



## FORM-A

EXH.62

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p align="center"><b>IN THE COURT OF SPECIAL JUDGE (POCSO) &amp; ADDITIONAL<br/>SESSIONS JUDGE DAHOD AT, LIMKHEDA.</b></p> <p align="center">Present : Special Judge (POCSO) &amp; Additional Sessions Judge<br/>(Date of Judgment : <b>24.06.2026</b>)<br/><b>(Special Case (POCSO) No.09/2064)</b><br/><b>with</b><br/><b>(Special Case (POCSO) No.10/2026)</b><br/><b>(Dhanpur Police Station 'A' Part Crime Register<br/>No.11821014210262/2021,</b><br/>Section 363, 366, 376(2-N), 376(3), 114 of I.P.C. &amp; Section 4, 6,<br/>8, 17, of the POCSO ACT)</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| COMPLAINANT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | STATE OF GUJARAT                                                                                                                                                                                                                                                                                                                                                                                                                        |
| REPRESENTED BY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | LD. A.P.P. MR.S.B.CHAUHAN                                                                                                                                                                                                                                                                                                                                                                                                               |
| ACCUSED                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p><b><u>SPECIAL CASE (POCSO) NO.09 OF 2026</u></b><br/><b>AMARSINH GAMIRBHAI PATEL,</b><br/>AGED - 60 YEARS,<br/>OCCUPATION – AGRICULTURE,<br/>RESIDING AT GHADA, NICHVAS FALIYU,<br/>TAL.DHANPUR, DIST.DAHOD.</p> <p><b><u>SPECIAL CASE (POCSO) NO.10 OF 2026</u></b><br/><b>ASHWINBHAI AMARSINH PATEL,</b><br/>AGE – 23 YEARS,<br/>OCCUPATION – AGRICULTURE,<br/>RESIDING AT GHADA, NICHVAS FALIYU,<br/>TAL.DHANPUR, DIST.DAHOD.</p> |
| REPRESENTED BY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | LD. ADVOCATE MR.R.V.VANKAR & LD.ADVOCATE<br>MR.A.D.SOLANKI IN BOTH THE CASES                                                                                                                                                                                                                                                                                                                                                            |

## FORM-B

|                            |                                 |
|----------------------------|---------------------------------|
| Date of Offence            | 04.05.2021                      |
| Date of FIR                | 23.05.2021                      |
| Date of Charge sheet       | 13.04.2026<br>IN BOTH THE CASES |
| Date of Framing of Charges | 13.05.2026<br>IN BOTH THE CASES |

|                                      |            |
|--------------------------------------|------------|
| Date of Commencement of evidence     | 22.05.2026 |
| Date on which judgment is reserved   | 16.06.2026 |
| Date of the Judgment                 | 24.06.2026 |
| Date of the Sentencing Order, if any | NIL        |

#### ACCUSED DETAILS

| Rank of the Accused                              | Name of Accused            | Date of Arrest | Date of Release on Bail | Offences charged with                                                                 | Whether Acquitted or convicted | Sentence Imposed | Period of Detention Undergone during Trial for purpose of Section 428 Cr.P.C. |
|--------------------------------------------------|----------------------------|----------------|-------------------------|---------------------------------------------------------------------------------------|--------------------------------|------------------|-------------------------------------------------------------------------------|
| <b><u>SPECIAL CASE (POCSO) NO.09 OF 2026</u></b> |                            |                |                         |                                                                                       |                                |                  |                                                                               |
| 1                                                | AMARSINH GAMIRBHAI PATEL,  | 05-07-2021     | 09-07-2021              | Section 363, 366, 376(2-N), 376(3), 114 of I.P.C. & Section 4, 6, 8, 17, of POCSO ACT | Acquitted                      | -                | 05 days                                                                       |
| <b><u>SPECIAL CASE (POCSO) NO.10 OF 2026</u></b> |                            |                |                         |                                                                                       |                                |                  |                                                                               |
| 2                                                | ASHWINBHAI AMARSINH PATEL, | 08-12-2025     | 24-12-2025              | Section 363, 366, 376(2-N), 376(3), 114 of I.P.C. & Section 4, 6, 8, 17, of POCSO     | Acquitted                      | -                | 17 days                                                                       |

**FORM-C****LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A. Prosecution:**

| RANK  | NAME                            | NATURE OF EVIDENCE<br>(EYE WITNESS,<br>POLICE WITNESS,<br>EXPERT WITNESS,<br>MEDICAL WITNESS,<br>PANCH WITNESS,<br>OTHER WITNESS) |
|-------|---------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| PW 1  | Dr.Akash Maheshkumar Khanna     | Medical Officer                                                                                                                   |
| PW 2  | Mother of the prosecutrix       | Complainant                                                                                                                       |
| PW 3  | Dr.Kanishak Harendrasinh Nayak  | Gynecologist                                                                                                                      |
| PW 4  | Rajubhai Raysingbhai Tadvi      | Panch-witness                                                                                                                     |
| PW 5  | Jashvantsinh Shanabhai Chauhan  | Panch-witness                                                                                                                     |
| PW 6  | Nileshbhai Maganbhai Rathod     | Panch-witness                                                                                                                     |
| PW 7  | Prosecutrix                     | XXXX                                                                                                                              |
| PW 8  | Bharatbhai Dhirubhai Rathod     | Witness                                                                                                                           |
| PW 9  | Ramanbhai Bhursingbhai Charel   | Witness                                                                                                                           |
| PW 10 | Dr.Mineshkumar Maheshbhai Sinha | Medical Officer                                                                                                                   |
| PW 11 | Kiritsinh Chandrasinh Vaghela   | Investigating Officer                                                                                                             |

**B. Defence Witness, if any :**

| RANK | NAME | NATURE OF EVIDENCE<br>(EYE WITNESS, POLICE WITNESS,<br>EXPERT WITNESS, MEDICAL WITNESS,<br>PANCH WITNESS, OTHER WITNESS) |
|------|------|--------------------------------------------------------------------------------------------------------------------------|
| -    | -    | -                                                                                                                        |

**C. Court Witness, if any :**

| RANK | NAME | NATURE OF EVIDENCE<br>(EYE WITNESS, POLICE WITNESS,<br>EXPERT WITNESS, MEDICAL WITNESS,<br>PANCH WITNESS, OTHER WITNESS) |
|------|------|--------------------------------------------------------------------------------------------------------------------------|
| -    | -    | -                                                                                                                        |

**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS****A. Prosecution:**

| <b>Sr. No.</b> | <b>Exhibit Number</b> | <b>Description of document</b>                              | <b>Proved by/<br/>Attested by</b> |
|----------------|-----------------------|-------------------------------------------------------------|-----------------------------------|
| 1.             | 08                    | Police yaadi for the medical examination of the prosecutrix | PW-1                              |
| 2.             | 09                    | Medical Case Papers of the prosecutrix                      | PW-1                              |
| 3.             | 10                    | Form 2(B) of the prosecutrix                                | PW-1                              |
| 4.             | 11                    | Medical Certificate of the prosecutrix                      | PW-1                              |
| 5.             | 13                    | Complaint                                                   | PW-2                              |
| 6.             | 16                    | Medical Case papers of the prosecutrix ;                    | PW-3                              |
| 7.             | 17                    | Provisional Medical Opinion ;                               | PW-3                              |
| 8.             | 18                    | Clinical Pathology Report (U.P.T.) ;                        | PW-3                              |
| 9.             | 19                    | Ultrasonography Report ;                                    | PW-3                              |
| 10.            | 20                    | Ultrasound Age Report ;                                     | PW-3                              |
| 11.            | 21                    | Clinical Pathology Report ;                                 | PW-3                              |
| 12.            | 25                    | Panchnama of place of offence shown by the prosecutrix ;    | PW-4                              |
| 13.            | 28                    | Panchanama of the seizure of the cloth of the prosecutrix ; | PW-6                              |
| 14.            | 33                    | Statement of victim recorded U/s.164 of CR.P.C ;            | PW-7                              |
| 15.            | 41                    | Compact Disk                                                | PW-8                              |
| 16.            | 42                    | Certificate issued U/s. 63(4)(c) of the B.N.S.              | PW-8                              |
| 17.            | 44                    | Letter to conduct the investigation ;                       | PW-9                              |
| 18.            | 45                    | Station Diary                                               | PW-9                              |
| 19.            | 48                    | Yaadi for medical examination of the accused                | PW-10                             |
| 20.            | 49                    | Medical Certificate of the accused                          | PW-10                             |
| 21.            | 52                    | Arrest Memo                                                 | PW-11                             |
| 22.            | 53                    | Muddamal Ravanagi Nodh ;                                    | PW-11                             |
| 23.            | 54                    | Muddamal Ravanagi Statement ;                               | PW-11                             |
| 24.            | 55                    | Muddamal Receipt ;                                          | PW-11                             |
| 25.            | 56                    | F.S.L.Report                                                | PW-11                             |
| 26.            | 57                    | F.S.L.Report                                                | PW-11                             |
| 27.            | 58                    | Section Addition Report ;                                   | PW-11                             |

|     |    |                                           |       |
|-----|----|-------------------------------------------|-------|
| 28. | 59 | Letter of allotment of government panch ; | PW-11 |
| 29. | 60 | Letter of allotment of government panch ; | PW-11 |

## B. Defence :

| Sr. No. | Exhibit Number | Description |
|---------|----------------|-------------|
| 1.      | -              | -           |

## C. Court Exhibits :

| Sr. No. | Exhibit Number | Description |
|---------|----------------|-------------|
| -       | -              | -           |

## D. Material Objects :

| Material Object No. | Description of the Exhibit                                       | Proved by/ attested by       |
|---------------------|------------------------------------------------------------------|------------------------------|
| 1                   | <b>Clothing of victim</b><br>(Panchnama vide Exh.28)             | PW-6                         |
| 2                   | <b>Clothing of accused Riteshbhai</b><br>(Panchnama vide Exh.58) | Admitted by the defence side |

**:- COMMON JUDGMENT :-**

(1) It transpires from the record that both these matters arising out of the same FIR bearing Part 'A' C.R.No.11821014210262/2021. Learned A.P.P. Mr.S.B.Chauhan has filed one application vide Exh.06 to consolidate the matters. In both these matters common question of law and facts are here. Hence, in order to avoid conflicting decision, waste of time and hardship to the parties, both these matters were ordered to be heard and decided as consolidated to be heard and decided as consolidated and common evidence is recorded in Special Case (POCSO) No.10of 2026 as per the order passed below Exh.06 dtd. 13.05.2026. Accordingly, both these matters have been heard

together and disposed of by this common judgment.

(2) In the case of **S.RADHAKRISHNA V/S. STATE - AIR - 2009 SC 885**, the Honourable Supreme Court has laid down the principle that Court should not write the name of victim of rape in judgment. Therefore, as per the Section - 228-A of the I.P.C, and as per Section 33(7) of the POCSO Act, this Court has not written the name of victim of rape in this judgment, but address the victim as "prosecutrix" in this judgment.

(3) The brief facts of the case are that, the first informant mother of the prosecutrix has lodged complaint on 23.05.2021 by stating that, on 04.05.2021 at about 03:00 hours prosecutrix had gone to grazing the goat towards the ravine and not returned till 05:00 hours in the evening. Such inquiry was made in the neighborhood, but prosecutrix not found out. There-after, such inquiry was also made in the relatives and nearby village but prosecutrix was not found out. There-after, it came to know from the village sarpanch of the complainant that present accused Ashwinbhai Amarsinh Patel took away the prosecutrix to keep her as his wife and therefore, such inquiry also made to the house of the accused and it was intimated by the accused Amarsinh Gamirgbhai Patel, his son Ashwinbhai took away the prosecutrix to keep her as his wife and they will not hand over the prosecutrix. There-after, a complainant was registered against the present accused under Section - 363, 366, 114 of the Indian Penal Code and Section - 8, 17 of the Protection of Children from

## Sexual Offences Act

(3.2) During the investigation, and after recording statement of victim, it was found that, the accused Ashwinbhai Amarsinh Patel had taken away prosecutrix by inducement of marriage with the help of his father accused Amarsinh Gamirbhai Patel. Hence, offence U/s.376(2-N), 376(3) of I.P.C. and Section – 4, 6 of the Protection of Children from Sexual Offences Act was added. After collecting sufficient evidence against the accused, the charge-sheet was filed by the I.O. before the Special Court, which was registered as Special Case (POCSO) No.9/2026 and Special Case No.10 of 2026. The name, age and particulars of the victim are mentioned in the file and are withheld to protect her identity as mentioned above and hence, she is hereinafter addressed as “the prosecutrix”, a fictitious identity given to her.

(4) Charge has been framed against the accused at Exh.05 in the Special Case (POCSO) No.09 of 2026 and at Exh.05 in the Special Case (POCSO) No.10 of 2026, for the alleged offences, under Sections 363, 366, 376(2-N), 376(3), 114 of the Indian Penal Code & Sec. 4, 6, 8, 17 of the Protection of Children from Sexual Offences Act. The accused denied the said charges and claimed to be tried. The prosecution has examined witnesses and relied upon many documentary evidence as mentioned herein below, in order to prove the charges levelled against the accused.

(5) During the Course of Trial, the prosecution has

adduced the oral evidence as well documentary evidence as stated in the **Form “C”** in the title.

(6) Prosecution has closed evidence vide Exh.61. On completion of the evidence of prosecution, further statement of accused under Section-313 of the Code of Criminal Procedure were recorded, wherein incriminating evidence against the accused were read over for the explanation of the accused and during it, the accused replied that, the evidence is not true and false case has been filed against them as such they have not committed any offensive act. They have not preferred to examine anybody as a defence witness. There-after, I have heard the argument of both the parties.

(7) The learned A. P. P. Mr.S.B.Chauhan has argued that, the prosecution has proved its case beyond reasonable doubt against the accused by the evidence, produced here in this case and the accused may be convicted for the alleged offence.

(8) On other hand, it is the argument of the learned Advocate Mr.R.V.Vankar for the accused of both the Special Cases (POCSO) for the accused that, the prosecution has failed to prove its case against the accused beyond reasonable doubt, hence, the accused are required to be acquitted for the charge, leveled against him.

(9) For the above mentioned allegations, following points are arisen for decision of this trial.



**POINTS**

1. Whether prosecution proves beyond reasonable doubt that the victim was minor at the time of incident ?
2. Whether the prosecution proves beyond reasonable doubt that on 04.05.2021 between 15:00 hours to 17:00 hours present accused Ashwinbhai Amarsinh Patel had kidnapped the minor daughter of the complainant - prosecutrix aged about 14 years and 01 month, from Kothariya village from the lawful guardianship of her parents by inducing to marry her and taken her away and committed repeatedly sexual intercourse with her and accused Amarsinh Gamirbhai and accused Shaileshbhai Puniyabhai Tadvī abetted the offence thereby committed offence under Sections 363, 366, 376(2-N), 376(3), 114 of the Indian Penal Code ?
3. Whether prosecution proves beyond reasonable doubt that on the above said date, time and place, the accused, though had knowledge that the prosecutrix was minor, he had kidnapped the prosecutrix from the lawful guardianship of her parents by inducement of marriage and committed penetrative sexual assault with the victim and thereby committed

offence under Sections 4, 6, 8, 17 of the Protection of Children from Sexual Offences Act ?

4. What order ?

(10) My answer for the above points are as under.

1. In the affirmative.
2. In the negative.
3. In the negative.
4. As per final order.

(11) My reasons for the above answers are as follows.

-: **REASONS** :-

**POINT NO.1 - AGE OF THE PROSECUTRIX**

(12) Considering submissions of both the sides and considering complaint and perusing the material on record, it transpires from that, the prosecutrix was doing the house hold work on the date of incident. The School Leaving Certificate of the prosecutrix is produced vide Exh.34, in which, the date of birth of prosecutrix is mentioned as 25.07.2003. The incident had occurred on 04.05.2021, as such, the prosecutrix was minor at the time of incident. There is no any dispute, contest or objection against the document, and hence, the fact is successfully proved that on the date of incident, the victim was minor, and hence, issue No. 1 is answered in affirmative.

**POINT NOS.2 & 3**

(13) Both these issues being inter-connected with each other, it would be convenient to deal with their together.

(14) All the precautions and safe guards as per the directions of the Hon'ble Gujarat High Court and the Hon'ble Supreme Court have been taken which are required while recording the evidence of the victim. Guidelines for recording evidence of vulnerable witnesses in criminal matters, as approved by the "Committee to monitor proper implementation of several guidelines laid down by the Hon'ble Supreme Court as well as the Hon'ble High Court of Gujarat for dealing with matters pertaining to sexual offences and child witnesses" have been followed.

**EVIDENCE OF PROSECUTRIX**

(15) So far as offence under Sec. 376(2-N), 376(3) of I.P.C. and Sec. 4, 6 of the POCSO Act is concerned, the evidence of prosecutrix must be given predominant consideration, but the evidence of prosecutrix must be truthful and there exists no circumstances, which cast as a shadow of the doubt over her veracity and appear to be a witness of sterling quality of whose sole testimony, conviction could be sustained.

(16) Here to prove the case the prosecution has examined prosecutrix (PW-7) vide Exh-32, whereby in examination-in-chief she deposed that, incident occurred about about four years

ago. On the day of the incident, her mother scolded her about the house-hold work and therefore she left the house without informing the family members and she had gone at Kathiyavad for doing the labour work. After some time, she returned at home and she was taken to the Police station. Further, she was taken to the Government hospital, Dhanpur and Zydus Hospital, Dahod. There-after, she was taken to the Dhanpur Court, and she gave statement before Magistrate. She further deposed that any person has not kidnapped her or not raped her at any point of time.

As the prosecutrix (PW-7) turned hostile and had retracted from her earlier statement, the Additional Public Prosecutor has cross - examined her at length, but nothing material for the prosecution has come forth. During the cross-examination by L.A. for the accused, she has admitted in the police station her mother dictated her statement. She did not give any history before the doctor. She gave statement before the magistrate as per the say of her mother. She has further admitted that accused has not abducted her and not committed any illegal act against her.

#### **EVIDENCE OF THE FIRST INFORMANT**

(17) In this matter the prosecution has examined the mother of the prosecutrix (PW-2) vide Exh.12. The mother of the prosecutrix (PW-9) has deposed that incident occurred on 04.05.2021. On the day of the incident, prosecutrix had gone for grazing the goats did not return till late hours, she made such

inquiry but prosecutrix not found out. There-after, it came know from the talk of the people that Ashwinbhai took away the prosecutrix. There-after, she has filed the complaint. She has identified her signature on the complaint vide Exh.13.

During the cross-examination of the L.A. for the accused she has admitted that she has police asked about the incident and there-after, took her signature. She denied that police has not read over the complaint to her. She has admitted that in the complaint she gave the name of the accused. She has also admitted that name of the accused stated by the person, who came with her. She has also admitted that she has not seen that prosecutrix went for grazing the goats.

The complainant whereby in examination-in-chief want to support the complaint, but as the prosecutrix (PW-7), who is the star witness has categorically admitted that accused has not made sexual intercourse with her and thereby not supported the prosecution case and more importantly, have not assigned any criminal role of the accused and has not deposed anything incriminating against accused and therefore there are no any useful purpose would be served by adopting the evidence of complainant and this evidence is not useful to prove the guilt of the accused-person.

#### **EVIDENCE OF THE PANCH WITNESS**

(18) There-after, in this matter the prosecution has

examined panch witness (PW-4) Rajubhai Raysingbhai Tadv, vide Exh-24, panch-witness (PW-5) Jashvantsinh Shanabhai Chauhan vide Exh.26 and panch-witness (PW-6) Nileshbhai Maganbhai Rathod vide Exh.27, whereby in examination-in-chief they have not supported the panchnamas. They have admitted that they have signed on prepared panchnama. As they have turned hostile, they have been cross-examined by the Addl. P.P for the State, but nothing material for the prosecution has come forth.

**EVIDENCE OF THE MEDICAL OFFICER :**

(19) In this matter prosecution has examined medical officer (PW-07) Dr.Akash Maheshkumar Khanna vide Exh-07, whereby in examination-in-chief he deposed that on 24.08.2022, he was performing his duty at C.H.C, Dhanpur at that time prosecutrix brought for medical examination by police and he has examined the prosecutrix. He has further stated that the history given by victim. According to alleged victim, “son of paternal aunt of the prosecutrix gave the mobile number of the accused Ashwinbhai and accused Ashwinbhai and son of her paternal aunt gave her threat to kill took her at Talaja for doing the labour work. They stayed there for one year and accused Ashwin made sexual intercourse with her forcefully. Accused Ashwin took her at Bhavnagar and C.P.I took them here.” It is further stated by the M.O that bodily injuries was not detected at the time of examination. Moreover, as per the genital examination no injury found on genital part. She was referred to the Civil Hospital,

Dahod for radiologist and gynecologist examination. During the cross-examination of the L.A. for the accused he has admitted that he has written the age of the prosecutrix as per the police yaadi. He has also admitted that at the time of medical examination relatives of the prosecutrix has also came with her. He has admitted that in the consent letter he took the signature of the guardian of the prosecutrix. He has also admitted that the completion time of the medical examination of the prosecutrix is not stated in the medical certificate. He denied that he has prepared the medical certificate as per the police yaadi.

(20) In this matter prosecution has examined Gynecologist (PW-3) Dr.Kanishak Harendrasinh Nayak vide Exh-15, whereby in examination-in-chief he deposed that on 25.08.2022, he was present on his duty at Zyodus Hospital, Dahod, at that time prosecutrix was brought for medical examination by Police with the refer note of Medical Officer, C.H.C. Dhanpur and he has examined the prosecutrix. Prosecutrix has gave the history as mentioned in the medical papers. She has further stated that prosecutrix was 17 years 09 months old unmarried and she lastly came into menstrual period on 25.08.2022. Her hymen was ruptured. It is further deposed by the M.O. that bodily injuries were not detected at the time of examination. During the cross-examination of the L.A. for the accused he has admitted that in the medical certificate age of the prosecutrix written as per the case papers. He has further admitted that he has not done U.T.P. Test and Sonography Test. She has admitted that there are so

many reasons for the hymen ruptured. He denied that he himself written the history of the prosecutrix.

(21) In this matter prosecution has examined medical officer (PW-10) Dr.Manishkumar Maheshbhai Sinha vide Exh-47, whereby in examination-in-chief he deposed that on 08.12.2025, he was performing his duty at C.H.C, Dhanpur at that time accused brought for medical examination by police and he has examined the accused. He has further stated that the history given by accused as stated in the medical case papers of the accused. It is further stated by the doctor that bodily injuries were not detected at the time of examination. He has further deposed that after the medical examination of the accused it is the opinion of the medical officer that he is capable for doing intercourse. During the examination, this witness denied that accused has not given any history before him. He also denied that he has prepared the medical certificate of the accused as per the police yaadi.

#### **EVIDENCE OF THE INVESTIGATING OFFICER**

(22) There-after, in this matter the prosecution has examined (PW-11) Kiritsinh Chandrasinh Vaghela vide Exh-51 whereby in examination-in-chief he deposed that on 21.01.2026, Dhanpur P.I.Shri B.V.Zala was on leave and he was incharge. He has examined the case papers and conducted the investigation. Complainant filed the complaint before the P.S.I.Shri B.M.Patel and after registering the offence complaint forwarded towards the



C.P.I.Shri Devgadh-baria and he has conducted the investigation. C.P.I.Shri Devgadh-baria has prepared the panchnamas and recorded the statements of the witnesses. He has also recorded the statement of the prosecutrix. He has filed the section addition report. There-after, P.I.Shri V.B.Zala was on leave and he has conducted the further investigation and after collecting the sufficient evidence he has filed the charge-sheet against the accused. During the cross-examination of the L.A. he denied that he has not recorded the statement of the accused and prsecutrix as they dictated. He also denied that he has not prepared the panchnama in presence of the panchas. He further denied that though there is no sufficient evidence against the accused, he has filed the false charge-sheet against accused.

(23) So far as the evidence of Investigating Officer is concerned, it is needless to say that, the Investigating Officer has never personal knowledge of the case and for that, the Hon'ble Gujarat High Court in the case Hamiddullah Bismillahkhan Nawab Vs. State of Gujarat reported in **1988(1) GLH page 375** delivered by the Hon'ble Justice D.C.Gheewala and Hon'ble Justice J.C.Desai has held that, “knowledge of Investigating Officer regarding the occurrence cannot be said to be in personal knowledge of Investigating Officer and it cannot be considered as evidence against the accused.” It is pertinent to note that, Investigating Officer has no personal knowledge regarding the occurrence, but he came to know regarding the fact by interrogation and other thing, so the Court cannot solely rely the

evidence of Investigating Officer as he has no personal knowledge.

(24) Moreover, entire evidence adduced by the prosecution side, prosecution fails to established that the present accused was involved in the said offence.

**EVALUATION OF ALL EVIDENCES :**

(25) In the light of the aforesaid nature of deposition of the prosecutrix (PW-7), who is the star witnesses and the material witness of the prosecution, I am of the considered view that the case of the prosecution cannot be treated as trustworthy and reliable.

Reliance can also be placed upon the judgment reported as **Criminal Appeal No.1553 of 2019, Narra Peddi Raju V/s. State of Andhra Pradesh**, wherein it has been observed by Hon'ble Supreme Court that,

“It is the statement made on oath in the Court which has to be the foundation of conviction. The conviction of an accused cannot be based on a statement of the witnesses recorded under Section 161, CrPC or even under Section 154, Cr.P.C especially when the witnesses resile from their earlier statements while appearing in the Court and make a completely different statement in the Court.”

Reliance can also be placed upon the judgment

reported as **Suraj Mal Vs. The State (Delhi Admn.)**, in **AIR 1979 S.C. 1408**, wherein it has been observed by the Hon'ble Supreme Court as:

"Where witness make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witness."

Similar view has also been taken in the judgment reported as **Madari @ Dhiraj & Ors. v. State of Chhattisgarh**, 2004(1) C.C. Cases 487.

In the judgment reported as **Namdeo Daulata Dhayagude and others v. State of Maharashtra**, in **AIR 1977 SC 381**, it was held that where the story narrated by the witness in his evidence before the Court differs substantially from that set out in his statement before the police and there are large number of contradictions in his evidence not on mere matters of detail, but on vital points, it would not be safe to rely on his evidence and it may be excluded from consideration in determining the guilt of accused.

If one integral part of the story put forth by a witness was not believable, then entire case fails. Reliance can be placed upon the judgment of the Hon'ble Delhi High Court reported as **Ashok Narang v.State, in 2012 (2) LRC 287 (Del)**.

Crucially, the materials and evidence on the record do not bridge the gap between "may be true" and "must be true" so essential for a Court to cross, while finding the guilty of an accused, particularly in cases where once the witnesses have themselves not deposed anything incriminating against accused. Even otherwise, no useful purpose would be served by adopting any hyper technical approach in the issue.

(26) Prosecutrix has given history before the medical officer as well as gynecologist and stated that accused made sexual intercourse with her, but in view of the history given by the accused or victim they fell in the category of hearsay evidence and it cannot be relied upon without the support of the evidence of the victim.

(27) Prosecutrix has given statement before the Additional Chief Judicial Magistrate, Limkheda under Section 164 of Criminal Procedure Code, which is produced by the prosecution vide Exh.33, wherein victim before the Judicial Magistrate First Class, Dhanpur stated that accused has made sexual intercourse with the her.

(28). It is required to refer the judgment of the Hon'ble Supreme Court 2024(0) AIJEL-SC 74303 SC – Vijaya Singh Vs. State of Uttarakhand, in the judgment Hon'ble Supreme Court has held that ;

The jurisprudence concerning a statement under Section

164 CrPC is fairly clear. Such a statement is not considered as a substantive piece of evidence, as substantive oral evidence is one which is deposed before the Court and is subjected to cross-examination. However, Section 157 of Indian Evidence Act, 1872 makes it clear that a statement under Section 164 CrPC could be used for both corroboration and contradiction. It could be used to corroborate the testimonies of other witnesses. In *R. Shaji Vs. State of Kerala*, MANU/SC/0087/2013 this Court discussed the two-fold objective of a statement under Section 164 CrPC as :

15. So far as the statement of witnesses recorded under Section 164 is concerned, the object is two fold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164 CrPC, his evidence in Court should be discarded, is not at all warranted ...”

The Court also recognized that the need for recording the statement of a witness under Section 164 CrPC arises when the witness appears to be connected to the accused and is prone to changing his version at a later stage due to influence. The relevant para reads thus:

“16. ... During the investigation, the Police Officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 Code of Criminal Procedure. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced...”

**(Para-27)**

Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during the trial upon a calculated balancing of conflicting versions in light of the other evidence on record. **(Para - 28)**

Thus, statement of the prosecutrix under Section 164 of the Criminal Procedure Code, is not substantive piece of the

evidence and statements under section 164 Cr.P.C can be used only for the purpose of contradiction and corroboration, therefore, on the evidence of the statements under section 164 Cr.P.C accused cannot convicted.

(29) From the above discussion, it is clear that the case of the prosecution is neither reliable nor believable and is not trustworthy and the prosecution has failed to establish the offences against accused for the offences of kidnapping the victim by inducement of marriage or to have illicit intercourse or penetrative sexual assault or rape upon her at the time of incident. The evidence of the witnesses makes it highly improbable that such incidents ever took place. The witnesses have not deposed any iota of evidence that accused has committed any of the charged offences.

(30) Now, F.S.L evidence and medical evidence are there to prove the offence. It is well established in the school of law that when the victim has not supported any incident which can be treated as rape or penetrative Sexual offence then, only on the basis of medical evidence the accused cannot be convicted. FSL can be used for the corroboration and can not be treated as substantive piece of evidence. Prosecution has produced the F.S.L. Report vide Exh.56 & 57, it appears that no incriminating evidence found from it. Therefore, F.S.L. report is also not support the case of the prosecution.

It is pertinent to note that I have gone through the

Provisions of Section 114A of the Evidence Act and 29 and 30 of the POCSO Act for the statutory presumption. Here, the prosecution has not established any offence under POCSO Act, then there is no question of application of Section 29 & 30 of the POCSO Act. Here, there is no case of consent of the victim, therefore, Section 114A of the Evidence Act is also not applicable. It is also observed by the Court that the POCSO Act is enacted for the protection of children from Sexual offence but at the same time, at the time of deciding the case, the Court has to evaluate the evidence as per the basic principle of the Evidence Act. Minor contradiction have no weight over the gravity, over the evidence but when the deposition of victim does not inspire the confidence of the Court, the court cannot convict the accused on the ground of morality and on the ground of social effect.

(31) It is a cardinal principle of criminal jurisprudence that prosecution is to prove the guilt of the accused beyond the possibility of any reasonable doubt. It is also a settled principle that though there may be an element of truth in the prosecution story against the accused but considered as a whole there is invariably a long distance to travel and whole of this distance must be covered by the prosecution by legal, trustworthy and unimpeachable evidence before an accused can be convicted.

(32) There is no material on record to show that on 04.05.2021 between 15:00 hours to 17:00 hours from the jurisdiction of **Dhanpur** Police Station, the accused Ashinbhai



Amarsinh Patel had kidnapped the prosecutrix by inducement of marriage and committed penetrative sexual assault on the prosecutrix and committed rape upon her when she was minor and accused Amarsinh Gamirbhai Patel abetted the offence. Consequently, no inference can be drawn that the accused Ashwinbhai Gamirbhai Patel and Amarsinh Gamirbhai Patel are guilty of the charged offences under **Sections - 363, 366, 376(2-N), 376(3), 114 of the Indian Penal Code and Section 4, 6, 8, 17 of the Protection of Children from Sexual Offences Act.**

(33) Therefore, in view of above discussion, the conscience of this Court is completely satisfied that the prosecution has failed to prove the charges for the offence under Sections - 363, 366, 376(2-N), 376(3), 114 of the Indian Penal Code and Section 4, 6, 8, 17 of the Protection of Children from Sexual Offences Act, against the accused Ashwinbhai Gamirbhai Patel and Amarsinh Gamirbhai Patel and hence, I answer Issues nos.2 and 3 in the negative.

**POINT NO.4**

(34) So far this issue is concerned, it is the cardinal principle of criminal justice system that, the prosecution has to prove its case beyond reasonable doubt. But herein this case, as discussed here-in-above, the prosecution fails to prove its charge against the accused beyond reasonable doubt, hence, this Court is of the opinion to acquit the accused, therefore following final order is passed in the interest of justice.

**-: ORDER :-**

1. As per Section 235(1) of Cr.P.C., the accused **Amarsinh Gamirbhai Patel** of Special Case (POCSO) No.09 of 2026 and accused **Ashwinbhai Amarsinh Patel** Special Case (POCSO) No.10 of 2026 are hereby acquitted from the charges of the offences, punishable under **Section - 363, 366, 376(2-N), 376(3), 114 of the Indian Penal Code** and **Section 4, 6, 8, 17 of the Protection of Children from Sexual Offences Act**, which was registered at **Dhanpur Police Station** vide **Part 'A'** **C.R.No.11821014210262/2021.**
2. The accused are ordered to furnish one local solvent surety of **Rs.15,000/- (Rupees Fifteen Thousand Only)** **each** and personal bond of like amount for compliance of Section 437-A of the Cr.P.C.
3. As per the Circular No.1255 of 2026 dtd. 29.04.2026 issued by the Hon'ble Gujarat High Court, this judgment communicate to the father of the prosecutrix on his mobile number or on the address and also provide the certified copy of this judgment to the prosecutrix free of cost.
4. Registry is directed to remove all original documents showing prosecutrix's identity and kept in sealed cover along with records and keep redacted copy.

5. Case property be destroyed after expiry of period of limitation of appeal.
6. Accused are on bail. Their bail bond stands discharged.
7. Original Judgment to be kept in Special Case (POCSO) No.10/2026 and copy of the Judgment to be kept in Special Case (POCSO) No.09/2026 .

Pronounced in open court today on this **24<sup>th</sup>** day of **June, 2026**.

Date : 24/06/2026      **[HARESHKUMAR HIMMATLAL THAKKAR]**  
Place : Limkheda      **SPECIAL JUDGE (POCSO) & ADDL. SESSIONS**  
                                 **JUDGE, DAHOD AT, LIMKHEDA.**  
                                 **[Code No.GJ 00533]**