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**In the Court of Additional District Judge and
Special Judge [POCSO]
Arvalli @ Modasa**

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Special (POCSO) Case No. 05 of 2025

Exh.....

The State of Gujarat

... Complainant

VERSUS

Ranjitbhai Monghabhai Damor.

Hindu, Age : Adult, Occu. : --.

Address : Limbodara, Ta. Meghraj, Dist. Arvalli.

...Accused

Appearance:

Mr.D. S. Patel, Ld. A.P.P. for the State.

Mr.R.A.Desai, Ld. Advocate for the Accused.

FORM B

Date of offence	07.09.2024 to 09.09.2024
Date of F.I.R.	13.09.2024
Date of Chargesheet	23.01.2025
Date of framing of charges	22.05.2025
Date of commencement of evidence	09.07.2025
Date of Judgment	07-07-2026
Date of the sentence in order, if any,	NIL

Accused Details

Rank of the Accused	Name of the Accused	Date of Arrest	Date of Release on Bail	Offence Charged with	Whether Acquitted or Convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Section 428 of Cr.P.C.
01	Ranjitbhai Monghabhai Damor.	07-12-2024	---	65(1), 137(2), 87, B.N.S. and Section 4, 6, 8, 12 of POCSO, Act.	Acquitted	--	07-12-2024 to 28-07-2025

∴ J U D G M E N T ∴

1. The accused herein are facing the charge under Sections 137(2), 87, 65(1) of B.N.S.-2023 and under Sections 4, 6, 8, 12 of POCSO Act, which is registered with Meghraj Police Station, District Arvalli bearing First Crime Registration **No.577 of 2024.**
2. The brief facts of the prosecution case go that on 07.09.2024 at 23-00 O'clock to 08.09.2024 at 6-30 O'clock, the accused herein was making the attempts to entice and seduce the minor victim being aged 15 years', 03 months', 13 days' and knowing fully well that the victim being minor took away or kidnapped her with view to compel her or to have sex outside the marriage and accused herein has had penetrative as well as aggravated penetrative sexual assault on and sexual harassment to the victim and also committed the rape on minor victim and made pregnant and thereby committed the offence punishable under sections 137(2), 87, 65(1) of B.N.S.-2023 and under section 4, 6, 8, 12 of POCSO Act. On complaint being filed, the said crime came to be registered and investigation is conducted, arrest of the accused was made and lastly on having sufficient evidence, charge-sheet was laid against the accused herein.

3. Accused being appeared before the Special Court (POCSO), he was provided with all the relevant police papers under Section 208 of the Criminal Procedure Code, submitted with charge-sheet. Thereafter, the charges came to be framed vide Exh.08 and read over and explained to the accused, to which accused pleaded not guilty and claimed trial.
4. The prosecution herein has, to substantiate its case, led following oral as well as documentary evidence.

Oral evidence: -

Sr.No	Name of the Witness	Nature of Witness	Exh.
1.	Victim's Father	Complainant	11
2.	Victim	Victim	17
3.	Dr. Priyankaben J. Prajapati.	Medical Officer, CHC, Meghraj.	13
4.	Dr. Mehulbhai Devkaranbhai Patel.	Doctor, Gynecologist, Sarvajanik Hospital, Modasa.	29
5.	Prajapati Alpeshbhai Somabhai	Principal of Shri B.J.Modi Highschool, Ramgadhi.	36
6.	Alkeshbhai Bhagwanbhai Chaudhari	P.I. Bhiloda Police Station.	40
7.	Mahipalsinh Hardevsinh Zala	P.I. L.C.B. Modasa.	46
8.	Dr. Mahimakumari Pravinsinh Thakor.	Medical Officer, CHC, Meghraj.	59
9.	Dr. Sagar Anilkumar Chimnani.	Medical Officer, Himmatnagar Civil Hospital.	61

Documentary Evidence :-

Sr. No.	Name of the Documents	Exh.
1.	Complaint.	12
2.	Police Yadi	14
3.	Medical Treatment Case Papers of Victim.	15
4.	Medical Certificate of Victim.	16
5.	Statement of Victim under Section 183 of BNSS.	18
6.	Medical Examination Report of Victim of Sexual Assault.	30
7.	Spot Panchnama.	31
8.	Panchnama of the victim's physical condition and Panchnama of seizure of the clothes of the victim.	32
9.	Panchnama of the accused's physical condition and Panchnama of seizure of the clothes of the accused.	33
10.	Panchnama of of the accused.	34

11.	School Leaving Certificate of Victim.	37
12.	General Register of School.	38
13.	Suchipatra	41
14.	Yadi for provide Govt. Panchas.	47
15.	Letter address to Medical Officer CHC, Meghraj.	48
16.	Letter address to Medical Officer Sarvajani Hospital, Modasa.	49
17.	Letter address to Medical Officer GMERS General Hospital, Himmatnagar.	50
18.	Ravangi Patrak.	51, 52
19.	Letter Address to Police Sub Inspector, Meghraj Police Station.	53, 54, 55, 57
20.	Report of Biology and Serology Department, Ahmedabad	56
21.	D.N.A. Report.	58
22.	Medicolegal Case Certificate of Victim.	60
23.	Letter address to Police Choki In-Charge Civil Hospital Chowki, Himmatnagar.	62
24.	Letter address to Medical Officer, GMERS General Hospital, Himmatnagar.	63
25.	Identification Form	64, 65
26.	USG Report.	66

5. On leading the said evidence, the prosecution has tendered the closing pursis at Exh.67. The further statement has been recorded, under Section 313 of The Code of Criminal Procedure after putting the circumstances appearing against the accused in the evidence.
6. The oral arguments of Learned Public Prosecutor and defence lawyer have been heard at length. The learned APP has mainly submitted that as per Section 29 of POCSO Act, 2012; there is presumption against the accused that he has committed the offence alleged against him unless it is rebutted. It is submitted that in the present case, the accused has not led any evidence on his behalf, neither oral nor documentary. It is further submitted that in order to prove the prosecution case, the concerned witnesses are examined. Out of them, evidence of official witness i.e., the medical officer, the police personnel, are the witness supporting the prosecution case. At the same time, it is also submitted that, the statement of the prosecutrix before the learned Magistrate under Section 183 of B.N.S.S. is also required to be considered. It is finally submitted that considering all the materials placed before this Court and also taking consideration presumptions available under Section 29 of

POCSO Act, 2012; the prosecution has successfully proved the guilt of the accused thereby, the learned APP has prayed to convict the accused.

7. *Per contra*, the learned counsel for the accused submitted that the prosecution has miserably failed to prove the guilt of the accused. It is further submitted that most of the witness are declared hostile as they have not supported the prosecution case moreover there is vast contradiction in the FIR, statement of the victim recorded under Section 183 of B.N.S.S. and the deposition of the prosecutrix recorded before this Court. That the Prosecutrix has categorically denied the incident at the time of deposition before court. It is further submitted that the other witness who is father of the prosecutrix and other witnesses have also not supported the case of the prosecution to link the accused to the alleged crime. Considering the evidence on record of prosecutrix and other witnesses, the medical evidence, the police evidence will not be helpful to prosecution. Hence, he prayed to acquit the accused person.
8. Having considered oral as well as documentary evidence and having gone through arguments advanced on behalf of both the sides, the following points for determination arise for my consideration.

Points for Determination

1. Whether the prosecution proves that the victim was 'child' on the day of incident?
2. Whether the prosecution proves beyond reasonable doubt that the accused herein raped the victim, who was under sixteen years of age and thereby committed the offence under Section 137(2), 87, 65(1) of B.N.S.-2023 as alleged?
3. Whether the prosecution proves beyond reasonable doubt that accused has committed penetrative sexual assault and sexual assault on the victim and attempted to commit the offence punishable under Section 4, 6, 8, 12 of the Protection of Children from Sexual Offences Act, 2012 as alleged?
4. What Order?

9. My findings to afore-quoted points for determination are as follows;
1. In the Negative.
 2. In the Negative.
 3. In the Negative.
 4. As per the final order.

: REASONS :

ISSUE NO. 1:-

10. That, it is the specific case of the prosecution that on the date of the alleged incident, the victim was below 18 years of age and therefore a “child” within the meaning of Section 2(1)(d) of the POCSO Act. Hence, the burden initially lies upon the prosecution to establish the age of the victim through cogent, reliable and legally admissible evidence. It is a settled proposition of law that the foundational facts regarding minority of the victim must first be proved before the statutory presumptions under the POCSO Act can be invoked.
- 10.1 In the present case, the prosecution has examined the complainant-father of the victim at Exh.11. The father, being the natural guardian and the best person to depose regarding the age of his daughter, has categorically deposed in his examination-in-chief that he does not know the exact date of birth of the victim and further stated that at the time of incident, the victim was aged about 16 years and 03 months. Even during cross-examination, he stated that it is true that my victim daughter was sent to school for eight years and failed 2 to 3 times.
- 10.2 The prosecution has also examined the victim herself at Exh.17. The victim has deposed that her date of birth is 25/05/2009. During cross-examination, she has stated that it is true that in the year 2024 she was 17 years old and at present she is 18 years. Even during cross-examination, she stated that it is true that I was sent to school for eight years and failed 2 to 3 times. Thus, the oral evidence of both the star witnesses i.e. the victim and her father, does not support the case of the prosecution regarding minority of the victim.

- 10.3 Though the prosecution has produced certain documentary evidence namely school leaving certificate and General Register at Exh.37 and Exh.38, the prosecution has examined the Principal of B.J.Modi Highschool, Ramgadhi at Exh.36, in his cross he has stated that it is true that I cannot say whether the date of birth of the victim is correct or not. The witness says that I am stating the date of birth on the basis of the record. It is true that the registration of the victim in our school was done on the basis of the previous school L.C. and no other proof of birth was submitted along with it. It is true that illiterate people do not register births in villages. I cannot say that when the parents are not registered, the parents write the approximate date of birth of the child in the school. It is true that if there is a Panchayat certificate and the registration is correct. It is true that registration is done approximately without a Panchayat certificate.
- 10.4 At this stage, it is profitable to refer to the principles laid down by the Hon'ble Supreme Court in **P. Yuvaprakash v. State Rep. by Inspector of Police, 2023 SCC OnLine SC 846**, wherein the Hon'ble Apex Court held that school transfer certificate or unproved school records cannot automatically be accepted as conclusive proof of age unless proved in accordance with law and supported by legally admissible evidence. The Hon'ble Supreme Court further observed that where reliable documentary evidence is absent or doubtful, medical evidence including ossification test assumes significance.
- 10.5 Further, the Hon'ble Supreme Court in **2025 INSC 1473** reiterated that the determination of age must be based upon legally admissible evidence and the evidentiary hierarchy contemplated under Section 94 of the Juvenile Justice Act has to be followed. It was observed that medical opinion through ossification test becomes relevant where authentic documentary evidence is either absent or not satisfactorily proved.
- 10.6 In the case on hand, despite serious dispute regarding the age of the victim, admittedly no ossification test or any scientific age determination test was conducted by the Investigating Agency. The prosecution has thus failed to

bring reliable, cogent and trustworthy evidence on record to conclusively establish that the victim was below 18 years of age on the date of the alleged incident.

- 10.7 In view of the aforesaid discussion, it would be apposite to summarize the findings on this issue. The oral testimony of the complainant-father, who admittedly had no personal knowledge of the exact date of birth of the victim, cannot by itself be treated as conclusive proof of minority. Similarly, the testimony of the victim herself, wherein she stated that she was 17 years of age in the year 2024 and 18 years of age at present, is inconsistent with the date of birth deposed by her, and does not inspire confidence so as to conclusively establish that she was below 18 years of age on the date of the alleged incident.
- 10.8 So far as the documentary evidence in the form of the School Leaving Certificate and General Register (Exh.37 and Exh.38) is concerned, the same cannot be said to have been proved in accordance with law. The Principal of the concerned school, who was examined at Exh.36, has candidly admitted in his cross-examination that he could not vouch for the correctness of the date of birth recorded, that the entry was made solely on the basis of the previous school's Leaving Certificate without any independent proof of birth, and that in the absence of a Panchayat certificate, such registration of date of birth in village schools is done only approximately. This admission goes to the very root of the reliability of the documentary evidence and squarely attracts the principle laid down by the Hon'ble Supreme Court in *P. Yuvaprakash v. State Rep. by Inspector of Police*, 2023 SCC OnLine SC 846, that unproved and unverified school records cannot be treated as conclusive proof of age.
- 10.9 It is further relevant to note that despite the existence of a genuine and serious dispute regarding the age of the victim on record, the Investigating Officer did not consider it necessary to subject the victim to an ossification test or any other scientific method of age determination. As held by the Hon'ble Supreme Court in 2025 INSC 1473, resort to medical evidence,

including ossification test, becomes necessary where the documentary evidence on record is either absent or has not been satisfactorily proved. The failure of the Investigating Agency to obtain such medical opinion, in the facts of the present case, has resulted in a vital lacuna which enures to the benefit of the accused.

10.10 For the reasons foretasted, this Court is of the considered opinion that the prosecution has failed to prove, by cogent, reliable and legally admissible evidence, the foundational fact that the victim was below 18 years of age, i.e., a "child" within the meaning of Section 2(1)(d) of the POCSO Act, on the date of the alleged incident. The material contradictions in the oral evidence, coupled with the unproved and unreliable documentary evidence and the complete absence of scientific corroboration, create a reasonable doubt which must operate in favour of the accused.

10.11 Hence, this Court holds that the prosecution has failed to establish the foundational fact regarding minority of the victim. Consequently, the benefit of doubt deserves to be extended to the accused. Accordingly, Issue No.1 is answered in the **NEGATIVE**.

ISSUE NOS. 2 TO 4 :-

11. Since all the points are interlinked with each other, for the sake of convenience and in order to avoid the repetition of the facts of the evidence, they are all taken up together for common discussion.
12. All the precautions and safe guards as per the directions of Hon'ble Gujarat High Court and the Hon'ble Supreme Court have been taken which are required while recording the evidence of the victim. Guidelines for recording evidence of vulnerable witnesses in criminal matters, as approved by the "Committee to monitor proper implementation of several guidelines laid down by the Supreme Court as well as High Court of Gujarat for dealing with matters pertaining to sexual offences and child witnesses" have been followed. Preliminary inquiries were made from the victim and it appeared that she was well oriented and was capable of giving rational answers to

questions. She understood the sanctity of oath. The victim appeared to be giving her evidence voluntarily and without any threat, pressure, fear, influence or coercion.

- 12.1 The testimonial collection, nature-wise, bifurcates itself into direct or substantial evidence, opinion evidence and collective evidence. The substantial evidence reconstructs entire episode or incident on the record, opinion evidence either corroborates or destroys the substantial evidence and collective evidence throws light on the authenticity and probity of entire evidence. First of all, let us scrutinize the victim and her relation witnesses account by critically analyzing entire evidence from the prism of examination in chief and cross examination.
- 12.2 Brief narratives of PW-1 and PW-2, emerging from cumulative reading of examination in chief and cross examination.
- 12.3 The testimonial collection of each and every witness needs to be analyzed in the present judgment which allows extracting the proof of the fact in issue and relevant fact therefrom.
- 12.4 Bearing in mind, the said situational aspect, let us critically examine and evaluate the deposition of the victim herein who is alleged to be kidnapped and made to suffer penetrative as well as aggravated penetrative sexual assault.
13. Having critically examined and evaluated the deposition of the victim herein, who is alleged to be kidnapped and made to suffer penetrative sexual assault. The crux of the victim's deposition vide Exh.17 as P.W.2 conveys that *"I know the accused Ranjitbhai. When I was studying in class 10, the accused Ranjit used to come to my school. When I went to the school, the accused used to threaten me that if I did not talk to him, I would kill your parents. And by forcing me in this way, I started talking. My date of birth is 25/05/2009. On 30/03/2024, he took me to a room and raped me there. 2. Dated 08/06/2024. I had a physical relationship with the accused and had to stay for a month. So I informed the accused about this. So he told me that I will get him medicine and send him back. Saying this, he took me in a Swift car. He took me to Lawarpur village in Gandhinagar district. There he kept me in a room. And during this*

time, there was no contact with my parents. After three months, the police came to Lawarpur village in Gandhinagar district. And the police said that it will not work anymore after so many days. When I stayed for three months, the accused used to threaten me that if you go with your father, he will kill you and used to beat me up. After that, the police came and brought me to the office of the Modasa Superintendent of Police and from there they took me to Meghraj police station and the police interrogated me and recorded my statement. And then they put me in Sakhi One Stop. Then I was taken to Meghraj Hospital and there I was given a physical examination where I wrote down my history to the doctor and the doctor did my physical examination. Then I was taken to Sakhi One Stop. Then I was taken to Modasa Hospital for sonography and then to Himantnagar Hospital where my child's sonography was done. Then I was taken to Sakhi One Stop. Then the next day the police took me to Modasa Court before Judge Saheb. Where the judge asked me Statement written. I was shown a sealed cover from the court record and shown the statement in which my signature is given as Exhibit 18. When the police caught me, the accused threatened me that I would write the statement as I said. So, I wrote the statement as he said. I gave the clothes I was wearing at the time of the incident to the police. It was a red dress and a black lehenga. The dirty clothes that were shown to me are the same ones that I gave to the police. Seeing that the photo of the accused is shown to me in the charge sheet, I say that the same accused raped me. Cross-examination It is true that in 2024 I was 17 years old and currently I am 18 years old. It is not true that I was sent to study in the seventh year of school. It is not true that I am young and I do not know for how many years I was sent to school. It is true that the police took my statement twice. It is not true that I have written in the police statement that "My father is in the business of driving. Ranjitbhai Mohnabhai Damornao used to live in our house for the last five years with an Eco car and my father used to drive it." It is not true that I told the police that there was a love affair between me and the accused. It is not true that in the second police statement it is written that for the last three years, I and the accused were engaged and this engagement was known to my parents and family and the people of the village. It is not true

that in the second police statement it is written that my parents and our I was confident that my family would get me married, so we used to have physical relations at my house and in the vicinity by mutual consent. It is true that in my statement to the police and the statement to the magistrate, I did not state that the accused had physical relations with me. The witness states that the accused threatened me, so it is not written down. It is true that I did not state the fact that the accused threatened me before the police, the doctor or the magistrate. It is true that in the history I gave to the doctor, I stated that there was a love affair and that there was no coercion or rape. It is not true that I had a love affair with a boy other than the accused. It is not true that when the accused came to know about this, the accused talked about breaking the engagement. That is It is not true that this is why my father filed a complaint against the accused. It is not true that the accused was staying at my house and was given money to do business at my father's house. It is true that the fact that the accused forcibly took me away from my house was not mentioned in the police statement. It is not true that in the magistrate's statement it is written that "My parents and family members knew that I was engaged to the accused for the last three years and I was confident that we would get married and we were living as husband and wife." It is true that the fact that "the accused used to threaten me when I was going to school that if I did not talk to him, I would kill your parents. And by forcing me in this way, I started talking" is not written in the police statement. It is true that "on 30/03/2024, he took me to a room and there he sexually assaulted me against my will. After that, he left me on the road and I went home" is not written in the police statement. It is true that I had a physical relationship with the accused and had to stay for a month. So I informed the accused about this. So he told me that I would get him medicine and let him go. Saying this, he took me in a Swift car. He took me to Lawarapur village in Gandhinagar district. There he kept me in a room. And during this time, there was no contact with my parents. After three months, the police came to Lawarapur village in Gandhinagar district. And the policeman said that the fact that it has been going on for so many days, it will not work anymore is not written in the police statement. It is not true that the accused did not

forcibly have physical intercourse with me or that I did not become pregnant because of it. It is not true that I am giving false testimony on the advice of my parents and family members. It is not true that despite the fact that I had a love affair with the accused before the doctor, police and magistrate, on the advice of my parents. I have stated this fact before the court under pressure. It is not true that I am giving false testimony despite being engaged to the accused.." Looking to the deposition of the Victim, it is crystal clear that she absolutely refutes the happening of entire prosecution version as regards kidnapping and raped by the accused herein and has had sexual intercourse with her. Thus, the victim to the hilt denies entire incident.

- 13.1 The victim to the hilt denies entire incident, making available history. Having approval of the Court, the prosecution put number of grilling questions that might have been asked in the cross-examination, but that exercise too went in to vain as nothing could be elicited which may advance the interest of prosecution further.
- 13.2 That the victim was declared hostile with the permission of the court and cross examined by the prosecution, in her cross-examination victim has not admitted the contents of the complaint.
- 13.3 Thereafter, the victim has been cross-examined by the Id. Advocate of the accused. The victim had admitted in her cross-examination in her cross she has stated that *"It is true that I studied in school for eight years and that I failed two or three times during my education. It is true that I was engaged to the accused and that we lived together as husband and wife. It is true that the accused resided at my house. It is true that the accused never committed any wrongful act against me. It is true that, at the instance of my father and family members, I made statements before the police, the doctor, and the learned Magistrate. It is true that I was in a love relationship with another boy. It is true that I did not narrate any facts to the police and that the police merely asked me my name. It is true that, as stated earlier before this Hon'ble Court, no such incident as alleged ever took place. It is true that no one abducted me, took me away, or threatened me at any point of time.."* That the prosecution has produced statement of victim recorded u/s 183 of B.N.S.S. at Exh.18, in

which she had stated that I ran away with accused with her own free will and had sexual relations with the him with her own will and accused has not force her.

- 13.4 This Court has considered the statement of the prosecutrix recorded under Section 183 of B.N.S.S. wherein she has supported the prosecution case, but in her examination of chief and cross examination conducted on behalf of accused, before courts she has stated nothing against the accused or regarding any offence against the accused person. While, in cross examination conducted by the APP, she has admitted the facts which her narrated before the police statement. After perusing the testimony of the victim, in which, she absolutely refutes the happening of entire prosecution version and the complaint has wrongly been filed. Further, the victim admitted the fact that it is true that the victim admitted the contents of the reply before police. Thus, the victim to the hilt denies entire incident. It is required to note that the statement recorded u/s 183 of B.N.S.S. is not a substantive piece of evidence; it can be used only to contradict the victim. Therefore, it cannot be the sole base to convict the accused. Hence, looking to the entire evidence of the victim she has changed her version time to time, in the circumstances, only on the basis of evidence of victim, accused cannot be convicted but court has been looked into other corroborative evidence.
- 13.5 In the perspective of the victim's testimony and version emerging therefrom, let us look at the testimony of the complainant, who happens to be the father of the victim. He has been examined as P.W.1 at Exh.11. He has deposed that *"The incident took place on 07/09/2024. On the night of the incident, I, my wife, and my daughter (the victim) were sleeping in the chopard of our house. At about 6:00 a.m., when I woke up to milk the cattle, I found that my daughter was missing. Thereafter, I searched for her in the nearby area and at the houses of our relatives, but despite my efforts, she could not be traced. About four months prior to the incident, the accused, Ranjitbhai Mohanbhai Damor, used to take my daughter to school on his motorcycle and had threatened that he would take her away. On the morning of the incident, we contacted the accused's family by telephone, but his mobile phone was switched off.*

Thereafter, accompanied by the village elders, we went to the accused's residence. Although his family members were present, the accused was not found. His family members assured us that they would search for both the accused and my daughter. However, despite these efforts, my daughter could not be located. I was shown the complaint at Exhibit 12, and I identified my signature appearing thereon. At the time of lodging the complaint, I had produced my daughter's School Leaving Certificate before the police. After about three months, my daughter was traced, and the police called us to the police station. Thereafter, we were produced before the Court, where custody of my daughter was handed over to me pursuant to the Court's order. After she returned, I questioned my daughter, who informed me that she was four months pregnant by the accused, Ranjitbhai Mohanbhai Damor. She further stated that the accused had persuaded her to leave the house, assuring her that they would terminate the pregnancy if she accompanied him. She also informed me that the accused had said there was no need for her to return to her parental home and that he would pay ₹5,00,000 to her father. The accused is the son of my wife's maternal uncle. I have known him for several years. The accused present before this Hon'ble Court is the same person." During his cross he has stated that "It is true that I did not file a complaint on the day of the incident. It is true that no reason has been given for delaying the complaint. It is true that I sent my victim daughter to study for 6 years.... It is true that four members of my family came with me to file a complaint. It is true that the complaint was filed against the accused on the basis of suspicion. It is true that I do not know when and how my victim daughter left home. It is true that the accused was not at my house when my daughter left home. It is true that the accused stayed at my house for two years while I was driving the accused's car. It is true that the victim threatened or lured me in my presence. I do not know that it was given. It is true that the police only asked for my name and address and the police wrote the complaint and I only signed it. It is true that my victim daughter was sent to study for eight years and failed two to three times. It is true that the accused lived in my house and he got engaged to my victim daughter. It is true that child marriages happen in our Thakor community. It is

true that my victim daughter did not tell me anything. It is true that I do not know anything except signing the complaint."

- 13.6 In the present case, as discussed above, the victim denies the entire incident. Likewise, the complainant and father of the victim has also not supported the prosecution case. Hence, upon scrutinizing the evidence of victim and her father, he has totally denied the prosecution case. In the circumstances, nothing has suggested from the oral evidence of star witnesses, that the accused has lured and eloped the victim and sexual intercourse with the victim without her consent. As discussed in issue no.1, prosecution has not proved that victim was child at the time of incident. Hence, the relation of Accused and victim seems to be contextual.

Analysis of Medical Evidence:

14. The prosecution has examined PW.2 – Dr. Mehulbhai Devkaranbhai Patel, Medical officer, Gynec. Sarvajanic Hospital, Modasa vide Exh.29, who has medically examined the prosecutrix and prosecutrix has narrated history before him and as per history given by her, *I have known Ranjit for 2 years. I was living with him in a room in Chiloda area two and a half months ago. I had sexual intercourse with Ranjit voluntarily.* This witness has given certificate vide Exh.30 and in which the victim was referred to sonography for expert opinion.
- 14.1 That the prosecution has examined P.W.8 – Dr. Mahimakumari Pravinsinh Thakor vide Exh.59 on 06-12-2024, who has medically examined the prosecutrix and prosecutrix has narrated history before him and as per history given by her, Both the accused and I are in a relationship and living together and are yet to get married. The certificate produced vide Exh.60, in which, no opinion was given.
- 14.2 On appreciation of the evidence of PW-4, it transpires that, the victim was referred to me for gynecological examination, and after the gynecological examination, this witness has issued the medical certificate of the victim at Exh.29, wherein, no mark of injury over any part of the victim are

mentioned. As no physical assault or external injury was found on the victim's body during the medical examination, and after reviewing the evidence of the witness i.e. PW-2, it is not clear that the accused committed rape or made physical assault upon the victim.

- 14.3 That the prosecution has examined PW.2 – Dr. Priyankaben Jayendrabhai Prajapati, Medical officer, CHC, Meghraj vide Exh.13. The said witness stated in her testimony that the accused had been examined and this witness asserted that he has well developed bod and generative organ. He was mentally sound and there was no any injury or sign of struggle was notice during examination and after taking samples, the samples were forwarded to FSL and in the certificate issued by this witness, he opined that nothing to suggest that the said accused was incapable of performing sexual intercourse.
- 14.4 That the prosecution has examined PW.9 – Dr. Sagar Anilkumar Chimnani, Medical officer, Civil Hospital, Himmatnagar vide Exh.61. The said witness stated in his testimony that the victim had been examined and this witness asserted that I have taken DNA samples of the victim and her child and sent them to the FSL.
- 14.5 This witness is cross-examined by the learned Advocate for the accused, wherein he stated that it is true that I am not a gynecologist. It is true that the victims came directly to me. It is true that just by taking blood samples from the child and its mother, it cannot be determined who the father is.
- 14.6 On a critical and cumulative analysis of the medical evidence discussed hereinabove, certain significant aspects emerge which weigh heavily against the case of the prosecution. Firstly, it is an admitted position that the victim was brought before the medical officer (PW-2) by the police, and the police remained present at the time of her examination. In such circumstances, the history narrated by the victim to the medical officer, being given in the presence of the investigating agency, loses much of its evidentiary sanctity and cannot be treated as a spontaneous or reliable version for corroborative purposes.

- 14.6.1 Secondly, and more importantly, the medical certificate at Exh.29 does not record any mark of injury on any part of the victim's body, nor does the evidence of PW-2 support the theory of forceful sexual assault. Similarly, the medical examination of the accused (PW-2, Exh.13) also did not reveal any injury or sign of struggle. The absence of any injury on either party, though not by itself conclusive of consent, is a relevant circumstance which, when read with the history of a pre-existing relationship narrated by the victim before PW-2 and PW-8, is consistent with the defence version rather than that of forcible commission of rape.
- 14.6.2 Thirdly, insofar as the paternity of the child is concerned, PW-9 has candidly admitted in his cross-examination that he is not a gynaecologist, that the victim came directly to him, and that mere collection of blood samples of the victim and the child cannot, by itself, establish paternity. No DNA/FSL report has been placed on record by the prosecution to scientifically link the accused with the paternity of the child or with the commission of the alleged offence. In the absence of such foundational scientific evidence, the mere collection of samples remains an incomplete exercise and cannot be read in favour of the prosecution.
- 14.6.3 Thus, taking an overall view of the medical evidence — namely, the compromised value of the history given in police presence, the absence of injury on the victim, and the complete absence of any DNA/FSL report connecting the accused to the offence — this Court finds that the medical evidence, far from corroborating the prosecution's case, falls significantly short of establishing the commission of the offence by the accused. The medical evidence, therefore, is not sufficient to connect the accused with the commission of the alleged crime.
15. The learned APP has also relied on the certificate, history given by victim and opinion of the medical officer. The Medical Officer has narrated whatever he has found during the medical examination of the prosecutrix. He has opined that there was intercourse with the prosecutrix.

- 15.1 At this juncture, it is to be noted that the ocular evidence would prevail over medical evidence, and medical evidence has only a corroborative value. In this case, the prosecutrix has very categorically deposed on oath that the accused has not kidnapped her and lured the victim to compel for marriage and not done any wrong act or not had any physical relationship with her. There is no reason to disbelieve the evidence of the prosecutrix, particularly, when she is the victim of the case and she has stated on oath.
- 15.2 In the case of **Dayal Singh and others V/s State of Uttaranchal (2012) 7 Page No. 165** wherein, the Hon'ble Court has held that where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. In the present case, the prosecutrix is a victim. Her deposition on oath before this Court appears credible and trustworthy, no reason to disbelieve the same. Hence, the medical opinion pointing to the alternative possibility cannot be accepted as conclusive.
- 15.3 Hence, there is a huge conflict between the history given to Medical officer and other evidences on record and as discussed above, under such facts and circumstances, the evidence given by the prosecutrix herself, before this court on oath is required to be considered.
16. The learned APP has also relied on the statement recorded under Section 183 of B.N.S.S. before the learned Magistrate. This Court has also considered the statement of the prosecutrix recorded under Section 183 of B.N.S.S. wherein she has supported the prosecution case, but in her deposition before courts she has stated nothing against the accused or regarding any offence against the accused person. Moreover, it is required to note that the statement recorded u/s 183 of B.N.S.S. is not a substantive piece of evidence, it can be used only to contradict the victim only. Therefore, it cannot be the sole base to convict the accused.

Analysis of Investigating Officer's deposition :-

17. The deposition of the Investigating Officer, Mahipalsinh Hardevsinh Zala P.W-7 vide Exh.46 has been recorded. The Investigating Officer has done entire investigation as a part of duty thereof; he has made last ditched effort to bring home the charge against the accused herein. His entire testimony sticks to his conclusion as regards laying of charge-sheet against the accused herein on finding sufficient materials. This conclusion does not stand scrutiny of entire evidence including the victim, her father, medical evidence etc. Against this backdrop, relying upon only testimony of investigating officers and reaching the conclusion of recording the guilt of the accused herein seems to be crossing limit of principle of suspicion cannot take place of the proof as from it might be to it must be have very far and wide distance between them. The material available in the testimony of Investigating Officers does not help in traveling the distance of proof from it might be to it must be. From this perspective, the testimony of Investigating Officer alone in the face of all the star witnesses including victims and their parents being turned hostile and medical evidence to lend to an extent credence to the version of the victim so far as the allegations of Sec. 4, 6, 8, 12 of POCSO Act as well as kidnapping.

As to the statutory presumption: -

18. This Court has considered the entire evidence of both the sides on record. This Court has considered Section 29 of the POCSO Act, 2012. The learned APP has submitted that though the prosecutrix have declared hostile and not supported the case, the evidence of official witnesses like police officer, medical officer. Statement of the victim under Section 183 of B.N.S.S. recorded before the Magistrate should be considered and the presumption available under Section 29 of the POCSO Act, 2012 should be raised. It is profitable to refer to Sec.29 of the POCSO Act.

Section 29:

Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under

Section 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."

- 18.1 On considering Section 29 of POCSO Act, 2012 it appears that presumption under Section 29 would come into play only when the prosecution is able to bring on record, the facts that would form the foundation for presumption. It is also to be noted that that presumption under Section 29 of the POCSO Act, 2012 is not absolute. The statutory presumption would get activated or triggered only if the prosecution proves the essential foundational facts. If the accused is able to create serious doubt on the veracity of the Prosecution case or the accused bring on record material which would render the prosecution version highly improbable, the presumption would be discharged and weakened.
- 18.2 In the present case from the entire evidence, it does not appear that the prosecution had proved the basic essential facts so that presumption under Section 29 can be raised. Without any doubt, it is very clear from the deposition of the prosecutrix and the witnesses that they have not supported the prosecution case and under such circumstances, statutory presumption cannot be raised. It is established principle that to rebut a presumption, first, the presumptive proposition must itself be formulated based on relevant and credible material; and second, the accused must know what presumption he has to rebut.
- 18.3 In the present case, nothing incriminating or involving the accused in the present offence has been deposed by the prosecutrix as well as the witnesses. The presumptive proposition has not been formulated. Hence, there is no question to rebut the presumption on behalf of the accused. In the case of **Dhanvantrai Balvantrai Desai V/s State of Maharashtra** reported in **AIR 1964 SC 575**, Hon'ble Supreme Court has held that the words "unless the contrary is proved" which occur in the provisions make it clear that the presumption has to be rebutted by disproving the facts for

the proof of which evidence was let in by the prosecution, so the argument advanced by the learned APP regarding Section 29 of POCSO Act, 2012 is not tenable.

19. The prosecution has left every door ajar for the defence to enter into and demolish entire premises of the prosecution herein. Since the prosecution does not bring home the charge being put forward against the accused herein on the basis of foundational facts.
20. The absent of proof of foundational or preliminary facts constituting penetrative and sexual assaults, kidnapping, kidnapping to compel to marry and raped the victim, who was under sixteen years of age, does not shift the pendulum of onus on the accused herein. This deduction emerges from the mandate of Section 4, 6, 8, 12 of the Protection of Children from Sexual Offence Act, 2012 and the offences under Sections 137(2), 87, 65(1) of B.N.S.-2023.
21. Having Considered entire evidence nothing has suggested that any offence alleged by the prosecution has been occurred. That the victim has not supported the prosecution case, nothing has brought on record that suggest any loss on mental agony has been caused to the victim. Therefore, this is not a fit case to award any compensation.
22. Considering the entire evidence on record, the charges against the accused cannot be said to be proved by the prosecution. Even the panchnama are also not proved. The prosecution has failed to exonerate itself from the facts of proving the guilt of the accused beyond reasonable doubt. My answer from Issue Nos. 2 & 3 are in the Negative; and hence, for Issue No. 4, I pass the following final order:

<< ORDER >>

1. Under section 235 (1) code of criminal procedure, the accused **Ranjitbhai Monghabhai Damor** is R/o Limbodara, Ta. Meghraj, Dist. Arvalli stands acquitted under sections **137(2), 87, 65(1)** of B.N.S.-2023as well as under section **4, 6, 8, 12 of POCSO Act.**

2. The material objects shall be destroyed after the period fixed for preferring appeal gets over. The vehicle shall be returned to the Owner of the Vehicle after due verification, if any.
3. As per amended provision of Section 437A(1), the accused are hereby ordered and directed to execute bail bond with surety for the sum of Rs.15,000/- (Rupees Fifteen Thousand Only), for a period of six months, for their appearance in case of appeal is filed against this judgment before the higher Court.

Today, signed and pronounced in the open Court.

Place: Modasa.

Date: 07/07/'26

MLR...

[K. K. Shukla]
Special POCSO Judge and
Additional Sessions Judge
M O D A S A
Code No.GJ-00547.