 24.8.1984 and in the column of birth date 18.8.1984 is written. He has narrated the facts stated in the register in his deposition. That the name Munni; Father's name Popatlal Chimanlal; Name of person who came to register birth date is Shantaben Ambalal Patel - Mother name Kanchanbaben.

8.1 That the birth was registered by Shantaben Ambalal Patel. It is also stated that at the time of registration of birth, if the name is not given to the child the parents generally call their child Munno or Munni. In such case he used to register as in that way. He has produced xerox certified copy of Sr. No.46 at page No.9 of the said register. This witness is cross-examined by the Defence Advocate. Nothing adverse is revealed which can damage the case of the prosecution.

9 The prosecution has examined PW-7 Ranjanben Chhotalal Shah at Exh.28. She is Principal of Prakash Vidyalaya School, Borisana, Taluka Kalol, District Mahesana. She has deposed that she has brought general register of the school wherein the details as regards to the name of child, Srl., sex, birth date and the name of last school etc. is mentioned. She has deposed that on page no.33 at Sr. 1026, name of the prosecutrix, Hindu Kadwa Patidar, birth of place Vamaj Taluka, Kadi, District Mehsana, last school attended Prakash Vidhyalaya, Borisana, etc. are mentioned. Her birth date is shown as 1.6.1984. She has also issued one certificate as regards to the birth date. She has identified signature of former principal Mr. A.K.Patel on the certificate. The said certificate is exhibited at Exh.29. She has produced copy of extract of page no. 33 of the general register of the school which is exhibited at Exh.30. It is also deposed that no discrepancy is found during regular inspection made on 22.12.2001. During cross examination this witness has explained details of most of the column of the the register.

9.1 On perusing the oral evidence of the Principal and documentary evidence produced on record, the birth date of the victim is shown as 1.6.1984. If we consider the birth date as per school leaving certificate, at the time of incident, the prosecutrix was 14 years 11 months and 25 days i.e. below 16 years.

10 Considering the ratio of the judgment referred as above and evidence as regards to the birth i.e. certificate issued by Talaticum-Mantri and certificate issued by the school authorities, the certificate issued by the Talati-cum-Mantri is more reliable and trustworthy as it is first in point of time and entry was made at the relevant point of time. On perusing Exh.32, the prosecution has established that the birth date of the prosecutrix is 18.8.1984. The incident took place on 25.5.1999. So, this court is of the opinion that the age of the prosecutrix at the time of incident as 14 years 9 months and 7 days i.e. below 16 years.”

10.5 Recently, the Hon’ble Apex Court has offered its observation for age determination of victim in POCSO cases and it is decided in **2025 (0) AIJEL-SC 75808 Sushil Kumar Tiwari vs. Hare Ram Sah** and the important paragraphs of this judgment for age determination are discussed in para no. 16, 17 & 18 which reads as under :-

“16. As regards the first issue concerning the age of the victim, it is quite understandable that for an offence under the POCSO Act, the victim must be aged under 18 years. In order to prove so, the prosecution has relied upon both oral and documentary evidence.

The oral testimony of the mother of the victim, examined before the Trial Court as PW-3, reveals that the victim was 12 years old at the time of incident. Further, the statement of victim under Section 164 Cr.P.C. also bears an endorsement regarding her age. The concerned ACJM, examined as PW-4, has recorded her age as 13 years. The father of the victim, examined as PW-5, has deposed that the victim's age at the time of incident was 12 years. Insofar as the documentary evidence is concerned, the Transfer Certificate (Annexure P-10) issued by the government school attended by the victim records her date of birth as 03.10.2004, thereby meaning that during the concerned time-frame of the year 2016, the victim was around 12 years old. The medical report dated 01.07.2016 (Annexure P-1) is also relevant on this aspect. The said medical report pertains to the ultrasound examination of the victim and records her age as 15 years.

17. It cannot be denied that there are slight variations in the age of the victim at the relevant point of time, as discernible from the oral and documentary evidence. However, we do not find ourselves in agreement with the High Court that the age was not proved during trial. The oral testimonies of PW-3, PW-5 and PW- 6 are consistent inter-se as well as with the Transfer Certificate issued by the government school. The age of the victim appears to be within the range of 12-13 years at the relevant point of time. The medical report records the age as 15 years. However, we cannot lose sight of the fact that the age of the victim was not challenged during cross-examination of any of the witnesses mentioned above. Their testimonies, on the point of age, have largely remained unrebutted, thereby meaning that the Respondent Nos. 1 and 2 had no claim that she was not a minor at the relevant point. We do not mean to say in cases involving POCSO Act or Juvenile Justice (Care & Protection) Act, 2015, the determination of age is not required. Most certainly, the determination of minority is essential to extend the protection of these legislations, however, as long as the age conclusively appears to be under 18 years, the special protections carved out in favour of children cannot be diluted by insisting upon a rigid determination of the age, that too when it was not even questioned at the right time. In the present case, even if it is believed that the age of the victim was not determined to the hilt, the Trial Court had concluded that the victim was aged between 12 to 15 years at the relevant point of time and thus, was a minor. Thus, it could not be stated that the Trial Court had not determined the minority of the victim. It was done

and, in our opinion, rightly so, on the basis of the un rebutted oral and documentary evidence.

18. Interestingly, the Respondent Nos. 1 and 2 neither claimed that the victim was not a minor at any point of time nor led any evidence to that effect. We find that the High Court has erred in raising a doubt where none existed, even inter-se the parties to the case. We are also of the opinion that once the minority of the victim was beyond doubt, the special protection of POCSO Act ought not to have been diluted by raising a fictitious doubt regarding the precise age of the victim. For, the Courts must remain alive to the socio-economic circumstances of the victims, especially those who are based in remoter regions of the country. In rural regions, discrepancies in the educational and identification documents are not unknown and, in such circumstances, the Courts must be sensitive to the ground realities of the society, so as to ensure that the intent of the law is not suppressed and protections created by the legislature reach the intended persons in their right spirit.”

10.6. Therefore, with the above judgments of the Hon’ble Apex Court and Hon’ble Gujarat High Court, and the recent judgment of the Hon’ble Apex Court, it is clear that determination of minority is essential to extend the protection of this legislation. However, when the age appears to be under 18 years, the special protection carved out in favour of children cannot be violated merely by questioning the age. The Hon’ble Apex Court has clearly held in its judgment that oral testimony of PW-3, PW-5, and PW-6 are consistent with each other as well as with the transfer certificate issued by the government school.

10.7. If we analyze the evidence adduced in the present case, the prosecution has examined the victim as PW-1 at Exhibit 15. Initial questions were asked by the Court to ascertain whether the victim understood the questions and could reply rationally, and whether she understood the seriousness of the oath. In this questionnaire, the victim unequivocally stated that her date of

birth is 08.06.2010. In her examination-in-chief, she reaffirmed that her date of birth is 08.06.2010. In cross-examination, the Defence could not bring any meaningful contradictions regarding this date of birth and the victim had denied the suggestion raised by the Ld. Defence counsel that on the date of incident, her age was more than 18 years or she was stated her wrong date of birth.

10.8. The father of the victim, was examined by the Prosecution as PW-2 at Exhibit 20. He has deposed in his examination in chief that his victim daughter is studied till Class-VIII and was doing household work for the last 1-1.5 years which shows that the age of the victim could be under the age of 18. Further, the PW-2 has denied the suggestion of Ld. Defence counsel in his cross-examination that it had been 28–29 years since his marriage, and voluntarily added that it had likely been around 20–22 years. Further, the victim is the second child of PW-2. This witness is the most appropriate and natural person to depose about the date of birth of the victim. Specifically, it appears that the victim had only completed primary education up to the 8th standard and was living at home as a dependent child under parental care, and this context prima facie establishes that the victim was a minor below 18 years of age at the time of the alleged incident. The PW-2 has also denied the suggestion that he is falsely stated the age of the victim. Except for this minor clarification, nothing substantial was brought forth by the Defence with reference to the date of birth of the victim.

10.9. The prosecution has examined Chelji Balubha Vaghela as PW-6 at Exhibit 31, who is the Sub-Registrar of Tharad Nagar

Palika. He produced the original register of birth record for the year 2010 of Tharad Nagar Palika and in this register at serial no.2769 on the page no.10, the entry with respect to the victim was entered, which shows that the victim was born on 08.06.2010 and that entry was made in the register on the basis of information provided by Dharnidhar Hospital, Tharad. The PW-6 has produced the copy of the page containing Serial No. 2769 of the Birth Registration Register after showing the original and it was exhibited as Exh.32. The said witness has further stated that as per the office record, the birth certificate of the victim has been issued, which is on record from Mark 3/19, bearing the signature and official seal as the issuing authority. The certificate issued by PW-6 was exhibited as Exhibit 33. In cross-examination, the said witness has admitted that the details of a child's birth are submitted to its office by the hospital in the prescribed format, and based on these details, it make entries in the birth register and he has not brought along such a form sent by the doctor in the prescribed format. The witness has denied the suggestion that no such form has been produced because no such form was ever submitted to his office and a false entry of this child's birth was prepared in the register. The witness has admitted the suggestion that at the time when the birth of the child was registered based on the report received from the hospital, the child's name was not provided from above in the child's name column, so the child's name was not previously written in the birth register. The witness has admitted the suggestion that he has no personal knowledge regarding the registration of this birth and is testifying based on the records.

It has been contended on behalf of the accused persons that the name of the child has not been mentioned in the birth certificate and in the birth record of Tharad Nagar Palika which raises a serious doubt about the date of birth of the victim and therefore, the Prosecution has failed to prove the date of birth of the victim. In POCSO cases, courts have consistently emphasized that minor discrepancies or perceived irregularities in documentation or variations in handwriting should not be grounds for dismissing the case of the Prosecution. These aspects are often considered technicalities that do not undermine the substantive evidence, especially when the victim's testimony is credible and corroborated. A pertinent example is the Hon'ble Supreme Court's decision in **Bhanei Prasad @ Raju v. State of Himachal Pradesh (2025 INSC 934)**, where the Hon'ble Court upheld the conviction under Section 6 of the POCSO Act, emphasizing that the victim's testimony, even if not corroborated by medical or forensic evidence, is sufficient to establish the offense. The Hon'ble Supreme Court noted that the presumption of guilt under Section 29 of the POCSO Act arises once the foundational facts are established, and minor contradictions in the victim's statement do not necessarily affect its reliability.

Further, a birth certificate issued by a competent Government authority such as a Gram Panchayat or Nagar Palika is a public document and enjoys a strong presumption of regularity and authenticity under the law. Minor physical imperfections do not ipso facto invalidate the document or render it inadmissible as evidence. In various judgments, the Hon'ble Supreme Court observed that minor clerical errors, overwriting,

or corrections do not automatically vitiate an official record unless there is evidence of mala fide intention or forgery. Further, the official of Gram Panchayat or Nagar Palika has no reason to fabricate the date of birth of the victim.

10.10. If we further consider the other important evidence on this point, the perusal of the medical certificate of the victim issued by Dr. S. K. Patel, Medical Officer, Tharad Govt. Hospital, shows that the age of the victim is mentioned in it as 14 years and 9 months. The Defence had pored some technical questions regarding the age determination of the victim but in my opinion, this cross-examination is not useful to defence.

10.11. Even during the investigation, the I.O. has also occasioned to consider the age of the victim and the I.O. was also satisfied that her age is below 18 years and she is minor. Upon carefully reviewing Exhibit 33, the official birth register tendered into evidence by PW-6, and addressing the defense's contention regarding the omission of the child's name in that document, this Court finds the objection to be without merit. The entry in question was duly recorded in the official birth register based upon the primary information furnished directly by the hospital. Consequently, the mere absence of the child's specific name within the record does not constitute a fatal or serious lapse on the part of the public administration or the government office concerned. Accordingly, this Court harbors no doubt whatsoever regarding the absolute authenticity, validity, and evidentiary reliability of this birth entry. Therefore, considering all the evidence on this point, I am fully satisfied and I am of the

opinion that the date of birth of the victim is 08.06.2010 and the incident in question was happen on 12.03.2025, therefore, considering the date of incident and considering the date of birth of victim, it appears that on the date of alleged incident, she was minor just 14 years and 9 months of age. Therefore, considering the entire evidence, I am of the opinion that the Prosecution has successfully Proved the age of the victim and according to all the details pertaining to the age of the victim, she certainly below the age of 18 years and her date of birth is 08.06.2010. Therefore, with the above discussion, the issue No.1 is decided in affirmative.

Issue No. ii :-

11. In this issue, the Prosecution required to prove that the accused had kidnapped the victim in order to compel her to have sexual intercourse with her. The important provision of the section runs as under :

11.1. In order to prove the offences punishable under Section 137(2), 87 of the BNS, the Prosecution first need to prove that the accused has committed such acts, which has been defined under Section 137(1)(b) of the BNS as kidnapping. The Section 137 of BNS reads as follows:-

“137. KIDNAPPING.

(1) Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship —

(a) [Kidnapping from India] whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India;

(b) [Kidnapping from lawful guardianship] whoever takes or entices any child [minor under sixteen years of age if a male, or under eighteen years of age if a female] or any person of unsound

mind, out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child (minor) or person from lawful guardianship.

Explanation.—The words “lawful guardian” in this clause include any person lawfully entrusted with the care or custody of such child (minor) or other person.

(2) [Punishment for kidnapping] Whoever kidnaps any person from India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Further, section 87 of the BNS describes about the kidnapping, abducting or inducing woman to compel her marriage, etc. and it reads as under :

“87. KIDNAPPING, ABDUCTING OR INDUCING WOMAN TO COMPEL HER MARRIAGE, ETC.

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

If we examine with above sections and its ingredients, the Prosecution was required to prove that the present accused had taken or enticed the victim and at the time of incident a female, which was under 18 years of age and accused would take out of keeping of her lawful guardian and there is no consent my her lawful guardian. The Prosecution is also required to establish that the victim was either forced or seduced into illicit intercourse, or

that there is a likelihood she was forced or seduced. On this issue, if we consider the testimony of the lawful guardian and the father of the victim who has been examined by the Prosecution as PW-2 at Exh.20. He has clearly deposed that on the date of incident, he, his wife and sons, and the victim all slept at their home and on that day, early in the morning at 3:00 AM, when he woke up, he saw that his victim daughter was not present and thereafter, he inquired in the neighborhood, but his victim daughter was not found anywhere and at the time of the incident, his victim daughter had a phone with her; he called his victim daughter, but her phone was switched off and thereafter, the PW-2 and his son both went to Mavasari and lodged a complaint there.

11.2. If we further consider the deposition of the victim on this point, she has deposed in her deposition at Exhibit-15 and she has stated that on the date of incident, the accused Bharatinh told her that he would come to meet her the next day at night and then, the next day at night, at around 11:00, the accused Bharatsinh came to meet her, called her and said that he was outside and the victim should come out and thereafter, the victim jumped over the wall of her house and went to the outer side, after which the accused Bharatsinh took her to the neighbouring house and established physical relations with her and this continued with her for one year, that is, he used to come to her every week or fifteen days and establish physical relations with her. The victim has further admitted that thereafter, the accused Bharatsinh told her that he would come to take the victim after two days and that both of them would elope and after two days, Bharatsinh came to his vil-

lage on a bike and told her to come out of the house and to write a chit and leave it on the cot. The victim has further stated that the accused Bharatsinh came at night at 2 o'clock near the temple in front of her house and honked, so she went out and sat on the bike and from there, they went to Dheriyana, from there to Dhima, from there to Vav and from Vav to the destination Khawda in Kutch and when they reached Khawda, Bharatsinh was receiving phone calls from his family members on his mobile, telling him to come home, thereafter, Bharatsinh said that since calls were coming from home, they would have to leave the bike at Khawda and go home by bus and therefore, they started returning home by bus and when they reached Bhabhar, Bharatsinh got down there and told her to get down at Tharad. It is to be noted that there are no direct or indirect allegations against the accused Dilipbhai Lavjibhai Joshi that he had eloped or abducted the victim while the allegations against him is that he went to the shop of the victim, met her and at that time gave the victim an Instagram ID and an Android mobile with a SIM card, and on the next day after gave the mobile, the accused Dilipbhai said on the phone that he would come to meet the victim at night and on the next day at night at 09:00, he came outside the house of the victim and told the victim on the phone to come outside the house and thereafter, he took the victim to the neighbouring house and established physical relations with her six times in three days.

11.3. Upon a careful consideration of the facts and the material available on record, it is not established that the accused had kidnapped or enticed the victim from her residence. The evidence on

record rather indicates that the victim had voluntarily left her home without informing any of her family members. It is further evident that she did not make any attempt to seek assistance from any person while accompanying the accused no.1 on the motor-cycle. Further, as per the case of Prosecution, there are no direct allegations against the accused no.2 that he had lured or abducted the victim. Therefore, all the necessary ingredients to constitute of section 137(2) & 87 of BNS are not successfully proved against the accused persons, therefore, the issue No. ii is decided in Negative.

Issue No. iii :-

12. In this issue, the Prosecution required to prove that after taking the victim by the accused with him, on the above mentioned date, the accused persons had committed the aggravated penetrative sexual assault / rape with the victim, and committed the offence under section 65(1), 64(2)M of the BNS and Section 4 & 6 of the POCSO Act.

12.1. Section 63 of BNS provides the definition of ‘Rape’ and replaces Section 375 of IPC. Section 63 of the BNS reads as under :

“63. RAPE.

A man is said to commit “rape” if he—

a)penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

b)inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

c)manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

d)applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the

circumstances falling under any of the following seven descriptions:

-
- i. [First] against her will;*
- ii. [Secondly] without her consent;*
- iii. [Thirdly] with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;*
- iv. [Fourthly] with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;*
- v. [Fifthly] with her consent when, at the time of giving such consent, by reason of ss of mind or intoxication nor the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;*
- vi. [Sixthly] with or without her consent, when she is under eighteen years of age;*
- vii. [Seventhly] when she is unable to communicate consent.”*

ESSENTIAL INGREDIENTS:-

- (a) A man has sexual intercourse with a woman.
- (b) Such intercourse falls under one of the seven clauses of the Section.
- (c) The case does not fall within the exception to the Section.

12.2. Section 64 provides punishment for Rape and Section 65 provides punishment for Rape in certain cases. Section 64 and 65(1) runs as under :

“64. PUNISHMENT FOR RAPE -

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape,—

- i. within the limits of the police station to which such police officer is appointed; or*
- ii. in the premises of any station house; or*
- iii. on a woman in such police officer’s custody or in the custody of a police officer subordinate to such police officer; or*

- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or*
- (c) being a member of the armed forces deployed in an area by the Central Government or a State Government commits rape in such area; or*
- (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or*
- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or*
- (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or*
- (g) commits rape during communal or sectarian violence; or*
- (h) commits rape on a woman knowing her to be pregnant; or*
- (i) [i] commits rape, on a woman incapable of giving consent; or*
- (j) [k] being in a position of control or dominance over a woman, commits rape on such woman; or*
- (k) [l] commits rape on a woman suffering from mental or physical disability ;or*
- (l) [m] while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or*
- (m) [n] commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.*

65. PUNISHMENT FOR RAPE IN CERTAIN CASES.

(1) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim."

12.3. If we further consider the relevant requirements of the POCSO Act i.e. Sections: 3 to 6 they run as under:

3. Penetrative sexual assault.— A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Punishment for penetrative sexual assault.—

(1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than 4[ten years] but which may extend to imprisonment for life, and shall also be liable to fine.

(2) **Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.**

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

5. Aggravated penetrative sexual assault.—

xxx

xxx

xxx

(i) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;

1****

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks;

xxx

xxx

xxx

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly;

xxx

xxx

xxx

6. Punishment for aggravated penetrative sexual assault. — (1) *Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.*
(2) *The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.*

12.4. If we examine the evidence on this issue and if we first examine the evidence of complainant/victim on this issue, it runs as under :

Evidence of complainant/victim and her Father :

12.4.1. If we consider the deposition of the prime witness of this incident i.e. the victim who is also the complainant of the present case. She has been examined at Exh.15 as PW-1. Court is initially raised some questions regarding her competency as she was child witness and this court was satisfied that the victim replied logically to the questions asked to her and also administered oath to her. In chief-examination, the present victim has stated that when she used to sit occasionally in her grandfather's kirana shop, the accused Bharatsinh who was doing road work in her village, gave her his mobile number, which was 9537343884 and told her to talk to him on the number he was giving and she spoke to him on this number. The victim has further stated that thereafter, Bharatsinh told her that he would come to meet her the next day at night and then, the next day at night, at around 11:00, he came to meet her, called her and said that he was outside and the victim should come out, thereafter, she jumped over the wall of her house and went to the outer side, after which the accused Bharatsinh took her to the neighbouring house and established

physical relations with her and this continued with her for one year, that is, he used to come to her every week or fifteen days and establish physical relations with her. The victim has further stated in her chief-examination that when she was sitting in the shop, about four months prior to the date of complaint, the accused Dilipbhai Lavjibhai Joshi came to her shop, met her and at that time gave her an Instagram ID and an Android mobile with a SIM card, the number of which SIM card was 9510194470 and the next day after accused Dilip gave the mobile, he said on the phone that he would come to meet the victim at night and the next day at night at 09:00, he came outside her house and told her on the phone to come outside the house and thereafter, he took her to the neighbouring house and established physical relations with her six times in three days. The victim has further deposed that thereafter, the victim had a conversation with Bharatsinh and he told her that he would come to take her after two days and that they both would elope, thereafter, after two days, Bharatsinh came to her village on a bike and told her to come out of the house and to write a chit and leave it on the cot. The victim has further deposed that the accused Bharatsinh came at night at 2 o'clock near the temple in front of her house and honked, so she went out and sat on the bike and from there, they went to Dheriyana, from there to Dhima, from there to Vav and from Vav to the destination Khawda in Kutch and when they reached Khawda, Bharatsinh was receiving phone calls from his family members on his mobile, telling him to come home and thereafter, Bharatsinh said that since calls were coming from home, they would have to leave the bike at Khawda and go home by bus,

therefore, they started returning home by bus and when they reached Bhabhar, accused Bharatsinh got down there and told her to get down at Tharad and thereafter, when she reached Tharad, she got down there and her father had come to take her and thereafter, they went home and for three-four days she had gone to her maternal uncle's house and at that time, her maternal uncle [REDACTED] asked her what had happened with her, so she told her maternal uncle the entire incident, thereafter, her maternal uncle said that a case should be filed, and therefore on the second or third day they went to Mavasari Police Station and lodged the complaint. The victim had identified the complaint and her signature on the same, and it is exhibited as Exhibit-16. The victim has identified the accused persons.

The sealed cover and the statement recorded under Section 183 of the BNSS are taken on record and exhibited as Exhibit No. 63 and in this statement also, the victim had stated almost the same facts as testified in her testimony and made clear allegations against both the accused persons regarding forceful sexual intercourse and rape with the victim without her will.

The victim was duly cross-examined by the Ld. Counsels for the accused persons and in cross-examination, the defense highlighted physical layout hurdles, such as a seven-foot compound wall, locked doors, creaking iron gates, and family members sleeping nearby, arguing that unnoticeable intrusions or escapes would be practically impossible. The defense heavily probed the absence of specific details in the initial statements of the victim, complaint, and court testimony and submitted that noting the lack of exact dates, times, months of the alleged inci-

dents, specific descriptions of the bike, or mentions of physical resistance, shouting, or seeking immediate help during travel when she was going with the accused no.1 on the way to Khawda. The another defence raised by the Ld. Advocates for the accused persons is that the victim admitted to active social media use (WhatsApp and Instagram) and late-night phone conversations with Bengabhai Prajapati, which had become widely known rumors within the village and society and strongly pushed the narrative that the victim falsely implicated the present accused persons to protect Bengabhai, pointing out her initial S.P. office application and discussions involving her maternal uncle and relatives before the formal police complaint at Mavasari Police Station. Despite aggressive questioning highlighting delayed reporting, missing specific timelines, and strong family/social involvement in lodging the case, the victim firmly maintained her core allegations, repeatedly denying suggestions that the incidents were entirely fabricated or that her medical and legal statements were false.

12.4.2. If we consider the deposition of the father of the victim who has been examined as PW-2 at Exh.20 by Prosecution. This witness has stated in his examination in chief that on the date of incident when he woke up around 3:00 AM to find his victim daughter missing, her phone was switched off, and initial neighborhood searches yielded nothing and he initially went to Mavasari Police Station to report that his daughter had run away, but police told him to return the next morning and when he went back, the PSI refused to register the FIR and consequently, the family traveled to Palanpur Court to submit a written application

against the police inaction and shortly after returning home, the Mavasari PSI called them back, and they successfully registered the FIR the next day. The PW-2 has further deposed that the victim called him the day after she ran away, asking him to pick her up from Radhanpur because she had been abandoned there by accused Bharatsinh and thereafter, he met the victim at the Tharad bus stand and brought her home and upon her return, the victim disclosed that Bharatsinh who is a road contractor in Fangdi village, had previously visited their home during the day to fetch water and had intimidated and abducted her on a motorcycle. The PW-2 has further deposed that the victim has further stated that she was taken to Radhanpur and then to Khavda, Kutch, staying away overnight, and that Bharatsinh had provided her with the mobile phone she carried. The PW-2 had identified both the accused persons.

This witness was extensively cross-examined by Defence and this witness has admitted that he had not witnessed the incident with his own eyes, and has no personal knowledge regarding it and he had not seen the accused no.1 taking his victim daughter away on a motorcycle. The PW-2 had admitted the suggestion that prior to the incident, accused Bharatsinh and he were like friends; that is why he know Bharatsinh. The PW-2 had denied the suggestion that he had not stated in his police statement that, *"Thereafter, my son and I both went to Mavasari and went there to lodge a complaint"* and also denied that he had not stated in his police statement that, *"My daughter was taken away after being intimidated in order to sell her."* The PW-2 had also denied the suggestion that he had not stated in his police statement that,

"My victim daughter had a mobile phone which Bharatsinh had brought and given to her." The PW-2 had also denied that no such incident occurred as he is stating in his examination-in-chief and it did not happen that the accused took the victim anywhere. In overall cross-examination of the PW-2, Defence has failed to challenge the version offered by Prosecution.

12.5. Medical Evidence :

Prosecution has examined Jaydeepsinh Danaji Rajput as PW-3 at Exh.23 who had conducted the medical examination of the accused. The said doctor has deposed that victim, in the history recorded before him, stated that while sitting at her shop, she came into contact over the phone with Bharatsinh Kajaji Rajput and Dilip Lavjibhai Joshi and those persons used to call her at around 11:00–12:00 at night, called her to the open space near her house, and maintain physical relations with her against her will and on 12.03.2025, Bharatsinh Kajaji Rajput called her at night, lured her with the promise of marriage, and abducted her to Khavda, Kutch, where in a hotel, he maintained physical relations with her against her will. The PW-3 has further deposed about the medical examination conducted by him and deposed that the hymen of the victim was ruptured and the cervical os was closed. The PW-3 has further deposed that the victim was referred for a gynecological opinion and identified the medical certificate issued by him, which is produced at Mark 3/12 and exhibited as Exh.24.

The PW-3 was duly cross-examined by Ld. Defence counsels and in cross-examination by the Ld. Advocate for the accused no.1 the PW-3 has admitted that at the time of medical ex-

amination, the victim was accompanied by her family members but denied the suggestion that the history was dictated by the family members who accompanied the victim. The PW-3 has further denied the suggestion that the victim's body was fully developed. The PW-3 has denied the suggestion that he had not conducted any examination of the victim's body but has giving false testimony on oath to support the prosecution. Upon Cross-examination by Learned Advocate on behalf of Accused No. 2, the PW-3 has admitted that the development of the victim's genitalia was good but denied the suggestion that it was like that of an adult female and also denied that the build of the victim's body appeared to be that of an adult and states that this type of condition is seen during adolescence. The PW-3 has denied the suggestion that to support the police case, he had issued a false certificate and is giving false testimony in support thereof.

Another doctor Sanjaybhai Khetabhai Patel has been examined by the Prosecution as PW-5 at Exh.29 and in chief-examination, he has deposed that on 28/03/2025, while he was performing duty at Tharad Government Hospital, Lady A.S.I. brought the victim to him for physical examination and he and Dr. Kuldeep Mathur (Gynecologist) examined the victim and the development of the victim's private parts was good. The said witness has deposed that the hymen was old and ruptured and the perineum was normal. The PW-5 has admitted that the victim was habituated to sexual intercourse. The PW-5 has identified the medical certificate issued by him, which is produced under Mark 3/14 and taken on record as Exh. 30. The PW-5 was duly cross-examined by the Ld. Advocate for the accused persons and dur-

ing cross-examination, he has denied the suggestion that he did not conduct any physical examination of the victim and prepared the certificate on the basis of the police memo.

Another doctor Vijaybhai Jivabhai Odedara who had conducted the medical examination of the accused persons, had been examined by the Prosecution as PW-4 and he has deposed that on 17/04/2025, while he was present on his duty at the Government Hospital, Tadav, Police Constable Magnabhai Aydanji, brought the accused persons and he examined them. The PW-4 has deposed about the history given by the accused persons and stated that upon inquiring with him, the accused no.1 stated that, *"The victim and I were in contact through phone since March 2025 and used to talk over the phone as friends. When she asked me for marriage, I refused as her age was young. On 13/03/2025, she called me to Fangdi. After we went to Khavda from there, upon learning that her family members were searching for her, we went to Bhabhar, where I got off and sent the victim to Tharad, where her family members were present. We did not engage in physical relations."* The PW-4 has further deposed about the medical examination conducted by him. Further, the accused no.2 has clearly deposed in his history given before the doctor that he had made sexual relations with the victim with her consent.

The PW-4 was duly cross-examined by the Ld. Advocate for the accused persons and during cross-examination, he has denied the suggestion that he did not conduct any physical examination of the accused and prepared the certificate on the basis of the police memo.

12.6. Panch Witnesses :

Danabhai Gangabhai Avra has been examined as PW-7 at Exh.34. He is the Panch witness of the panchnama regarding seizure of clothes of the victim which is exhibited at Exh.35 and he has stated about the proceedings of the said panchnama. The said witness was duly cross-examined by the Ld. Defence counsel.

Alpeshkumar Somalal Modi has been examined as PW-8 at Exh.55. He is the Panch witness of the panchnama regarding the motorcycle used in the alleged offence, which is exhibited at Exh.56 and he has stated about the proceedings of the said panchnama. The said witness was duly cross-examined by the Ld. Defence counsel.

If we consider the entire depositions of these witnesses, it appears that they supported the case of the Prosecution and the clothes of victim were recovered by police and in my opinion, it is proved through reliable evidence.

12.7. Evidence of I.O. :

The I.O. of the present case P.S.I. Rajendrakumar Jivrambhai Chaudhary has been examined by the Prosecution as PW-10 at Exh.60 and in his Chief-examination, he has deposed about the investigation conducted by him. The said witness has been duly cross-examined by the Ld. Defence counsel and in his cross-examination, the I.O. has admitted that he did not prepare any map of the scene of the offence, however, videography is necessary while drawing a panchnama. The I.O. has admitted the suggestion that he recorded the statement of Dhengabhai Dajabhai Prajapati during the course of investigation but he did not come to

know that Prajapati Dengabhai Dajabhai and the victim had a love affair. The I.O. has further admitted that during the investigation, he tried to obtain CCTV footage, but no CCTV footage was found from anywhere. The I.O. has denied that as an investigating officer, having investigated this case, he is giving false testimony on oath in support of that investigation. The I.O. has admitted the suggestion that a house and an open space are two different things and regarding the ownership of the house at the so-called scene of the offence, the statement of the owner of the house of that open space has not been recorded during the course of investigation. The I.O. has denied that he has not produced any documentary basis or evidence relating to this open space because there was no such open space. It is further admitted that the I.O. has not kept any documentary evidence on record during the investigation to the effect that the father of the victim had a shop and he has not recorded the statements of any persons surrounding the house of the victim. The I.O. has denied the suggestion that he did not record the statements because those persons were not supporting the complaint. The I.O. has further denied that facts showing the presence of Accused No. 2 in Fangdi village within a month around four months prior to the complaint were revealed in the investigation on the basis of CDR. The I.O. has denied the suggestion that he submitted a chargesheet before the Court despite insufficient evidence against the accused. It is further admitted that he did not seize any bills regarding the ownership of the mobile phone that was seized during the investigation. This court has also asked some questions to the I.O. and while questioning that on what basis can it be determined that the fact

stated by the victim in the presence of the doctor at CHC Tadhav that the accused took her to Khavada, Kutch and established physical relations against her will, was stated out of panic, and do you believe that under normal circumstances a person states such a fact in panic? The I.O. has answered that First, the medical examination of the victim was done, and then on the very next day, the statement of the victim was recorded under Section 183 of the B.N.S. before the Judicial Magistrate First Class, which, when we read, the aforesaid fact was not found therein. The I.O. has admitted that in his investigation, it was revealed that accused Dilip Joshi had given a phone to the victim and that the said phone was subsequently taken back by Dilip Joshi, which the victim also stated in her statement under Section 183 of the B.N.S.S. and among the mobile phones seized from Dilip Joshi, one phone was given to the victim. The I.O. has further admitted that if a motorcycle is taken out from the side of the toll plaza, it can be seen in the camera and in this regard, he did not record the statement of any employee of the toll plaza nor obtained any documentary evidence from the toll plaza.

12.8. Evidence of Nodal Officers of Mobile Companies :

Prosecution has examined Vishal Ravindra Solanki who is the Nodal Officer of Bharti Airtel as PW-11 and he has admitted that the police had sought the Call Detail Records (CDRs) for the phone numbers 8487836918 and 8780238544, along with the associated customer application forms and certificate under Section 63(3)(c) of the BSA; the relevant documents and certificates were duly provided. The PW-11 has revealed that the numbers were registered in the name of Bharatsinh Kajji Rajput. The said

witness has also identified the relevant CDRs and certificates produced at Exh.96, 97, 98, 102, 103 and 104.

Prosecution has also examined Mukul Upendrabhai Bhatt who is the Nodal Officer of Vodaphone Idea Ltd., as PW-12 and he has admitted that the police had sought the Call Detail Records (CDRs) for the phone numbers 9537343884 and 8780238544, along with the associated customer application forms; the relevant documents were duly provided. The said witness has also identified the relevant CDR produced at Exh.100.

13. Now the question before this court is that whether the accused persons have rebutted the evidence produced before the court. Looking to the evidence on record, it can be safely concluded that Prosecution has safely proved the fundamental and foundational facts of the case and presumption under Section 29 & 30 arises against the accused and accused now, required to disprove the facts proved by Prosecution. Section 29 and 30 of the POCSO Act are reproduced herein below for ready reference :-

"29. Presumption as to certain offences.-

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."

"30. Presumption of culpable mental state-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a Defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Explanation.-In this section, "culpable mental state"

includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

14. If we consider entire evidence, it appears that the prosecution has safely proved basic facts of the present case. The prosecution has safely proved the age of the victim. The prosecution has also safely proved that the present accused persons had raped the victim by repeated sexual intercourse. In light of above evidence, if we analysis the defence of the accused and duty cast on him to disprove the above-stated facts under Section: 29 of the POCSO Act, it appears that accused persons have miserably failed to disprove the basic version of the Prosecution case. Present accused persons have not offered themselves for their deposition and they have not produced any Defence evidence or produced any documents to disprove the Prosecution case. It appears from record that the victim and the accused persons were frequently in contact with each other through phone calls and Social Media messages and the Defence has not disputed this fact. It appears that there is no reason to remain in contact with minor girl of aged about 14 years 9 months whereas it has also proved that the accused persons had provided the mobile phones to the victim and the same has been proved from available record or CDRs of the accused persons as well as victim. In my opinion, the prosecution has safely established and proved by cogent and reliable evidence and the accused persons have not discharged the burden asked on them under Section: 29 of the POCSO Act. Therefore, considering entire evidence and with requirement of Sec.29 of the POCSO Act, I have fully satisfied that the prosecution has safely proved the charges against the accused persons.

15. Therefore, analyzing entire evidence on this requirement, I have fully satisfied that the sexual intercourse was committed by present accused persons and if we appreciate the facts and circumstances in the light of provisions of Sections: 29 and 30 of the POCSO Act, the accused persons have miserably failed to discharge the duty cast on them of rebuttal evidence.

16. The Hon'ble Supreme Court has held that the sole testimony of the victim in sexual offence is sufficient to hold the accused guilty if it inspires confidence and the same principles have been recently reiterated in **Phool Singh vs. State of Madhya Pradesh (2021 (0) AIJEL-SC 68073)**. The Hon'ble Apex Court while discussing its previous decisions, has held that :-

“5. We have heard the learned counsel for the respective parties at length. We have gone through the judgment and order of conviction passed by the learned trial Court convicting the accused for the offence under Section 376 IPC and the impugned judgment and order passed by the High Court.

5.1. At the outset, it is required to be noted that in the present case, the prosecutrix has fully supported the case of the prosecution. She has been consistent right from the very beginning. Nothing has been specifically pointed out why the sole testimony of the prosecutrix should not be believed. Even after thorough cross-examination, she has stood by what she has stated and has fully supported the case of the prosecution. We see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. The submission on behalf of the accused that no other independent witnesses have been examined and/or supported the case of the Prosecution and the conviction on the basis of the sole testimony of the prosecutrix cannot be sustained is concerned, the aforesaid has no substance.

5.2. In the case of Ganesan (supra), this Court has observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.

In the aforesaid case, this Court had an occasion to consider the series of judgments of this Court on conviction on the sole evidence

of the prosecutrix. In paragraphs 10.1 to 10.3, it is observed and held as under:

10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in *Vijay [Vijay v. State of M.P., (2010) 8 SCC 191 : (2010 AIR SCW 5510)]*, it is observed in paras 9 to 14 as under: (SCC pp. 195-98) "9. In *State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550] : (AIR 1990 SC 658)* this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)

'16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'

10. In *State of U.P. v. Pappu [State of U.P. v. Pappu, (2005) 3 SCC 594 : (AIR 2005 SC 1248)]* this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the

accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)

'12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.'

11. In *State of Punjab v. Gurmit Singh* [*State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 : (AIR 1996 SC 1393)], this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable Prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 and 403, paras 8 and 21)

'8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed

considerations which have no material effect on the veracity of the Prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable Prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable Prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.' (emphasis in original)

12. In *State of Orissa v. Thakara Besra* [*State of Orissa v. Thakara Besra*, (2002) 9 SCC 86 : (AIR 2002 SC 1963)], this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the Prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In *State of H.P. v. Raghubir Singh* [*State of H.P. v. Raghubir Singh*, (1993) 2 SCC 622] (AIR Online 1993 SC 1) ; this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.* [*Wahid Khan v. State of M.P.*, (2010) 2 SCC 9 : (AIR 2010 SC 1)] placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan* [*Rameshwar v. State of Rajasthan*, AIR 1952 SC 54].

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and

reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

10.2. In *Krishan Kumar Malik v. State of Haryana* [*Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130 : (AIR 2011 SC 2877)], it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

10.3. Who can be said to be a "sterling witness", has been dealt with and considered by this Court in *Rai Sandeep v. State (NCT of Delhi)* [*Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21 : (AIR 2012 SC 3157)]. In para 22, it is observed and held as under: (SCC p. 29)

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the Prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co- relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying

the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

5.3. In the case of Pankaj Chaudhary (supra), it is observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises. In paragraph 29, it is observed and held as under:

"29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283] : (AIR 2006 SC 508). It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. [State of Rajasthan v. N.K., (2000) 5 SCC 30 : (AIR 2000 SC 1812)]."

5.4. In the case of Sham Singh v. State of Haryana, (2018) 18 SCC 34 : (AIR 2018 SC 3976), it is observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it is observed and held as under:

"6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable Prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in

the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 :

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the Prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable Prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635) : (AIROnline 1996 SC 91)."

6. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained."

17. The prosecution case primarily rests upon the testimony of the victim, examined as PW-1 at Exhibit 15, who is the prime witness to the incident. Prior to recording her evidence, the Court appropriately examined her competency, considering that she was a child witness as well as the victim. Upon satisfaction that she was capable of understanding the questions and responding logically, her oath was duly administered. Her testimony is natural, consistent, and supported by surrounding circumstances. The

victim has deposed that accused Bharatsinh, who was engaged in road work in the village, supplied his mobile number 9537343884 and initiated regular telephone contact and he thereafter called her out at night, took her to a neighbouring house and established physical relations and these acts continued for approximately one year, occurring weekly or fortnightly. The victim has further deposed that about four months before the formal complaint, accused Dilipbhai Lavjibhai Joshi approached her at the family *kirana* shop, handed over an Instagram ID together with an Android mobile bearing SIM number 9510194470, and thereafter similarly summoned her at night and established physical relations with the victim six times over three consecutive days. The victim has further deposed that later, Bharatsinh persuaded her to leave a note and accompany him on a motorcycle to Khawda in Kutch under the pretext of elopement; after family calls intervened they returned by bus and she was recovered at Tharad. The victim identified both accused and her complaint at Exh. 16. Her statement recorded under Section 183 BNSS at Exh. 63, reiterates the same allegations of non-consensual sexual intercourse.

18. Further, the victim's father who has been examined as PW-2, corroborated the sequence of her disappearance, recovery and subsequent disclosure that accused Bharatsinh had intimidated and taken the victim, having earlier supplied the mobile phone she carried.

19. It appears that history and admission given by accused before Medical Officer is relevant piece of evidence and it is relevant under Section 21 of Indian Evidence Act. It is the duty of

accused to explain the circumstances and reasons for this admission. The history given before the Doctor by the accused can be said to be admission which can be read as evidence as observed by the Hon'ble High Court of Gujarat in **2020 (0) AIJEL-HC 241889 GUJARAT HIGH COURT Prajapati Shaileshkumar Naranlhai Versus State Of Gujarat** in para-19.1 that:

19.1 This witness has further deposed that the Appellant Accused Shailesh Prajapati was also brought to him with police yadi on the same day. On medically examined the Appellant Accused, who has given the history that on 27.5.1999 at about 11:30 he committed rape. He has further narrated in the history that on 26.5.1999 he and the victim went to Junagadh. They visited several places and stayed in the guest house and he made intercourse at 11:30. The Doctor is cross-examined by the learned Advocate for the defence but nothing revealed against the prosecution. The history given by the Accused as regards to confession is hit by Section 26 of the Evidence Act because the Accused was in police custody during medical examination. But admission part can be read in evidence.

Further, the Hon'ble Gujarat High Court has observed in **2019 AIJEL-HC 240302 Gujarat High Court Ranjanlen Maheshlhai Vasava Versus State Of Gujarat** that :

(a) Indian Penal Code, 1860 - S. 376 - Evidence Act, 1872-S. 21, 24, 25, 26- offence of rape – incriminating admission by accused before doctor in the course of his medical examination - admissibility in evidence - accused made an admission before doctor admitting his presence on the date of incident at relevant point of time and also admitting fact that victim was in his company and that he took victim to his house and closed door-held, admission is incriminating in nature - if history given by accused before doctor is strictly in nature of confession, then such confession would be inadmissible in evidence being hit by S. 25 and 26 of Evidence Act - however, if the history is in nature of incriminating admission, then the same would be admissible and relevant u/s. 21 of Evidence Act.

Para 15:-

Having regard to the evidence on record, it is established beyond any doubt that on the date of the incident, something happened inside the

house of the accused. If the accused claims to be absolutely innocent or claims to have been falsely implicated in the alleged offence, then we are afraid such a claim gets falsified by the incriminating admission of the accused himself before the doctor in the form of history given by him in the course of his medical examination. Unfortunately, this part of the evidence does not appear to have been even looked into or touched by the Trial Court. We do not find any merit in the contention of Mr. Barod, the learned counsel appearing for the accused that the history given before the doctor by the accused should be ignored or should not be looked into as the same is inadmissible in evidence. Mr. Barod has confused himself with the confession and admission. It is true that if the history given by the accused before the doctor is strictly in the nature of a confession, then such confession would be inadmissible in evidence being hit by sections 25 and 26 of the Evidence Act. However, if the history is in the nature of an incriminating admission, then the same would be admissible and relevant under section 21 of the Evidence Act. In the case on hand, the accused cannot escape from the fact that he made an incriminating admission before the doctor admitting his presence on the date of the incident at the relevant point of time and also admitting the fact that the victim was in his company and that he took the victim to his house and closed the door. What happened thereafter inside the house is the only thing which needs to be looked into closely. The matter does not rest at the stage of incriminating admission alone before the doctor in the form of history. In the cross-examination of the P.W. 1, the mother of the victim, a very damaging suggestion has been put to her by the defence counsel and the reply to such suggestion establishes the fact that the victim being frightened came home crying. We also take notice of the suggestion put by the defence to the P.W. 14, Dr. Vinodkumar Upadhyay. In the cross-examination of Dr. Upadhyay, a suggestion was put by the defence that except the history recorded in the medical papers, no further history was given by the accused. The suggestion was accepted by Dr. Upadhyay and Dr. Upadhyay has deposed that it was true that except the history noted in the case papers, no other history was given by the accused which is suggestive of the fact that the accused has accepted that he stated before the doctor while narrating the history that on the date of the incident, he was playing with the victim and, thereafter, he took the victim to his house and closed the house. At this stage, we shall deal with the contention canvassed by Mr. Barod as regards the evidentiary value of such suggestions by the defence counsel.

20. In the case on hand, the Medical evidence supports the history of sexual activity. The examining doctors recorded that the hymen was old and ruptured and that the victim was

habituated to sexual intercourse. The history given by the victim to the medical officers attributed repeated non-consensual acts to both accused. Accused No. 2, in the history recorded during his own examination, admitted having sexual relations with the victim, though claiming consent. Further, the accused no.1 has clearly admitted in his history before the doctor that the victim was in contact with him through phone from March-2025 and the telephonic conversations had been made between them which also proves from available call detail records of accused and victim. Further, the accused no.1 has also admitted in his history before the doctor that on 13.03.2025, the victim had called him at Fangdi and he had gone there and taken the victim to Khavda which clearly affirms that the accused no.1 was with the victim from the alleged date of incident.

21. Call-detail records produced through the nodal officers of the relevant service providers confirm that the mobile numbers linked to Bharatsinh were actively used and that contact with the victim was maintained. Further, the I.O. has clearly admitted that the mobile phone given by the accused no.2 to the victim was later taken back by him and the same was seized during the investigation and the call detail records clearly suggests that the accused no.2 was in frequent contact with the victim during alleged period of incident.

22. The recovery of the victim's clothes, effected under a duly drawn panchnama and supported by the testimony of the panch witness, together with the seizure of the motorcycle alleged to have been used in the journey to Khawda, supplies independent

corroboration of the sequence of events narrated by the victim. These recoveries lend tangible support to the account of her removal from the village and subsequent movements.

23. In the course of cross-examination, learned counsels for the accused persons subjected the victim and other prosecution witnesses to searching scrutiny. Particular emphasis was laid upon the physical layout of the residential premises, including the presence of a substantial compound wall, locked doors and the proximity of sleeping family members, so as to suggest that unnoticed entry or exit would have been improbable. Attention was also invited to the absence of precise dates, times or months in the initial complaint, the police statements and the court deposition, as well as to the lack of any reference to physical resistance, outcry or immediate appeal for help during the journey. The defence further highlighted the victim's admitted use of social-media platforms and late-night conversations with another individual, advancing the suggestion that the present accused had been falsely implicated in order to shield that person. Delayed reporting and the involvement of maternal relatives in the decision to approach the police were likewise pressed.

At this stage, a fruitful reference can be made to the case of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat reported in (1983) 3 SCC 217**, wherein the Hon'ble Supreme Court has observed as under:

“9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman

who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?

Therefore, this court is of the opinion that by considering the above observation of Hon'ble Supreme Court, such minor discrepancies in the time of occurrence are not uncommon in cases of this nature, particularly when the witnesses are rustic villagers and the incident involves a small child. This Court is of the considered opinion that the alleged contradictions are not weaken to the prosecution case and does not affect the credibility of the witnesses.

Notwithstanding the force of these suggestions, the victim remained firm on the essential features of her testimony. She consistently maintained that both accused had established repeated telephonic contact with her, had induced her to leave the house at night, and had thereafter subjected her to sexual intercourse against her will. The statement recorded under Section 183 of the BNSS substantially accords with the version given in court. The Investigating Officer's evidence, though acknowledging certain investigative limitations such as the non-availability of CCTV footage and the absence of a site map, does not detract from the core narrative emerging from the victim's deposition and the medical findings.

24. Therefore, viewed in its totality, the oral testimony of the victim, the medical evidence indicating an old rupture of the hymen and habituation to sexual intercourse, the electronic records of mobile contact, and the recovery of material objects

form a coherent body of evidence. That body of evidence establishes that both accused remained in frequent communication with the victim through mobile phones and that they repeatedly committed the offence of rape upon her.

25. I have considered all the aspects of the present case. Considering all the aspects for grant of victim compensation to present victim under Victim Compensation Scheme, 2019, I am of opinion that present victim should not offered any amount under this scheme. She should be granted compensation from the proposed fine to be imposed on present accused for her rehabilitation.

26. Therefore, considering the entire evidence on record, the prosecution has safely proved the charges of Sections: 65(1), 64(2)M of the BNS and Section 4 and 6 of the POCSO Act while the charges of Section 137(2), 87 of the BNS are not proved against the accused persons. Hence, in the interest of justice, issue No.3 is decided accordingly and the following order is passed.

:- O R D E R :-

- 1) The accused persons **1. Bharatsinh Kajaji Rajput** and **2. Dilipkumar Lavjibhai Parkhabhai Joshi** are hereby is hereby acquitted for the offences committed under Section 137(2), 87 of the BNS.
- 2) The accused persons **1. Bharatsinh Kajaji Rajput** and **2. Dilipkumar Lavjibhai Parkhabhai Joshi** are hereby is hereby convicted for the offences committed under Section 65(1), 64(2)M of the BNS and Section 4 and 6 of the POCSO Act.

3) Since this Court has convicted the accused persons for the offences committed under Sections 65(1), 64(2)M of the BNS and Section 4 and 6 of the POCSO Act, the present accused persons are required to be heard on the aspect of quantum of sentence.

Signed and Pronounced in the open Court on this **17th Day of August, 2026** at Tharad, District Banaskantha.

THARAD
DATE : 17/08/2026

(P. M. SAYANI)
SPECIAL JUDGE (POCSO) &
ADDL. SESSIONS JUDGE
THARAD, BANASKANTHA
CODE No. GJ00575