



FORM-A

EXH.79

IN THE COURT OF SPECIAL JUDGE (POCSO) & ADDITIONAL SESSIONS JUDGE DAHOD AT, LIMKHEDA. Present : Special Judge (POCSO) & Additional Sessions Judge (Date of Judgment : 19.06.2026) (Special Case (POCSO) No.28/2024) <u>with</u> (Special Case (POCSO) No.12/2026) (Limkheda Police Station 'A' Part Crime Register No.11821035240635/2024, Section 363, 366, 376(2-N), 376(3), 114 of I.P.C. & Section 4, 6, 17, of the POCSO ACT)	
COMPLAINANT	STATE OF GUJARAT
REPRESENTED BY	LD. A.P.P. MR.S.B.CHAUHAN
ACCUSED	<u>SPECIAL CASE (POCSO) NO.28 OF 2024</u> SHAILESHBHAI PUNIYABHAI TADVI, AGED - 30 YEARS, OCCUPATION – AGRICULTURE, RESIDING AT DEVDHI, TADVI FALIYU, TAL.LIMKHEDA, DIST.DAHOD. <u>SPECIAL CASE (POCSO) NO.12 OF 2026</u> (1) PRATAPBHAI TITABHAI PALAS, AGE – 35 YEARS, OCCUPATION – AGRICULTURE, RESIDING AT CHEDIYA, PATEL FALIYU, TAL.LIMKHEDA, DIST.DAHOD. (2) RITESHBHAI PRABHATBHAI PALAS, AGE – 21 YEARS, OCCUPATION – AGRICULTURE, RESIDING AT CHEDIYA, NICHVAS FALIYU, TAL.LIMKHEDA, DIST.DAHOD.
REPRESENTED BY	LD. ADVOCATE MR.S.K.NINAMA IN <u>SPECIAL CASE (POCSO) NO.28 OF 2024</u> LD. ADVOCATE MR.D.D.BHARVAD IN <u>SPECIAL CASE (POCSO) NO.12 OF 2026</u>

FORM-B

Date of Offence	28.05.2024
Date of FIR	15.06.2024
Date of Charge sheet	08.08.2024 SPECIAL CASE (POCSO) NO.28 OF 2024 27.05.2026 SPECIAL CASE (POCSO) NO.12 OF 2026
Date of Framing of Charges	19.11.2024 SPECIAL CASE (POCSO) NO.28 OF 2024 06.06.2026 SPECIAL CASE (POCSO) NO.12 OF 2026
Date of Commencement of evidence	10.12.2024
Date on which judgment is reserved	15.06.2026
Date of the Judgment	19.06.2026
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 on Undergone during Trial for purpose of Section 428 Cr.P.C.
<u>SPECIAL CASE (POCSO) NO.28 OF 2024</u>							
1	SHAILESHBHAI PUNIYABHAI TADVI,	20-06-2024	01-04-2025	Section 363, 366, 376(2-N), 376(3), 114 of I.P.C. & Section 4, 6, 17, of POCSO ACT	Acquitted	-	09 Months 12 days

SPECIAL CASE (POCSO) NO.12 OF 2026							
1	PRATAPBHAI TITABHAI PALAS,	24-03-2025	01-04-2025	Section 363, 366, 376(2-N), 376(3), 114 of I.P.C. & Section 4, 6, 17, of POCSO	Acquitted	-	01 week 01 day
2	RITESHBHAI PRABHATBH AI PALAS,	12-05-2026	21-05-2026		Acquitted	-	01 week 02 days

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

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Nareshbhai Shanubhai Palas	Panch-witness
PW 2	Sureshbhai Varsingbhai Tadvi	Panch-witness
PW 3	Jitendrabhai Parsottambhai Makwana	Panch-witness
PW 4	Dr.Nesargi Vindokumar Mandovara	Gynecologist
PW 5	Dr.Amitkumar Ramubhai Ninama	Medical Officer
PW 6	Palakben Chimanbhai Patel	Witness
PW 7	Prosecutrix	XXXX
PW 8	Valiben Gamirbhai Chauhan	P.S.O
PW 9	Father of the prosecutrix ;	Complainant
PW 10	Jagdishbhai Mangalsinh Khant	Investigating Officer
PW 11	Sandipkumar Vishnubhai Vasava	Investigating Officer
PW 12	Dr.Rashida Husen Dhangadhrawala	Medical Officer

B. Defence Witness, if any :

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

C. Court Witness, if any :

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

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description of document	Proved by/ Attested by
1	08	Panchnama of the body condition of the accused ;	PW-1
2	12	Panchnama of place of offence shown by the prosecutrix ;	PW-3
3	13	Panchanama of the seizure of the cloth of the prosecutrix ;	PW-3
4	19	Medical Case papers of the prosecutrix ;	PW-4
5	20	Provisional Medical Opinion ;	PW-4
6	21	Clinical Pathology Report (U.P.T.)	PW-4
7	22	Histo/Cyto Report ;	PW-4
8	23	Ultrasonography Report	PW-4
9	26	Yaadi for medical examination of the prosecutrix	PW-5
10	27	Medical Certificate of the prosecutrix ;	PW-5
11	31	Birth certificate of the prosecutrix	PW-6
12	32	Extract of the birth-death register ;	PW-6
13	53	Statement of victim recorded U/s.164 of CR.P.C ;	PW-7
14	55	Letter to conduct the investigation ;	PW-8
15	56	Schedule	PW-8
16	56	Panchnama of the body condition of the accused Riteshbhai and seizure of his cloth ;	Addmitted by the defence side
17	61	Complaint	PW-9
18	64	Muddamal Ravanagi Nodh ;	PW-10
19	65	Muddamal Receipt ;	PW-10
20	66	F.S.L.Report	PW-10

21	67	Letter of allotment of government panch ;	PW-10
22	68	Section Addition Report ;	PW-10
23	72	Muddamal Ravanagi Nodh ;	PW-11
24	73	Muddamal Receipt ;	PW-11
25	76	Yaadi for medical examination of the accused ;	PW-12
26	77	Medical Certificate ;	PW-12

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	Clothing of victim (Panchnama vide Exh.13)	PW-3
2	Clothing of accused Riteshbhai (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.11821035240635/2024. Learned A.P.P. Mr.S.B.Chauhan has filed one application vide Exh.08 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.28 of 2024 as per the order passed below Exh.08 opn 06.06.2026. 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 father of the prosecutrix has lodged complaint on 15.06.2024 by stating that, on 28.05.2024 he was out of station for doing the labour work and on that day at about 01:30 hours son of the complainant called him and told that on 27.05.2024 and at about 10:00 hours prosecutrix and family members of the complainant were going to sleep and on the next day in the morning at about 06:00 hours prosecutrix found missing. 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 talk of the people that accused Riteshbhai Pratapbhai Palas took away the prosecutrix to keep her as his wife and therefore, such inquiry also made to the house of the complainant

and it was intimated that accused-person accused Ritesbhai has also not available at home and they have also made such inquiry and if they will find out, they will hand over the prosecutrix - daughter of the complainant. There-after, prosecutrix was handed over and complainant asked her about the incident and prosecutrix told her that accused Riteshbhai Pratapbhai Palas took her at Morbi by inducing to marry her and forcefully made sexual intercourse with her and parents of the Ritesh took them return. Therefore, a complainant was registered against the present accused under Section - 363, 366, 376(2-N), 376(3) of the Indian Penal Code and Section - 4, 6 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 present accused had taken away prosecutrix by inducement of marriage with the help of his father accused Pratapbhai Titabhai Palas and stay at the house of the accused Shaileshbhai Puniyabhai. Hence, offence U/s. 114 of I.P.C. and Section – 17 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.28/2024 and Special Case No.12 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.06 in the Special Case (POCSO) No.28 of 2024 and at Exh.05 in the Special Case (POCSO) No.12 of 2026, for the alleged offences, under Sections 363, 366, 376(2-N), 376(3), 114 of the Indian Penal Code & Sec. 4, 6, 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.

(7) Prosecution has closed evidence vide Exh.78. 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. He has not preferred to examine anybody as a defence witness. There-after, I have heard the argument of both the parties.

(8) 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.

(9) On other hand, it is the argument of the learned Advocate Mr.S.K.Ninama for the accused of Special Case (POCSO) No.28 of 2024 and learned Advocate Mr.D.D.Bharvad for the accused of Special Case (POCSO) No.12 of 2026 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.

(10) 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 28.05.2024 at about - 06:00 hours present accused Riteshbhai Pratapbhai Palas had kidnapped the minor daughter of the complainant - prosecutrix aged about 14 years and 01 month, from Khirkhai 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 Pratapbhai Titabhai Palas and accused Shaileshbhai

Puniyabhai Tadvi abetted the offence thereby committed offence under Sections 363, 366, 376(2-N), 376(3), 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, 17 of the Protection of Children from Sexual Offences Act ?

4. What order ?

(11) 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.

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

-: REASONS :-

POINT NO.1 - AGE OF THE PROSECUTRIX

(13) Considering submissions of both the sides and

considering complaint and perusing the material on record, it transpires from that, the prosecutrix was studying in the 9th Standard on the date of incident.

(14) To prove the age of the prosecutrix prosecution has also examined (PW-06), Talati-cum-Mantri, vide Exh.30. In his chief-examination, she has deposed that she was working as Talati-cum-mantri of Khirkhai Grampanchayat on 19.06.2024 and at present she is working as Talati-cum-mantri of Kamboi Grampanchayat. She has identified her the signature on the Birth Certificate at Exh.31 and in which the date of birth of the prosecutrix mentioned as 16.08.2008. She has further deposed that she took birth and death register for the year 2008 along with her and in which at serial no.90 the birth date of the prosecutrix registered and as per register the date of birth of the prosecutrix is 16.08.2008. She has identified her signature on the extract of the birth and death register. During the cross-examination, this witness has admitted that she has not registered the birth date of the prosecutrix.

Considering the birth certificate, the date of birth of the prosecutrix 16.08.2008. The incident had occurred on 28.05.2024, 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

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

(16) 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

(17) 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.

(18) Here to prove the case the prosecution has examined prosecutrix (PW-7) vide Exh-52, whereby in examination-in-chief she deposed that, incident occurred about about two years

ago. On the day of the incident, her family members scolded her about the study and therefore she left the house without informing the family members and had gone at Kathiyavad for doing 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, Limkheda. There-after, she was taken to the Limkheda 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-8) 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. Mr.S.K.Ninama for the accused, she has admitted that accused Shaileshbhai Puniyabhai has no one has took her and kept her at the house of the prosecutrix. She has further admitted in the cross-examination of the L.A. Mr.D.D.Bharvad, her mother dictated her statement in the police station and hospital. She has also admitted that she gave statement before the magistrate as per the say of her mother and police. She has further admitted that accused has not abducted her and not committed any illegal act against her.

EVIDENCE OF THE FIRST INFORMANT

(19) In this matter the prosecution has examined the father of the prosecutrix (PW-9) vide Exh.60. The father of the

prosecutrix (PW-9) has deposed that incident occurred on 17.05.2024. On the day of the incident he was out of station for doing the labour work and at about 10:30 hours his son called him and told that prosecutrix found missing from the night and there-after, his family told him that on 27.05.2024 they were sleeping and wake up at at about 06:00 hours, prosecutrix found missing. There-after, such inquiry was made in the neighborhood as well as in the relatives, but prosecutrix was not found out. There-after, he has filed the complaint. He has identified his signature on the complaint vide Exh.61. He has further deposed that no person abducted the prosecutrix.

The father of the prosecutrix - complainant (PW-9) has also not deposed anything incriminating against the accused therefore nothing material for the prosecution has come forth. The Additional Public Prosecutor has cross - examined him at length, but nothing material for the prosecution has come forth. During the cross-examination of the L.A. Mr.S.K.Ninama of the accused, he has admitted that complaint dictated by the leading members of the society and he has passed his signature on the complaint. He has further admitted that present accused has not abducted the prosecutrix and his daughter has not told anything.

EVIDENCE OF THE PANCH WITNESS

(20) There-after, in this matter the prosecution has examined panch witness (PW-1) Nareshbhai Shanubhai Palas, vide Exh-08 and panch-witness (PW-2) Sureshbhai Varsingbhai

Tadvi vide Exh.19, whereby in examination-in-chief they have not supported the panchnama of the body condition of the accused at Exh.09. 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.

There-after in this matter the prosecution has examined panch-witness (PW-3) Jitendrabhai Parsottamdas Makwana vide Exh-11 whereby in examination-in-chief PW-3 want to support the panchnama of place of offence shown by the prosecutrix at Exh.12 and panchnama of seizure of the cloth of the prosecutrix at Exh.13.

This panch-witness whereby in examination-in-chief want to support the panchnama produced at Exh.12 & 13 but as the prosecutrix (PW-7) and complainant (PW-9), who are the star witnesses have not supported the prosecution case and more importantly, have not assigned any criminal role to the accused and have not deposed anything incriminating against accused and therefore there are no any useful purpose would be served by adopting the evidence of this panch witness, and this evidence is not useful to prove the guilt of the accused-person.

EVIDENCE OF THE MEDICAL OFFICER :

(21) In this matter prosecution has examined medical officer (PW-05) Dr.Amitkumar Ramubhai Ninama vide Exh-25,

whereby in examination-in-chief he deposed that on 16.06.2024, he was performing his duty at C.H.C, Limkheda 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, “she knows the accused Ritesh since last four months and she was in love with accused. First time she met with accused in the Devadhi Shcool and before a month ago Ritesh took her with him and they made sexual intercourse two time with her will and consent. Thereafter, she came at home and after four to five days again she eloped and stayed at Morbi for 15 to 20 days and there they daily made sexual intercourse with her will and consent and ten days ago leading members of the village 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 this witness denied that history of the prosecutrix written as per the police yaadi. He has admitted no internal or external injuries found on the body of the prosecutrix.

(22) In this matter prosecution has examined Gynecologist (PW-4) Dr.Nesargi Vinodkumar Mandovara vide Exh-18, whereby in examination-in-chief she deposed that on 17.06.2024, she was present on her duty at Zydus Hospital, Dahod, at that time prosecutrix was brought for medical examination by Police

with the refer note of Medical Officer, C.H.C. Limkheda and she has examined the prosecutrix. Prosecutrix has gave the history as mentioned in the medical papers. She has further stated that prosecutrix was 14 years 05 months old unmarried and she lastly came into menstrual period on 06.05.2024. 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 she denied that she has written the history of the prosecutrix as per police yaadi. She has admitted that no internal or external injuries found on the body of the prosecutrix. She has admitted that there are so many reasons for the hymen ruptured.

(23) In this matter prosecution has examined medical officer (PW-12) Dr.Rashida Hussien Dhangadhrawala vide Exh-75, whereby in examination-in-chief he deposed that on 15.09.2025, she was performing her duty at C.H.C, Limkheda at that time accused brought for medical examination by police and she has examined the prosecutrix. She has further stated that the history given by accused as given by the prosecutrix. It is further stated by the doctor that bodily injuries was 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 she has not written the history as dictated by the prosecutrix. She denied that no fresh injuries found on the body of the accused.

EVIDENCE OF THE INVESTIGATING OFFICER

(24) There-after, in this matter the prosecution has examined (PW-08) Valiben Gamirbhai Chauhan vide Exh-54 whereby in examination-in-chief she deposed that on 15.06.2024, she was performing her duty as Woman Head Constable at Limkheda Police Station and she was in charge of the P.S.O., at that time complaint was filed by the complainant before the P.I.Shri Khant. She has registered the offence and forwarded the complaint to the P.I.Shri J.M.Khant, for the investigation. She has identified her signature on the letter to conduct the investigation at Exh.55 and also identified her signature on the station diary at Exh.57. During the cross-examination of the L.A. she has admitted that she has registered the offence and forwarded towards P.I.Shri J.M.Khant for the investigation and except this she has not done anything.

(25) There-after, in this matter the prosecution has examined investigation officer (PW-10) vide Exh-63, whereby in examination-in-chief he deposed that in the year 2024, he was performing his duty as P.I. at Limkheda police station and at that time complainant has filed the complaint before him and he has written the complaint as complainant dictated and forwarded towards P.S.O for registration of the complaint. He has conducted the investigation. He has prepared the panchnamas. He has recorded the statement of the witnesses. He has arrested the Shaileshbhai Puniyabhai Tadvai and recorded his statement and after collecting the sufficient evidence, he has filed the

charge-sheet against the accused Shaileshbai. During the cross-examination of the L.A he denied that he has not written the complaint as complainant dictated ; he has not recorded the statements of the witnesses as they dictated ; he has prepared the panchnama in absence 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.

(26) There-after, in this matter the prosecution has examined investigation officer (PW-11) vide Exh-76, whereby in examination-in-chief he deposed that in the year 2026, he was performing his duty as P.I. at Limkheda police station and he has conducted the further investigation of this offence at that time P.I.Shri K.C.Vaghela has arrested the accused Pratapbhai Titabhai Palas and there-after, he has arrested the accused Riteshbhai Pratapbhai Palas. He has recorded the statement of the accused. He has prepared the panchanamas He has sent the muddamal in the F.S.L. During the cross-examination of the L.A. he denied that he has not prepared the panchanamas in presence of the panch. He also denied that there is no sufficient evidence against the accused, he has filed the false charge-sheet.

(27) 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.

(28) 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 :

(29) In the light of the aforesaid nature of deposition of the prosecutrix (PW-7) and complainant (PW-9), who are the star witnesses and the material witnesses 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.

(30) 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.

(31) 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.53, wherein victim before the Additional Chief Judicial

Magistrate, Limkheda stated that accused has made sexual intercourse with the her.

(32). 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.

(33) 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.

(34) 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.

(35) 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.

(36) There is no material on record to show that on 28.05.2024 at about 06-00 hours from the jurisdiction of **Limkheda** Police Station, the accused Riteshbhai Pratapbhai Palas had kidnapped the prosecutrix by inducement of marriage and accused Ritenshbhai Pratapbhai Palas committed penetrative

sexual assault on the prosecutrix and committed rape upon her when she was minor and accused Pratapbhai Titabhai Palas and accused Shaileshbhai Puniyabhai Tadvı abetted the offence. Consequently, no inference can be drawn that the accused Ritehsbhai Pratpabhai Palas, Pratapbhai Titabhai Palas and Shaileshbhai Puniyabhai Tadvı 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, 17 of the Protection of Children from Sexual Offences Act.**

(37) 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, 17 of the Protection of Children from Sexual Offences Act, against the accused Rohitbhai Chhaganbhai Makwana and hence, I answer Issues nos.2 and 3 in the negative.

POINT NO.4

(38) 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 **Shaileshbhai Puniyabhai Tadv** of Special Case (POCSO) No.28 of 2024 and accused No.1 **Pratapbhai Titabhai Palas** and No.2 **Riteshbhai Pratapbhai Palas** of Special Case (POCSO) No.12 of 2026 are hereby acquitted from the charges of the offences, punishable under **Section - 363, 366, 376(2-N), 376(2)** of the **Indian Penal Code** and **Section 4, 6, 17** of the **Protection of Children from Sexual Offences Act**, which was registered at **Limkheda** Police Station vide Part 'A' C.R.No.11821035240635/2024.
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.28/2024 and copy of the Judgment to be kept in Special Case (POCSO) No.12/2026 .

Pronounced in open court today on this 19th day of **June, 2026**.

Date : 19/06/2026 **[HARESHKUMAR HIMMATLAL THAKKAR]**
Place : Limkheda **SPECIAL JUDGE (POCSO) & ADDL. SESSIONS**
 JUDGE, DAHOD AT, LIMKHEDA.
 [Code No.GJ 00533]