

Received On : 30/08/2024

Registered On : 30/08/2024

Decided On : 10/07/2026

Duration: : Y M D
01 10 10

FORM - A

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, THARAD	
Present: P. M. Sayani (Special Judge (POCSO))	
[Date of the Judgment : 10.07.2026]	
[Special POCSO Case No. 12/2024]	
(FIR No. 11195060240211/2024 registered at Vav Police Station punishable under Section 376, 506(2) of IPC and Section 4 and 5(h) of the POCSO Act)	
COMPLAINANT	State of Gujarat.
REPRESENTED BY	Ld. APP Mr. R. D. Joshi
ACCUSED	Swaroopji Shantiji Thakor
REPRESENTED BY	Mr. D. M. Patel Ld. Advocate for the Accused

PART - B

Date of Offence	22.06.2024
Date of FIR	02.07.2024
Date of Chargesheet	30.08.2024
Date of Framing of Charges	25.10.2024
Date of commencement of evidence	14.11.2024
Date on which judgment is reserved	01.07.2026
Date of the Judgment	10.07.2026
Date of the Sentencing Order, if any	-

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	Swaroopji Shantiji Thakor	30.07.24	16.10.24	376, 506(2) of IPC and Section 4 and 5(h) of the POCSO ACT	Acquitted	-	-

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

RANK	EXH.	NAME	NATURE OF EVIDENCE
PW-1	11	Mother of the victim	Complainant
PW-2	13	Victim	Victim
PW-3	16	Jagdishbhai Manilal Thakor	Age Witness
PW-4	19	Dr. Ishwarbhai Madhabhai Makwana	Medical Witness
PW-5	20	Dr. Hardikkumar Ramlal Suthar	Medical Witness
PW-6	23	Vashrambhai Vohtabhai Chaudhary	Panch Witness
PW-7	27	Aashishkumar Ghemarbhai Rabari	I.O.
PW-8	39	Deep Manharkumar Patel	Scientific Officer

B. Defence

RANK	EXH.	NAME	NATURE OF EVIDENCE
DW-1	43	Dipakkumar Bhembhijbhai Parmar	Notary Advocate
DW-2	47	Raghubhai Laxmanbhai Joshi	AHC

LIST OF Prosecution / Defence / Court Exhibits**A. Prosecution :**

Sr. No.	Exh.	Description
1	12	Complaint of the complainant
2	17	Copy of relevant page of school register regarding entry of victim
3	18	School Leaving Certificate of the victim

4	24	Spot Panchnama
5	25	Panchnama regarding the physical condition of accused
6	21	Medical Certificate MLC No. 3527/2024
7	26	Medical Certificate of the victim issued by CHC, Vav
8	29	Yadi regarding medical examination of the victim and issuance of certificate.
9	30	Yadi regarding medical examination of the accused and issuance of certificate.
10	31	Spot Examination sheet
11	32	Statement of the victim recorded under Section 183 of the BNSS
12	33	Ravangi Patrak No.1
13	34	FSL Yadi
14	35	FSL Receipt
15	36	FSL Report

B. Defence :

Sr. No.	Exh.	Description
1	45	Certified Copy of Notary made by Mr. D. B. Parmar
2	46	Certified Copy of Register of Notary of Mr. D. B. Parmar
3	49	Certificate Copy of statement of the victim's elder sister recorded on 28.06.2024 by AHC Raghubhai Laxmanbhai Joshi
4	50	Certificate Copy of statement of the accused recorded on 28.06.2024 by AHC Raghubhai Laxmanbhai Joshi

-::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 for the past one year or so, the husband of the complainant has been suffering from mental illness and despite receiving medical treatment, his condition has not improved and as People in their neighborhood suggested that there might be a spiritual or supernatural issue and advised them to consult a “*Bhuvaji*” and accordingly, they contacted Swarupji Shantiji Thakor, a person residing in Kotarwada who is known as a devotee of *Meldi Mata* and they invited him to their home. It is further averred in the complaint that the accused stated that there was a spiritual disturbance in the house of the complainant and that he would need to perform certain rituals for all family members and instructed them to observe certain religious practices for 12 months and to visit him every month at Kotarwada. It is further averred in the complaint that during this period, accused Swarupji used to visit the house of the complainant frequently and on 22/06/2024, he took away her elder daughter, without her consent but due to fear of social stigma, she and her family members did not file a police complaint at that time. It is further averred that the younger daughter of the complainant i.e. the victim was also deeply frightened by the incident and she later informed her that about a month prior to this incident, accused had come to their house and told her that he would perform a private ritual to help her father recover, and that she needed to participate in it alone and took her into a room and conducted certain acts under the pretext of the ritual and during this time, the accused threatened her with harm if she resisted or raised any

alarm and under fear and coercion, he acted against her will. It is further averred that before leaving, the accused warned the victim not to disclose the incident to anyone, threatening harm to her family and due to his fear, the victim did not inform anyone initially and when she later shared this with the complainant, she informed her relatives who encouraged them to come forward and it has also come to their knowledge that accused Swarupji Shantiji Thakor, despite knowing that the victim daughter of the complainant is a minor, committed similar acts against her under the pretext of rituals and threatened her with harm if she disclosed the matter. Therefore, the present complaint regarding the incident was filed at Vav Police Station. It is further averred in the complaint that at the time of the incident, the victim was aged only 16 years and 4 months old.

3. On the basis of the complaint, the FIR No. 11195060240211/2024 registered at Vav Police Station punishable under Section 376, 506(2) of IPC and Section 4 and 5(h) of the POCSO Act.

4. After completion of the investigation, the charge-sheet had been filed before this Court and it was registered as Special (POCSO) Case No. 12/2024. The copy of the charge-sheet was supplied to the accused, and the Ld. A.P.P had opened the case of the Prosecution against the accused. On 25.10.2024, a charge for the offences under sections 376, 506(2) of IPC and Section 4 and 5(h) of the POCSO Act was framed against the accused at Exh.7, to which the accused pleaded not guilty and claimed trial.

5. The Prosecution has examined 8 witnesses and thereafter, the Ld. A.P.P. for the state closed the Prosecution evidence vide

purshish at Exh.40. The statement of the accused was recorded under Section 313 of the Cr.P.C wherein he denied the allegations and stated that he had been falsely implicated in the present case. The accused has examined two witnesses and produced the documentary material as 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 the oral and documentary evidence on record, establishes a consistent, cogent, and reliable chain of circumstances proving the guilt of the accused beyond reasonable doubt. It is further argued that the victim, a minor girl aged approximately 16 years and 4 months at the time of the incident, has clearly and unequivocally narrated the occurrence in her deposition at Exh.13, stating that the father of the victim had suffering from mental illness, therefore, people from the surrounding area told them to show him to some *Bhuvaji* and accordingly, the relatives informed her mother about accused Swarupji Shantiji Thakor, the *Bhuvaji* of Meladi Mata at Kotarwada village, who could cure the father of the victim and on the date of incident, accused Swarupji Shantiji Thakor was staying at the house of the victim and he told the victim that she had to perform the ritual with him in solitude inside the room and took the victim inside the room, closed the door of the room, and had a lemon, a knife, and a brass pot with him and he rotated the pot over the victim and sprinkled water from the pot on her body and then he told the victim to remove all the clothes and victim

removed clothes and thereafter, against her will, the accused established physical relations with the victim and when she refused, he threatened to kill her. It is further argued that the testimony of the victim is duly corroborated by her statement recorded under Section 183 of the BNSS which is available on record at Exh.32. It is further argued that the evidence of the victim finds substantial corroboration from the testimony of her mother i.e. the complainant who has been examined at Exh.12, who have consistently deposed regarding the disclosure made by the victim and their version is further supported by other prosecution witnesses. It is further argued that the medical evidence of the doctor who has been examined at Exh.20, supports the Prosecution case and the medical certificates and radiological reports indicate findings consistent with the allegations, and the age of the victim is established to be below 18 years through medical as well as documentary evidence, including the birth records produced by the *Acharya*, Gayatri Girls High School at Exh.17 and Exh.18. It is further argued that the defence has failed to bring on record any material contradictions, omissions, or improbabilities in the testimony of the prosecution witnesses. It is further argued that the Investigating Officer who has been examined at Exh.27, has conducted the investigation in accordance with law, collected all relevant evidence, and filed the charge sheet upon finding sufficient material against the accused. 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 and therefore, presumption under Section 29 & 30 shall be drawn against the accused and accused has 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 376, 506(2) of IPC and Section 4 and 5(h) 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 and over and above oral arguments, Ld. Defence counsel has also filed written arguments at Exh.53. It has been submitted by the Ld. Defence counsel that there are substantial and material contradictions in the prosecution case, which go to the root of the matter and create serious doubt regarding the veracity and reliability of the allegations. It is further argued that the entire case is false and fabricated, mainly out of family anger and revenge after the accused eloped with the victim's elder sister and according to the defence, the complaint was filed only after that elopement, using the victim as a tool to settle scores and restore the family's reputation in society. It is further argued that one of the biggest holes pointed out is the complete lack of supporting evidence for the basic story and the family claimed the father of the victim was mentally ill and they took him to hospitals before turning to the *Bhuvaji*, yet, no hospital papers, medical certificates, or treatment records were produced on

record. It is further argued that the father of the victim himself was never examined as a witness by the Prosecution, even though he is central to the whole narrative and this makes the entire “dev-dukh” and *badha* story look cooked up. The Ld. Defence Counsel highlights major inconsistencies between the mother’s (complainant’s) statement and the victim’s testimony and stated that the victim mentioned dinner at 11 pm, a specific ritual, and the *Bhuvaji* staying overnight sometimes, but the mother never spoke about any of this and there are also shifting versions on how the *Bhuvaji* was contacted, who suggested him, and whether the victim tried to shout and such contradictions, makes apprehensions upon the credibility of the prosecution witnesses. It is further argued that the physical circumstances make the story highly unbelievable as the house is very small only around 50 feet, with family members sitting right outside in the *osari* and how a rape could happen inside without anyone hearing anything, no cries, no commotion. It is further submitted that no independent witness or neighbor was examined by the Prosecution before the court and no muddamal like lemon, knife, brass pot, or clothes etc., was ever seized, which would normally exist if the incident was real. The Defence has further submitted that there is also no clarity on the exact date and time of the incident and the victim could only say “about one and a half months earlier, at night” but in a serious case like this, such vagueness is suspicious and the complaint itself was filed with considerable delay, and no convincing reason was given for delay in registration of complaint. It is further submitted that the Medical evidence is also not supported the case of the

Prosecution and neither the victim nor the accused showed any injuries and the Doctors found no signs of rape and the history given to doctors also contradicts the court testimony. It is further argued that the school certificate which is produced to prove the age of the victim, is unreliable as no supporting documents were produced on record and medical opinion puts the age of the victim between 16-18 years, hence the benefit of upper age goes to the accused, taking her above the POCSO threshold. Ld. Defence counsel has further submitted that there are many lapses criticized in the investigation and no proper panchnama, contradictory measurements of the house, no useful CDR, no mobile phones seized, no independent witnesses examined, and even the scene panchnama appears to have been signed mechanically. The defence has also produced a notarised friendship agreement between the accused and the elder sister of the victim, with the statement of the elder sister of the victim in which she stated that she went voluntarily, which further supports the revenge motive theory.

Overall, the defence contends that the prosecution has failed to prove its case beyond reasonable doubt and there is no reliable evidence, multiple contradictions, missing links in the chain of evidence, and clear motive for false implication and in such a situation, the accused deserves the benefit of doubt and should be acquitted in the present case. The Defence has further submitted that the entire prosecution story, simply does not hold together when examined closely.

Ld. Defence counsel has relied upon the following case laws and has submitted that considering the ratio laid down in

these case laws, the accused may be acquitted from the charges leveled against him.

1. Kali Ram vs. State of Himachal Pradesh (1973 AIR 2773)
2. Jarnail Singh vs. State of Haryana (AIR 2013 Supreme Court 3467)
3. State of A.P vs. M. Madhusudhan Rao (Aironline 2008 SC 121)

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. With these arguments, Ld. Advocate for the accused has submitted that the Prosecution has miserably failed to prove its case against the accused and he deserves 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 the date of incident?
- (ii) Whether the Prosecution has successfully proved that on the date of incident, when the accused was staying at the house of the victim and told the victim that she had to perform the ritual with him in solitude inside the room and took the victim inside the room, closed the door of the room, and had a lemon, a knife, and a brass pot with him and he rotated the pot over the victim and sprinkled water from the pot on her body and then, told the victim to remove all the clothes and thereafter, established physical relations with the victim against her will, and committed the offence under section 376, 506(2) of IPC and Section 4 & 5(h) of the POCSO Act?
- (iii) What order?

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

- (i) In the Affirmative.
- (ii) In the Negative.
- (iii) 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. As per the version of the Prosecution, the victim was aged about 16 years old at the time of incident and to prove this fact, the Prosecution has examined Jagdish Manilal Thakor, who is the *Aacharya* of Gayatri Girls High School where, the victim was studied, as PW-3 and produced the school leaving certificate of the victim at Exh.18. The age of the victim is very much important with reference to prove the Prosecution case.

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 electric 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

“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 applicabbe in determining the age of victim of rape, which speaks about Rube 12(3) of the juvenile

Justice (Care and Protection of Children) Rubes, 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 Rube 12(3) of the juvenile Justice (Care and Protection of Children) Rubes, 2007, is applicable in determining the age of the victim of rape. Rube 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) (I). 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)(I) 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 Lakhani 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 to be a 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 Arjunhai Parmar who is the maternal aunt at whose place, she attended the marriage.

10.4. Therefore, with the above judgment of the Hon'ble Apex Court and Hon'ble Gujarat High 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.

10.5. If we analyze the evidence adduced in the present case on this issue, the complainant who is the mother of the victim, was examined by the Prosecution as PW-1 at Exhibit 11. She has clearly deposed that her victim daughter was born on 15.02.2008. In cross-examination, the Defence could not bring any meaningful contradictions regarding this date of birth. This witness is the most appropriate and natural person to depose about the date of birth of the victim. The perusal of the record shows that nothing substantial was brought forth by the Defence with reference to the date of birth of the victim.

10.6. The prosecution has examined the victim as PW-2 at Exhibit-13. She has clearly deposed that her date of birth is 15.02.2008. In cross-examination, the Defence could not bring any meaningful contradictions regarding this date of birth.

10.7. The prosecution has examined Jagdish Manilal Thakor as PW-3 at Exhibit-16, who is the *Aacharya* of Gayatri Girls High School where, the victim was studied. He confirmed that as per the general register of school, the victim was born on 15.08.2008 and the entry in respect of her birth, was duly recorded at G.R. No. 689. The witness has further deposed that the entry of the victim was mentioned according to the recording of the school, and she was admitted in the school on 25.06.2021 the relevant school leaving certificate was issued on 31.05.2023 as per school records. The PW-3 has tendered the relevant page of the register which is kept on record at Exh.17 and the copy of the school leaving certificate of the victim is tendered at Exh.18. The Defence has cross-examined the said witness and in cross-examination, he admitted that any birth certificate with regard to age of the victim, has not produced in his school and and before admitting in his school, in the school where the victim had studied, he cannot say on the basis of which document, the age of the victim was mentioned in that school records. The witness has denied the suggestion that he has issued a false birth certificate of the victim without any relevant material.

The defence has questioned the age of the victim on the ground that the witness admitted that no birth certificate was produced at the time of admission and that he could not state the

basis on which the previous school had recorded the victim's date of birth. However, such admissions, by themselves, do not render the school record unreliable. The witness was not associated with the initial admission of the victim in the previous school and, therefore, his lack of knowledge regarding the source document cannot lead to an inference that the recorded date of birth is incorrect. Significantly, the witness has categorically denied the suggestion that he had issued a false certificate. Except putting suggestions in cross-examination, the defence has failed to produce any cogent, reliable or convincing evidence to establish that the date of birth recorded in the school or school leaving certificate is erroneous or manipulated. No contrary documentary evidence has been brought on record to discredit the entries maintained in the ordinary course of official business. There is also no material to suggest any motive on the part of the *Aacharya* to issue a false certificate. Hence, the minor discrepancies elicited during cross-examination are insufficient to discard the school records, which remain reliable evidence for determining the age of the victim.

10.8 The PW-5 i.e. the doctor who had examined the victim with regard to age determination or gynecologist's opinion, has also opined the age of the victim about 14 years. The said witness has further deposed before the court that the Radiologist's opinion was also taken with regard to age of the victim and the Radiologist's has also opined her age about 16-18 years.

10.9 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 15.02.2008 and the incident in question was happen in the year 2024, therefore, it appears that on the date of alleged incident, the victim was minor below the age of 18 years. 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 15.02.2008. It is also relevant to consider that in the written submissions filed by the Defence, they have not seriously challenge the birth date of victim. 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 on the date of incident, the accused had gone to the house of the victim and by telling the victim that he would perform a private ritual to help her father recover, and that she needed to participate in it alone and took her into a room and conducted certain acts under the pretext of the ritual and during this time, the accused threatened the victim with harm if she resisted or raised any alarm and under fear and coercion, he acted against her will and committed the aggravated penetrative sexual assault / rape with the victim, and committed the offence punishable under section 376, 506(2) of IPC and Section 4 & 5(h) of the POCSO Act.

11.1. If we further consider the requirements of Sections: 375 and 376 of the IPC as well as the requirements of Section 506 of the IPC, and go through the said provisions it runs as under:

Section: 375 of IPC 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 penetrative 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 description:-

First – Against her will.

Secondly – Without her consent.

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.

Fourthly. - With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or 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.

Sixthly. - With or without her consent, when she is under eighteen years of age.

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.

Section: 376 of IPC 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 seven 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.-

- within the limits of the police station to which such police officer is appointed; or
 - in the premises of any station house; or
 - 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 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 of 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) commits rape on a woman when she is under sixteen years of age; or
- (j) commits rape, on a woman incapable of giving consent; or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
- (l) commits rape on a woman suffering from mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (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.

Section 506: Punishment for Criminal Intimidation :

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to

cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

11.2. If we further consider the relevant requirements of the POCSO Act i.e. Sections: 3, 4 and 5(h) 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 [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

- (h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance.

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

Evidence of complainant and victim & her Mother :

i) The Complainant who is the mother of the victim, was examined as PW-1 at Exh.11 and she has deposed that her husband has been mentally ill for approximately the last one year and they had taken him to the hospital for treatment; however, he was not recovering and the people in her neighborhood informed her that Swarupji Shantiji Thakor is a *bhuva* of *Meldimata*, and they should call him and accordingly, she and her family members called the accused to their house. The complainant has further stated that she does not remember the exact date, but accused (*Bhuva ji*) had stated that he would have to apply *talo* to all of them, and therefore all of them should remain outside and the accused called her victim-daughter and took her inside the room and after that, the accused brought a knife, one lemon, and one pot filled with water and sprinkled the water on victim's body, had her clothes removed, violated her modesty, and the accused climbed upon her victim daughter and committed rape upon her. The PW-1 has further admitted that approximately one and a half months after the said incident occurred, this *Bhuva ji* (accused) eloped with and took away her elder daughter and at that time, her victim-daughter narrated the incident that had happened to her with the accused.

The PW-1 was duly cross-examined by the Ld. Defence counsel and during cross-examination, she has denied that her elder daughter and the accused had a love relationship. The com-

plainant has admitted that she had not mentioned the exact date of the incident in her complaint and at the time of the incident, all members of her family were present in the compound of the house. The PW-1 has denied the suggestion that she has not stated the fact in her complaint that the accused climbed upon her daughter and committed rape upon her. The witness has further admitted that before she lodged the complaint, the accused had eloped with and taken away her elder daughter on a certain date. The PW-1 has denied that because her elder daughter had eloped with accused, she has filed the present complaint and falsely implicated the accused in this case. The complainant has admitted that after the present complaint was lodged, her elder daughter has returned to her house and is residing with her. The complainant has denied the suggestion that her elder daughter had gone with the accused, due to which she and her family faced defamation in the society, and therefore she has fabricated false facts in the present case, lodged a false complaint against the accused, and are giving false testimony in support of the same on oath.

ii) The victim has been examined as PW-2 at Exh.13 and she has deposed that approximately one year ago, her father's health was not good and he was suffering from mental illness and her father was taken by her relatives and her mother to different hospitals but he did not recover, therefore, people from the surrounding area told them to show him to some *Bhuvaji* and accordingly, her relatives informed her mother about Swarupji Shantiji Thakor (Accused), the *Bhuvaji* of Meladi Mata at Kotarwada village, who could cure her father. The victim has further deposed that

she does not remember the exact date, but approximately one year ago, this *Bhuvaji* (accused) was called to her house and at that time, the *Bhuvaji* (accused) said that she has some *dev-dukh* (divine affliction) and she will have to keep *badha* (ritual bondage) and all family members will have to perform the rituals and thereafter, the accused started visiting her house frequently and also stayed overnight. The victim has further deposed that she does not remember the exact date, but one night, the accused was staying at her house and he told her that she has to perform the ritual with him in solitude inside the room and took her inside the house room, closed the door of the room, and had a lemon, a knife, and a brass pot with him and he rotated the pot over her and sprinkled water from the pot on her body and then the accused told her to remove all the clothes from her body and therefore, she removed the clothes, she was wearing and thereafter, against her will, the accused established physical relations with her and when she refused, the accused threatened to kill her and also threatened that if she tell anyone, he would make all the members of her family mad like her father. The victim/PW-2 has further deposed that she was frightened by the accused's threat and was scared that the accused (*Bhuvaji*) would make her entire family mad and for this reason, she did not disclose this fact to anyone and thereafter, one day the accused eloped with her elder sister and at that time, she narrated the incident that happened with her to her mother and her mother consulted the family members and lodged a complaint at the police station. The victim has identified the accused.

The victim was duly cross-examined by the Ld. Defence counsel and during cross-examination, she has denied the suggestion that the accused and her elder sister were in a love relationship and both were in love with each other. The victim has admitted that before this complaint, her elder sister had gone away with the accused and she does not know whether the accused and her elder sister were living as husband and wife. The victim has admitted the suggestion that her family members did not approve of her elder sister going with the accused because of this, her family was defamed in the society. The victim has admitted the suggestion that her family had gone to the *Bhuvaji* (accused) on the saying of her aunt Jhelamben. The victim has further admitted the suggestion that at the time of the incident with her, her family members were present outside the room and she does not remember the date and time of the incident. The victim has further admitted that at the time of the incident, she did not raise any hue and cry. It is denied by the victim that the accused did not commit rape with her and that due to the grievance that her elder sister had gone with the accused, she has stated false facts at the instance of her mother and family members and has filed a false case against the accused by creating a false incident.

11.4. Medical Evidence :

i) Prosecution has examined Dr. Ishwarbhai Madhabhai Makwana as PW-4 at Exh.19 who had conducted the medical examination of the victim as well as medical examination of the accused and he has deposed that on 30.07.2024, the accused was brought to him for a medical examination and the accused has stated in history that he had a love relationship with the elder

daughter of the complainant and they have been cohabiting under a friendship agreement for approximately one and a half months, her younger sister has filed a false rape case against him.

The PW-4 has further admitted that the victim was also brought to him for medical examination and the victim has stated in her history before him that, approximately one month and five days ago, at around 11 o'clock at night, she was at her house when Swarupji Shantiji Bhua (accused) came to her house as a saint and said that her family is suffering from a divine affliction and that rituals need to be performed for the entire family one by one and thereafter, he called her alone into the room, rotated a pitcher over her, took out something from the *gunja* and threw it over me and then he removed her clothes and committed rape upon her and thereafter, the accused told her that if she tell anyone, he will drive her entire family mad. The said witness has further deposed about the medical examination of the victim and deposed that upon physical examination, the build of the victim was found to be good and her physical and mental condition was good, and she was not under the influence of any intoxicating substance. The doctor has further deposed that no injury marks were found on her body or clothes, nor were any stains observed and the development of her private parts was normal; there was no breast development. The PW-4 has further deposed that there was no discharge from the private parts, nor any injury and the samples of blood, pubic hair, urethral swab and smear, vaginal swab and smear, saliva, and axillary hair, were collected from the body of the victim and sent to the FSL department. The PW-4 has further deposed that as per his opinion, there were no signs of

any force on the victim's body, nor were any marks or bruises of any kind found on her body.

ii) The another doctor who had examined the victim with regard to her age, has also been examined by the Prosecution as PW-5 and in his deposition he has deposed about the medical examination and age determination of the victim. The said doctor has admitted in his cross-examination that in the history given by the victim before the Gynecologist, she had not stated about relations or physical relations with her.

11.5. Panch Witness :

i) Vashrambhai Vohtabhai Chaudhary, who is the panch witness of spot panchnama at Exh.24, has been examined as PW-6 and he has deposed about the panchnama proceedings and stated information about the spot. The said witness has been duly cross-examined by the Ld. Defence counsel and in cross-examination, he has admitted the suggestion that there were no signs found with regard to rape from the alleged spot.

11.6. Evidence of I.O. :

i) The I.O. of the present case P.I. Ashishkumar Ghemarbhai Rabari has been examined by the Prosecution as PW-7 at Exh.27 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, he has deposed that the clothes of the victim and victim were not seized because it was stated that the clothes had been washed repeatedly after the incident. The I.O. has further admitted the suggestion that no evidence were found with regard to present incident from the spot. The I.O. has admitted the sugges-

tion that he has not investigated about the '*Maitri Karar*' between the accused and the elder sister of the victim.

This court has also asked some questions to the I.O. and while asking about the seizure of mobile phone of the accused, he has deposed that he had not seized the mobile phone of the accused in connection with this offence. The I.O. has further deposed that he has also not seized the mobile phone of the victim, the victim's elder sister, or the victim's mother (i.e., the complainant) for the purpose of examination. It is further admitted that he had seen the mobile phone of the victim's mother; apart from that, he has not seen the mobile phone of the victim's elder sister or the victim and no apparently useful information was received by him from the mobile phones of the complainant and the accused. The I.O. has further admitted that he has not conducted any investigation regarding the complainant's husband being ill and the reason for this complaint is that despite treatment for the illness of the complainant's husband, his health did not remain good, and they contacted the present accused. The I.O. has further admitted that it has been stated in the complaint that the complainant's husband was suffering from mental illness but he has neither seen nor investigated any medical papers regarding the treatment of the complainant's husband in this regard.

12. The Hon'ble Supreme Court of India in case of **Debraj Dutta Versus State Of West Bengal (2026 (0) AIJEL-SC 77134)**, has discussed about credibility of testimony of victim in Sexual assault and has observed that unless the testimony of victim child is found to be fully credible and trustworthy, question of applying presumption on the strength of such statement alone does not arise.

The Hon'ble Supreme court has observed in para 14 and 15 of the judgment that :

“14. Further, the discrepancies in the statements of the crucial witnesses, PW-1 and PW-2, apart from the fact that there is no explanation as to why the police complaint was not lodged for nearly a day after the alleged incident cannot be ignored. In this regard, we may note that the father of the victim child is himself a member of the police force. That being so, the delay in the lodging of the FIR assumes greater importance. Further, the refusal of medical examination of the victim child also gains significance. This was not a case where invasive medical examination of the victim child was warranted whereupon, the mother could have denied permission for the same. Mere visual examination would have sufficed but the mother, PW-2, did not allow it and offered no explanation for her reticence in that regard. Her refusal in these circumstances, therefore, merits an adverse inference.

15. Unless the testimony of a victim child is found to be fully credible and trustworthy, the question of applying the presumption on the strength of such statement alone would not arise. The foundational fact of a sexual assault that would attract the presumption under Section 29 of the POCSO Act would require more than PW-1s statement which, on the face of it, was not credible as what she had stated to her mother was not borne out by her own statement before the trial court. The victim child narrated the incident to her mother on the night of the incident itself and, according to the mother, PW-2, the child specifically stated that the appellant had brushed his leg against hers but during her deposition before the trial court 8 months later, she failed to mention the same. This failure on the part of the victim child to consistently narrate the details of the incident negates the possibility of applying the statutory presumption.”

13. It is the case of the Prosecution that the family claimed the father of the victim was mentally ill and they took him to hospitals before turning to the *Bhuvaji*, but to prove this fact, no hospital papers, medical certificates, or treatment records of the father of the victim, are produced on record. Further, the father of the victim is never examined as a witness by the Prosecution, even though he is central to the whole narrative. It is also to be noted that as per the case of Prosecution, when the alleged

incident had happened, all the entire family members of the victim were sitting right outside at the spot (*osari*) but when the rape could have happen inside, no one found out, and the victim didn't even raise an alarm which seems doubtful. Further, as per the case of Prosecution, to perform the ritual, the accused took the victim inside the house room, closed the door of the room, and had a lemon, a knife, and a brass pot with him and he rotated the pot over the victim and sprinkled water from the pot on her body but no muddamal like lemon, knife, brass pot, or clothes etc., was ever seized, during the investigation which also raise a serious doubt about the Prosecution case. The victim has admitted the suggestion that her family had gone to the *Bhuvaji* (accused) on the saying of her aunt Jhelamben but this Jhelamben has also not been examined by the Prosecution to clarify how and under what circumstances, the accused came into contact with the victim's family, and whether the contact was indeed established because the victim's father was mentally ill or not. Further, the Prosecution has not examined any independent witnesses with regard to present case.

It also appears that there is no clarity on the exact date and time of the incident and the victim could only say “*about one and a half months earlier, at night*” but in a serious case like this, this type of statement weakens the reliability of the Prosecution case. Further, the Medical evidence is also not supported the case of the Prosecution and neither the victim nor the accused showed any injuries and the Doctors found no signs of rape. It appears from the history given by the accused before the doctor that the accused has stated that he had a love relationship with the elder

daughter of the complainant and they have been cohabiting under a friendship agreement (*Maitri Karar*) for approximately one and a half months, her younger sister has filed a false rape case against him.

14. Further, the Hon'ble Supreme Court of India in case of **State Of Andhra Pradesh Versus M.Madhusudhan Rao (2008 (0) AIJEL-SC 42340)**, has observed that the delay in registration of FIR should be sufficiently explained on behalf of the complainant and stated in Para No.19 of the judgment that :

“19. In the present case, as noted supra, First Information Report in regard to the alleged occurrence on 19.04.1996 was lodged on 22.05.1996. Admittedly after her discharge from the hospital on 22.04.1996, the complainant went to her parents' house and resided there. In her testimony, the complainant has deposed that since no one from the family of the accused came to enquire about her welfare, she decided to lodge the First Information Report. No explanation worth the name for delay in filing the complaint with the police has come on record. We are of the opinion that this circumstance raises considerable doubt regarding the genuineness of the complaint and the veracity of the evidence of the complainant (PW-1) and her father (PW-3), rendering it unsafe to base the conviction of the respondent upon it. Resultantly, when the substratum of the evidence given by the complainant (PW-1) is found to be unreliable, the prosecution case has to be rejected in its entirety.”

15. It appears from record that the present FIR was registered on 02.07.2024 and it is stated in the complaint that on 22.06.2024, the accused had eloped her elder daughter and at that time her younger sister i.e. the victim had stated her that at around one month before that day, the accused told the victim that she has to perform the ritual with him in solitude inside the room and took her inside the house room, closed the door of the room, and had a lemon, a knife, and a brass pot with him and he rotated the pot over her and sprinkled water from the pot on her body and then the accused told

her to remove all the clothes from her body and therefore, she removed the clothes, she was wearing and thereafter, against her will, the accused established physical relations and committed rape upon her. The perusal of the complaint or the testimonies of victim as well as the complainant shows that the exact date of incident has not been mentioned or stated by any of the witnesses which raises a serious doubt about the version of the complaint. This court is of the view that the delay is not automatically fatal in sexual offence cases because victims often hesitate due to fear, shame, or family pressure, however, where the delay is substantial and not satisfactorily explained, the court is entitled to scrutinize the prosecution case with greater care and if the prosecution offers no convincing explanation, the delay may assume significance, particularly when coupled with other suspicious circumstances. Therefore, considering the above judgment of Hon'ble Apex Court, this court is of the view that when the substratum of the evidence given by the complainant or victim, are found to be unreliable, the prosecution case has to be rejected in its entirety.

16. Further, the Hon'ble Supreme Court of India in case of **Kali Ram Versus State Of Himachal Pradesh (1973 (0) AIJEL-SC 13703)**, has observed that :

“17. The circumstances in which the accused is stated to have got letter PD written from Kedar Nath (P. W.2) are also rather peculiar. According to Kedar Nath, the accused compelled Kedar Nath at the point of gun to write that letter. The accused also told Kedar Nath not to disclose the contents of the letter to any one. It is not clear as to why the accused should ask Kedar Nath to keep the matter secret when he was himself, according to letter PD, making a confession about his having committed the crime of two murders. Apart from that, if Kedar Nath came to know on 22.11.1968 that the accused had committed the murder of Dhianu and Nanti, his failure to make any statement to the police till 24.12.1968 regarding the confession made by the accused to the witness would deprive his evidence of much of

its value. We, therefore, find it difficult to act upon the confession incorporated in letter PD.

17A. The last piece of evidence upon which the High court has maintained the conviction of the accused consists of the confession of the accused contained in letter PEEE sent by Sahi Ram (P. W. 4) to the Station House Officer Renuka. The first question which arises for consideration in respect of letter PEEE is whether it is admissible in evidence. sec. 162 of the Code of Criminal Procedure reads as under :

"162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution to contradict such witness in the manner provided by sec. 145 of the Indian Evidence Act, 1872 and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this Section shall be deemed to apply to any statement falling within the provisions of sec.32, clause (1) of the Indian Evidence Act, 1872 , or to affect the provisions of sec. 27 of that Act."Bare perusal of the provision reproduced above makes it plain that the statement made by any person to a police officer in the course of an investigation cannot be used for any purpose except for the purpose of contradicting a witness, as mentioned in the proviso to Ss. (1), or for the purposes mentioned in Ss. (2) with which we are not concerned in the present case. The prohibition contained in the Section relates to all statements made during the course of an investigation. Letter PEEE which was addressed by Sahi Ram to Station House Officer was in the nature of narration of what, according to Sahi Ram, he had been told by the accused. Such a letter, in our opinion would constitute statement for the purpose of sec. 162 of the Code of Criminal Procedure. The prohibition relating to the use of a statement made to a police officer during the course of an investigation cannot be set at naught by the police officer not himself recording the statement of a

person but having it in the form of a communication addressed by the person concerned to the police officer. If a statement made by a person to a police officer in the course of an investigation is inadmissible, except for the purposes mentioned in sec. 162, the same would be true of a letter containing narration of facts addressed by a person to a police officer during the course of an investigation. It is not permissible to circumvent the prohibition contained in sec. 162 by the investigating officer obtaining a written statement of a person instead of the investigating officer himself recording that statement.

18. It has been argued by Mr. Khanna on behalf of the State that at the time letter PEEE was addressed by Sahi Ram to the police, no investigation had been made by the police against the accused and, as such, the aforesaid letter cannot be held to be inadmissible. This contention, in our opinion, is wholly devoid of force. The restriction placed by sec. 162 on the use of statement made during the course of investigation is in general terms. There is nothing in the Section to show that the investigation must relate to any particular accused before a statement to the police pertaining to that accused can be held to be inadmissible.

xxx

xxx

xxx

20. Although letter PEEE has been held by us to be inadmissible, we would still have to deal with the oral deposition of Sahi Ram that the accused had made a confession to him on 28.11.1968. The version of the accused in this respect is that Sahi Ram is inimical to him as he had a dispute with him because of some misappropriation committed by Sahi Ram in connection with the smuggling of opium. According to Sahi Ram, he happened to meet the accused on 28.11.1968 when the accused made a confession to him about his having committed the murder of Dhianu and Nanti. The story about the gratuitous confession made by the accused to Sahi Ram, in our opinion, hardly inspires confidence. It is not the case of the prosecution that the police was after the accused and that the accused in that connection went to Sahi Ram to seek his help and made a confession to him. Sahi Ram is the son of a village Lambardar. It has been argued on behalf of the accused-appellant that the police, with a view to see that the crime relating to the murder of Dhianu and Nanti might not remain untraced, utilised the services of Sahi Ram for bringing in the evidence regarding the extra judicial confession of the accused. Looking to all the circumstances we find this contention to be not devoid of all force. Mr. Khanna submits that both the trial court and the High court have accepted the evidence of Sahi Ram and we should not interfere with the concurrent finding in this respect. We find it difficult to accede to this submission because we find that both the trial court as well as the High court were influenced by the fact that Ex. PEEE was admissible in evidence. As letter PEEE has been held by us to be not admissible and as we find that the

statement of Sahi Ram about the extra judicial confession is otherwise also lacking in credence, there should not arise any difficulty in this court disagreeing with the above finding of the trial court and the High court.

21. Mr. Khanna on behalf of the State has also tried to assail the finding of the High court regarding the possession of silver ornaments of the two deceased persons by the accused. In our opinion, the finding of the High court in this respect is based upon the appraisal of the evidence on record and there is no valid ground to disturb it.

22. Observations in a recent decision of this court, Shivaji Sahabroo Bobade and Another V/s. State of Maharashtra to which reference has been made during arguments were not intended to make a departure from the rule of the presumption of innocence of the accused and his entitlement to the benefit of reasonable doubt in criminal cases. One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal”

17. In the case on hand, it has been submitted on behalf of the accused that the elder sister of the victim had voluntarily left the company of her parental family and had entered into a live-in relationship with the accused by executing a live-in agreement (*Maitri Karar*) and the present FIR was lodged after the family became aggrieved by the elder daughter’s voluntary decision to reside with the accused. The defence has further argued that after the elder sister of the complainant had eloped with the accused and

as her elder sister was major, a strong case could not be established against the accused; therefore, the complainant falsely implicated the accused by fabricating a story and involving her minor daughter, who was the alleged victim and the present complaint is a result of afterthought of the family of the complainant.

The Ld. Defence counsel has also produced the the notarized copy of live-in agreement (*Maitri Karar*) made between the accused and the elder sister of the victim, at Exh.45, certified copy of Register of Notary through Mr. D. B. Parmar who had notarized the said live-in agreement and has also examined Mr. D. B. Parmar (Notary Advocate) as DW-1 at Exh.43 to prove its defence. The DW-1 has admitted that on 01.07.2024, both the parties, whose names are mentioned in agreement, are made the live-in agreement voluntarily and he had notarized the same and had made an entry regarding this, on page 214 of his Notary Register No. 29. The witness has also identified the said agreement.

The Ld. Defence counsel has also produced the statement of the elder sister of the victim as well as statement of the accused recorded on 28.06.2024 by AHC Raghubhai Laxmanbhai Joshi, at Exh.49 and 50 and has argued that as the elder sister of the victim has stated in this statement that her father wants to get her married elsewhere and she do not wish to get married at that time, her father keeps harassing and troubling her from time to time and speaks to her in any manner he chooses and due to this, on 22/06/2024 she left her house from Ishwariya village without informing anyone, alone by boarding separate vehicles and reached Kotarwada village, where, Swarup resides alone in the village at the temple of Meladi Mataji. The Ld. Defence counsel has also examined this AHC

Raghubhai Laxmanbhai Joshi as DW-2 at Exh.47 and in his deposition, the DW-2 has admitted that these statements were taken by him and also identified these statements.

These statements of elder sister of the victim as well as accused, are re-produced as under :

"તા.૨૮/૦૬/૨૦૨૪

મારું નામ

મો.નથી.

રૂબરૂમાં પુછવાથી લખાવું છું કે હું ઉપર જણાવેલ ઠામ-ઠેકાણે મારા પતિ સ્વરૂપ સાથે રહું છું અને ધરકામ કરું છું અમો બે બહેનો અને મારે બે ભાઈ છે જેમાં સૌથી મોટી હું છું અને મારાથી નાની બહેન મનિષા અને તેનાથી નાનો ભાઈ જગદીશ અને સૌથી નાનો ભાઈ હાર્દિક છે મારા તમામ ભાઈ બહેનોના લગ્ન બાકી છે અને મારા માતા-પિતા હયાત છે.

આજરોજ હું રૂબરૂ ચીલડા ઓપી મુકામે મારાપ્રતિ સ્વરૂપભાઈ સાથે આવેલ અને અહીં રૂબરૂમાં લખાવું છું કે હું છેલ્લા પાંચ વર્ષથી સ્વરૂપ સાથે પરિચયમાં હોય અને અમારી બન્ને વચ્ચે મિત્રતા હોય અને આ સ્વરૂપ અમારા ઘરે આવતો જતો રહેતો અને માર પિતાજી મારા લગ્ન બીજે કરાવવા માંગતા હોય અને હું હાલમા લગ્ન કરવા માંગતી ન હોય અને મારા પિતાજી અવાર નવાર મને હેરાન પરેશાન કરતા હોય અને મને જેમ તેમ બોલતા હોય જેથી ગઈ તા.૨૨/૦૬/૨૦૨૪ ના રોજ હું મારા ધરેથી ઈશ્વરીયા ગામેથી કોઈને કહ્યા વગર એકલી છુટા સાધનોમાં બેસીને કોતરવાડા ગામે આવતી રહેલ અને સ્વરૂપ ગામમાં મેલડી માતાજીના મંદિરે એકલો રહેતો હું ત્યા આવેલ અને મે સ્વરૂપને કહેલ કે આપડે બન્ને અહીંથી જતા રહીએ જેથી હું તથા સ્વરૂપ કોતરવાડાથી પ્રાઈવેટ વાહનમાં બેસીને પ્રથમ દિયોદર ગયેલ અને દિયોદરથી છુટા વાહનોમાં ફરતા ફરતા પંચમહાલ જીલ્લાના કાલોલ મુકામે પહોંચેલ અને ત્યારબાદ અમો બન્ને જણા ત્યાંથી અલગ અલગ જગ્યાએ બે ત્રણ દિવસ ફરેલ અને ગઈકાલ તા.૨૭/૦૬/૨૦૨૪ ના રાત્રીના સુમારે હું તથા સ્વરૂપ બન્ને જણા કોતરવાડા મુકામે આવેલ અને ત્યા રોકાયેલ અને આજરોજ અહીં ચીલડા ઓપી મુકામે હાજર થવા આવેલ છીએ અને અમો બન્ને જણા એકબીજાના મિત્રો હોય અને એકબીજા સાથે પોતાની મરજી હેવા માંગતા હોય હું મારા પિયરથી કોઈ દર દાગીના કે રોકડ રકમ લાવેલ નથી અને હું પુખ્ત વયની હોય પોતાનું સારા નરશાનું જાણતી હોય અને હું પોતાની મરજીથી સ્વરૂપ સાથે રહેવા માંગતી હોય અને હું મારા પિતાજીના ઘરે જવા માંગતી નથી અને મારા મિત્ર સ્વરૂપ સાથે જવા માંગું છું અને મે કોઈપણની ધાક ધમકી અને કોઈના દબાણમાં આવી આ પગલું ભરેલ નથી.

"તા.૨૮/૦૬/૨૦૨૪

મારું નામ સ્વરૂપભાઈ શાંતિજી જાતે.ઠાકોર ઉ.વ.૩૩ ધંધો,ખેતી રહે.કોતરવાડા તા.દિયોદર જી.બનાસકાંઠા મો.નં.૮૮૦૮૨૧૨૦૧૮

રૂબરૂમાં પુછવાથી લખાવું છું કે હું ઉપર જણાવેલ ઠામ-ઠેકાણે પોતાના પરિવાર સાથે રહું છું અને ખેતી કરી મારું ગુજરાન ચલાવું છું અમો પાંચ ભાઈ અને મારે ત્રણ બહેનો છે જેમાં સૌથી મોટાભાઈ અંબારામભાઈ અને તેનાથી ગોમતીબેન અને તેનાથી નાનાભાઈ સોમાભાઈ અને તેનાથી નાનો હું છું અને મારાથી નાનો ભાઈ

ભરતભાઈ અને તેનાથી નાની બહેન રાણીબેન અને તેનાથી નાની બહેન મીરાબેન અને સોથી નાનો ભાઈ ઠાકરાભાઈ છે અને મારા માતા પિતા હયાત છે મારા નાના ભાઈ ઠાકરાભાઈ સિવાય તમામ ભાઈ બહેનોના લગ્ન થઈ ગયેલ છે.

હું આજરોજ હું રુબરૂ ચીભડા ઓપી મુકામે આવેલ અને આપ સાહેબે મને મારા મોટાભાઈએ મારા ગુમ થયા અંગેની ગુમ અરજી વાંચી સંભળાવેલ જે બાબતે પુષ્પરજ કરતા લખાવુ છું કે અગાઉ આજથી આઠેક વર્ષ પહેલા મારા લગ્ન અબાસણા ગામે ધનાજી ઠાકોરની દિકરી શંકુબેન સાથે સમાજના ઉત્તરિવાજ મુજબ લગ્ન થયેલ અને આ લગ્ન જીવનથી મારે સંતાનમાં એક દિકરો નામે વિષ્ણુ હાલ ઉંમર ૭ વર્ષનો છે. અને ત્યારબાદ મારે અને મારી પત્ની શંકુબેન સાથે અવાર-નવાર નાની વાતે ઝઘડો થતો હોય અને મારે તેનાથી મન-મેળ ઓછો થયેલ અને આ મારી પત્ની માટે સાથે રહેવા માંગતી ન હોય મારો દિકરો લઈને પોતાના પિયર જતી રહેલ અને ત્યારબાદ આ બાબતે સામાજિક રાહે આગેવાનો દ્વારા મારા લગ્નનું છુટ્ટુ થાય તેમ જ છે અને [REDACTED] થી હું ઘણા સમયથી પરિચયમાં હોય અને હું તથા [REDACTED] એકબીજાની સાથે રહેવા માંગતા હોય અને હું છેલ્લા પાંચેક વર્ષથી ઈશ્વરીયા ગામે ભેરાજી ભુરાજી ઠાકોરના ઘરે આવતો જતો રહેતો અને ત્યાં ખેતીનું કામ સંભાળતો અને કોતરવાડા મારા ઘરે પણ આવતો જતો રહેતો હોય અને મારે [REDACTED] સાથે મિત્રતા હોય અમો બન્નેએ એકબીજા સાથે રહેવાનું કરવાનું નક્કી કરેલ અને ગઈ તા.૨૨/૦૬/૨૦૨૪ નાં રોજ હું કોતરવાડા ગામે મેલડી માતાજીના મંદિરે હું એકલો રહેતો અને મારા ભાઈઓ તથા મારા માતા પિતાજી ખેતરમાં રહેતા હોય અને સાંજના છ વાગ્યાના સુમારે [REDACTED] કોતરવાડા હું રહેતો હોય ત્યાં આવેલ અને મને કહેલ કે આપડે બન્ને અહીંથી જતા રહીએ જેથી હું તથા [REDACTED] કોતરવાડાથી પ્રાઈવેટ વાહનમાં બેસીને પ્રથમ દિયોદર ગયેલ અને દિયોદરથી છુટા વાહનોમાં ફરતા ફરતા પંચમહાલ જીલ્લાના કાલોલ મુકામે પહોંચેલ અને ત્યારબાદ અમો બન્ને જણા ત્યાંથી અલગ અલગ જગ્યાએ બે ત્રણ દિવસ ફરેલ અને ગઈકાલ તા.૨૭/૦૬/૨૦૨૪ ના રાત્રીના સુમારે હું તથા [REDACTED] મારા ગામ કોતરવાડા મુકામે આવેલ અને ત્યાં રોકાયેલ અને આજરોજ અહીં ચીભડા ઓપી મુકામે હાજર થવા આવેલ છીએ અને અમો બન્ને જણા એકબીજાના મિત્રો હોય અને એક બીજા સાથે પોતાની મરજી રહેવા માંગતા હોય અને મેં કોઈ પણ જાતનું [REDACTED] સાથે તેની મરજી વિરુદ્ધ ગુનાહિત કૃત્ય કરેલ નથી અને [REDACTED] પોતાના પિયરથી મારી સાથે રહેવા સારું પહેરેલે કપડે આવતી રહેલ છે અને તે પોતાની સાથે કોઈ દરદાગીના કે રોકડ રકમ લાવેલ નથી અને અમો બન્નેએ એકબીજાની સમંતિથી સાથે રહેવા માંગતા હોય અને આ [REDACTED] મારી સાથે રહેવા માંગતી હોય તેને મારી સાથે લઈ જાઉં છું"

18. This Court has carefully appreciated the entire evidence on record, both oral and documentary, and has given its anxious consideration to the submissions advanced on behalf of the prosecution as well as the defence. It is not in dispute that the elder sister of the victim is a major and that she had voluntarily left the company of her parental family and had entered into a live-in relationship with the accused by executing a live-in agreement (*Maitri Karar*). This fact stands established through the material placed on record. While this circumstance by itself may not conclusively establish that the accused has been falsely implicated,

it is undoubtedly a relevant and significant factor which lends support to the defence contention that the FIR was lodged after the family became aggrieved by the elder daughter's voluntary decision to reside with the accused.

19. It is further evident that the FIR in the present case was registered after an unexplained delay of 45 days. The complaint appears to have been lodged immediately after the family came to know of or felt aggrieved by the elder sister's voluntary act of leaving with the accused and entering into the live-in arrangement. The defence has legitimately argued, and the Court finds substance in the submission, that this sequence of events furnishes a probable motive for the false implication of the accused. The prosecution has not been able to offer any convincing or satisfactory explanation for the inordinate delay in the lodging of the FIR, nor has it been able to dispel the inference that the timing of the complaint was closely linked to the family's resentment over the elder sister's relationship with the accused.

20. Equally significant is the inherent improbability in the prosecution version that the accused committed acts of penetrative sexual assault upon the minor victim inside a residential house occupied by other family members. The Court finds it difficult to accept that such acts could have been perpetrated in a shared household without detection, without any alarm being raised, and without attracting the notice or suspicion of other family members residing in the same premises. The prosecution has failed to provide any satisfactory explanation in this regard. When these circumstances are viewed collectively, they assume considerable importance in assessing the credibility of the prosecution case.

21. Although the Protection of Children from Sexual Offences Act, 2012 contains statutory presumptions under Sections 29 and 30 which operate in favour of the prosecution, such presumptions are not irrebuttable. They arise only when the foundational facts are established by the prosecution beyond reasonable doubt, and even thereafter they stand rebutted if the defence is able to bring on record circumstances which create a reasonable doubt about the guilt of the accused. In the present case, the defence has successfully established circumstances, namely the voluntary live-in arrangement of the major elder sister with the accused, the unexplained delay of 45 days in the registration of the FIR, the proximity of the complaint to the said arrangement, and the inherent improbability of the alleged acts having been committed undetected in a family-occupied house, which collectively cast a serious and reasonable doubt on the veracity of the prosecution version.

22. When the testimony of the victim is appreciated against the backdrop of these attending circumstances, the Court is unable to hold that the same is wholly cogent, consistent and of such a nature as would inspire full confidence for basing a conviction. The statutory presumptions under Sections 29 and 30 of the POCSO Act therefore stand rebutted on the facts and circumstances brought on record. The prosecution has failed to discharge its burden of proving the guilt of the accused beyond reasonable doubt. In such circumstances, the accused is entitled to the benefit of doubt which has been created in his favour and hence deserves to be acquitted from the offences punishable under Section 376, 506(2) of IPC and Section 4 & 5(h) of the POCSO Act.

23. Consequently, in view of the above entire discussion, the points No. (ii) is answered in negative and accused is held not guilty for the offences punishable under section 376, 506(2) of IPC and Section 4 & 5(h) of the POCSO Act, and the following order is passed for point no.(iii).

∴ ORDER ∴

- 1) The accused **Swaroopji Shantiji Thakor** is hereby acquitted from all the charges leveled against him for the offences punishable under Section 376, 506(2) of IPC and Section 4 & 5(h) of the POCSO Act.
- 2) The accused **Swaroopji Shantiji Thakor** shall execute a personal bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one surety of the like amount in compliance of Provisions under Section 437-A of the Code of Criminal Procedure, 1973 within one week from today, which is to remain valid for such time as mentioned in Section 437-A of the Code of Criminal Procedure, 1973.
- 3) Non-valuable muddamal to be disposed after one month after the completion of appeal period.
- 4) File be consigned to record room, as per Rules.

Signed and Pronounced in the open Court on this **10th day of July, 2026** at Tharad.

THARAD
DATE : 10/07/2026

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