



GJKT010005612026



Exh.A/ 67

Received on	:	04.02.2026
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FORM - A**IN THE COURT OF SPECIAL JUDGE (POCSO) AND
ADDITIONAL SESSIONS JUDGE, BHUJ-KACHCHH.****Before Mr.J.A. Thakkar**
Special Judge (POCSO)**Special (POCSO) Case No.06 of 2026****Details of FIR/Crime and Police Station**

Police Station		Mandvi Police Station
Crime/FIR No.	:	No.Part-A-11205031250483/2025
Complainant	:	The State of Gujarat
Represented By	:	Mr.H. B. Jadeja, learned PP
Accused	:	Jushab @ Jusso Shiru Gulam Shiru, Aged 24 Years, R/o. Mafatnagar, Village:- Shirva,

	Taluka:- Mandvi- Kachchh.
Defended By	: Learned Advocate Mr.S. M. Khanna

FORM - B

Date of Offence	:	01.03.2025
Date of FIR	:	17.12.2025
Date of Charge-sheet	:	04.02.2026
Date of Framing of Charge	:	16.03.2026
Date of Commencement of evidence	:	21.04.2026
Date on which judgment is reserved	:	01.05.2026
Date of Judgment	:	04.05.2026
Date of the Sentencing Order, if any	:	-

DETAILS OF ACCUSED

Rank of the Accused	Name of the 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.
A1	Jushab @ Jusso Shiru Gulam Shiru	17.12.2025	--	U/s. 64(2) (m), 65(1), 351(3)of the BNS read with	Acquitted	-----	U.T.P.

				Section 4(2), 5 (j)(ii), 5(1) 6 of the POCSO Act			
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FORM – C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES			
A. Prosecution Witnesses:			
RAN K	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)	EXHIBI T
PW-1	Mother of victim	Complainant	14
PW-2	Father of victim	Witness	16
PW-3	Victim	Victim	17
PW-4	Dr. Chirag D. Kanani	Medical Witness	28
PW-5	Dr. Shubhra V. Shrivastav	Medical Witness	34
PW-5	Chetak. Y. Barot	Police Witness (Investigating Officer)	38
B. Defence Witnesses, if any:			
RAN K	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT	

		WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL		
C. Court Witnesses, if any:		
RAN K	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution Exhibits:		
Sr. No.	Exhibit Number	Description
1	Ex.15	Complaint
2	Ex.18	Statement of victim u/sec.183 of BNSS
3	Ex.19,22	DNA Sample recovered Panchnama
4	Ex.20	Panchnama of Place of incident
5	Ex.21	Sample recovered panchnama
6	Ex.23	Medical Examination Report of accused
7	Ex.24	Letter of M.O. regarding collection of samples of accused
8	Ex.25	Letter to M.O. regarding collection of samples of accused
9	Ex.29	Letter to M.O. regarding medical examination and

		collection of samples of victim
10	Ex.30	Medical Examination Report for Sexual Assault of victim
11	Ex.31	Letter of M.O. regarding collection of samples of victim
12	Ex.32	Letter to M.O. for taking DNA samples of accused
13	Ex.33	Form for DNA profile of accused
14	Ex.35	Continuation Sheet
15	Ex.39	Spot Examination Report
16	Ex.40	Permission of filing of Charge-sheet
17	Ex.41	Letter to Chief Officer for giving certified copy of birth certificate
18	Ex.42	Forwarding letter issued by Chief Officer, Mandvi Nagarpalika
19	Ex.43	Birth Certificate of victim
20	Ex.44	Letter to Principal, Shirva Primary School for giving School Leaving Certificate of victim
21	Ex.45	Birth Certificate and copy of School Leaving Certificate issued by Principal, Shirva
22	Ex.46	Discharge Summary
23	Ex.92	Receipt of Muddamal issued by DFS
24	Ex.47	Letter to M.O. for taking DNA samples of victim and child
25	Ex.48	Letter of M.O. regarding collection of samples of victim
26	Ex.49	DNA Profile Form of victim
27	Ex.50	Letter of M.O. regarding collection of samples baby of victim

28	Ex.51	DNA Profile Form of victim's baby FSL Report of muddamal (Serology)
29	Ex.52	Dispatch Note of Muddamal to FSL department for analysis
30	Ex.53	Receipt of Muddamal issued by FSL
31	Ex.54	Forwarding Letter of FSL
32	Ex.55	FSL Examination Report of muddamal
33	Ex.56	Dispatch Note of Muddamal to FSL department, Rajkot for analysis
34	Ex.57	Receipt of Muddamal issued by FSL
35	Ex.58	Forwarding Letter of FSL
36	Ex.59	Forensic Examination Report issued by FSL Rajkot
37	Ex.60	Dispatch Note of Muddamal to FSL department, Rajkot for analysis
38	Ex.61	Receipt of Muddamal issued by FSL
39	Ex.62	Letter of PI to PP for sending of FSL report of DNA Sample
40	Ex.63	Forwarding Letter of FSL
41	Ex.64	Forensic Examination Report issued by FSL Rajkot

A. Defence Exhibits, if any:

Sr. No.	Exhibit Number	Description
NIL		

B. Court Exhibits, if any:

Sr. No.	Exhibit Number	Description
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NIL

: J U D G M E N T :

- 1] The accused namely Jushab @ Jusso Shiru Gulam Shiru stands charged for the offences punishable under Sections 64(2)(m), 65(1), 351(3) of the Bhartiya Nyaya Sanhita (hereinafter referred as “BNS”) read with Sections 3(a), 4, 5(1) (j-2), 6 of the Protection of Children from Sexual Offence Act, 2012 (hereinafter referred as “POCSO Act”) for kidnapping the victim under 18 of age from her lawful guardianship; committing rape upon her repeatedly; and committing aggravated penetrative sexual assault on the victim.
- 2] In case of *Nipun Saxena Vs. Union of India, 2019(2) SCC 704 and Bhupinder Sharma Vs. State of U.P. (2008) 8 SCC 551*, it has been held by the Hon’ble Supreme Court that keeping in view of the social object of preventing social victimization and ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, the name of the victim should not be indicated. Thus, in view of the above provisions and Section 228A of BNS, disclosure of identity of the victim is not made.
- 3] The case of prosecution, in brief, is that on or before 01.03.2025 ,the accused developed a friendship with

the complainant' minor daughter and when she went to collect dung, at that time taking advantage of her aloneness , the accused made physical relation with the victim twice against her consent and made her pregnant and also threatened to kill her and thereby committed a serious offence of aggravated penetrative sexual assault under Sections 64(2)(m), 65(1), 351(3) of the BNS read with Sections 4(2), 5 (j)(ii), 5(1) 6 of the POCSO Act.

- 4] After filing of the charge-sheet and on appearing of the accused, it is assured that the copies of police papers have been given to him. Thereafter, charge was framed against the accused for the offence punishable under Sections 64(2)(m), 65(1), 351(3) of the BNS read with Sections 4(2), 5 (j)(ii), 5(1) 6 of the POCSO Act. The plea of the accused was recorded to which the accused pleaded not guilty and claimed for trial.
- 5] The prosecution, thereafter, led the evidence and after leading evidence, submitted a closing Pursis. Thereafter, further statement of accused was recorded. The accused has denied the charges leveled against him and further stated that he is innocent person and has been falsely implicated in this case.

- 6] Heard learned APP Mr. H.B.Jadeja for the State and learned advocate Mr.S. M. Khanna for the accused at length.
- 7] On giving careful consideration upon rival contentions, oral as well as documentary evidence on record, the following points arise for determination of this case:

:: POINTS FOR DETERMINATION ::

- (1) Whether the prosecution proves beyond reasonable doubt that the victim was minor at the time of incidence?
- (2) Whether the prosecution proves beyond reasonable doubt that on or before 01.03.2025 the accused despite knowing that the victim was minor, he developed the friendship with her and when she went to collect dung, at that time taking advantage of her aloneness, the accused made physical relation with the victim twice against her consent and made her pregnant and also threatened to kill her if she told any one about this matter and thereby committed a serious offence of aggravated penetrative sexual assault under Sections 64(2)(m), 65(1), 351(3) of the BNS read with Sections 4(2), 5 (j)(ii), 5(1) 6 of the POCSO Act?
- (3) What order?
- 8] My answers to the above points are as under:

- (1) In the negative
- (2) In the negative
- (3) As per final order.

Submissions on behalf of the State:

- 9] Learned PP Mr.H.B.Jadeja for the State has vehemently submitted that the accused has committed the offences against the minor victim. He has then drawn the attention of this Court to the Birth Certificate of victim produced at Ex.43, and has submitted that if this document is seen, the birth date of the victim is 26.03.2009. He has further submitted that as per the evidence came on record, it reveals that the accused made forcefully physical relation with minor victim frequently and made her pregnant. He has further submitted that the victim aged below 18 years has been subjected to sexual assault by the accused. The learned P.P. has further submitted that the medical certificates issued by the doctor as well as the case papers of the victim produced on record indicate that the victim was subjected to sexual assault at the hand of the accused. Ld. P.P. has further argued that as per the medical reports as well as deposition of the police witnesses and medical officer, the prosecution has established his case. Thus, the prosecution proved beyond reasonable doubt that the accused has committed a serious offence of

aggravated penetrative sexual assault upon the victim. He has, therefore submitted that the accused should be held guilty for the offences for which he is charged.

Submissions on behalf of accused:

- 10] Learned advocate for the accused has vehemently submitted that the accused is an innocent who has been falsely implicated in this case. He has further submitted that there is no iota of evidence of the commission of the alleged offences by the accused. He has further submitted that if the complaint as well as the depositions of the victim and her parents are seen and read together, then they clearly proves that the prosecution has miserably failed to prove commission of any of the offences by the accused. He has also submitted that if the entire evidence of the prosecution is read, there is no proof on record to show that the accused has committed alleged offences.

The learned advocate for the accused has also drawn attention of this Court towards the depositions of the material witnesses i.e. witness and her parents and submitted that they are turned hostile and there is material contradiction in the story put forward by the complainant in the complaint and thus, the prosecution story fails on this very important aspect. He has further submitted that the statement of victim under Section 183 of BNSS was recorded after

considerable period and thus though has been exhibited, their contentions are not proved by the prosecution. He has further submitted that if the depositions of other witness i.e. father of victim is seen, it does not support the case of the prosecution. The FSL report also does not inspire any confidence or show involvement of the accused in the alleged offences. He has, therefore, submitted the prosecution fails to prove the charges against the accused beyond reasonable doubt and hence, has submitted that the accused is required to be acquitted.

: REASONS :

Point No.(1)

- 11]** It is to be stated that necessarily the Court trying the offences under the POCSO Act is required to give a finding in regard to age of the victim as the provisions of the POCSO Act can be applied only if the victim is a child. Section 2(d) of the POCSO Act defines the child as a person below the age of 18 years. Further, Section 34 of the POCSO Act provides procedure for determination of age of child. In view of Section 34(1) of the POCSO Act, Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 becomes relevant, and applicable. As per the said provision, when the age of the victim is required to be determined, Section 94 (2)(iii) of the Juvenile Justice Act clearly indicates that the date of birth certificate

from the first school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court.

- 11.1 Herein the present case, the complainant/ mother of the victim in the complaint at Ex.15 stated that the victim was aged about 15 Years, 11 months and 12 days at the time of incident. Now, on perusal of the Birth Certificate and School Leaving Certificate of victim produced at Exh.-43 & 45 respectively, wherein the date of birth of the victim is mentioned as 26.03.2009. The said documents are referred in evidence of I.O. Mr. Chetak Yogeshkumar Barot at Exh.-38 But it is pertinent to note that the prosecution has not examined the author of said certificate to prove the age of victim. It is also pertinent to note that, the prosecution has not examined the authority or concerned department who maintained birth and death register according to law. Further, looking to the deposition of parents of victim at Exh.-14 and 16 respectively, they have stated in

their deposition on 21.04.2026 that at present age of the victim is 18 years and the the alleged incident has happened about four months ago. Even victim has stated in her deposition she do not know her date of birth. So, considering the deposition of different witnesses as discussed above, prosecution has failed to prove that the victim was minor at the time of incident. Looking to all these, it is reason to believe that, the prosecution has not succeeded to prove the certificate at Exh.-43 and 45 according to the provisions of Section 29 of the Bharatiya Sakshya Adhiniyam, 2023. Hence, looking to the deposition of the different witnesses as discussed above and documents produced on record, it is reason to believe that the prosecution has failed to establish that the victim was minor at the time of incident. Therefore, point no.1 is answered in the negative accordingly.

Points No.(2) and (3)

- 12] In order to prove the guilt of the accused in the offences under Sections 64(2)(m), 65(1), 351(3), 376(3) of the BNS read with Sections 4(2), 5 (j)(ii), 5(1) 6 of the POCSO Act, the prosecution has examined 4 witnesses and tendered the documentary evidences.
- 13] The prosecution has examined **PW1 – mother of the victim at Ex.17**. This witness has deposed before this

Court that, the incident took place about four months ago. During the period of incident, her victim daughter and she used to have frequent quarrel over household chores and she used to scold her victim daughter over household chores and tell her to make her complaint to her father, so that her victim daughter would often leave the house without telling anyone for two to three hours and then return home by herself after her anger subsided. Further, she has deposed that, as she used to scold her victim daughter frequently over household chores, which She did not like it, so she left without informing them and during this period, as her victim's daughter's health was not good, she suspected that there must have been some rift with her, so on the basis of suspicion she filed a complaint with the police. Apart from this, nothing else happened. Further, original complaint is shown to her, in which she identified her signature and the same is exhibited vide Exh.-15. Further, she has deposed that, after she filed the complaint, her victim daughter informed them that she used to leave the house for short periods due to frequent quarrels with her regarding household chores. Apart from this, she did not state any other facts regarding anything happening to her. Further, she has deposed that, as the accused is from their village, she know him. Further, she identified the accused before the Court. Further, she has deposed that, it has never happened that despited

knowing that her victim daughter is minor, the accused Jusab Ghulam Shiroo, by taking advantage of aloneness of her victim daughter, on different days, while she was going to her maternal uncle's farm to collect dung, forcibly had sexual intercourse with her twice against her consent. Further, she has deposed that, it has never happened that, this accused Jusab Ghulam Shiroo has ever made forcibly sexual intercourse with her victim daughter against her consent at any place and her victim daughter has never told them such fact.

13.1 As this witness has not supported case of the prosecution, Ld. P.P. has declared this witness **hostile**. After declared this witness hostile, the Ld. P.P. with permission of this Court, cross examined the witness in detail but the prosecution has totally failed to bring anything important on record which helpful to the case of the prosecution.

13.2 Further, the present witness was cross-examined by the learned advocate for the accused. In her cross-examination, this witness has admitted that, she had not read what the police had written in her complaint. Further, this witness has admitted that her victim daughter has never informed her about any fact such as the accused having raped her. Further, she has admitted that since the accused lives in her neighbourhood, she know him.

- 14] The prosecution has examined **PW2 – father of the victim at Ex.16**. This witness has deposed before this Court that, the incident took place about four months ago. During the period of incident, her victim daughter and her used to have frequent quarrel over household chores and his wife used to scold his victim daughter over household chores and tell her to make complaint to him, so that her victim daughter would often leave the house without telling anyone for two to three hours and then return home by herself after her anger subsided. Further, he has deposed that, as his wife used to scold her victim daughter frequently over household chores, which She did not like it, so she left without informing them and during this period, as her victim's daughter's health was not good, his wife suspected that there must have been some rift with her, so on the basis of suspicion she filed a complaint with the police. Apart from this, nothing else happened. Police interrogated him. Further, he has deposed that, after his wife filed the complaint, his victim daughter informed them that she used to leave the house for short periods due to frequent quarrels with her mother regarding household chores. Apart from this, she did not state any other facts regarding anything happening to her. Further, he has deposed that, since the accused is from their village, he know him. Further, this witness has identified the accused before the Court. Further, she has deposed

that, it has never happened that despited knowing that his victim daughter is minor, the accused Jusab Ghulam Shiroo, taking advantage of aloneness of her victim daughter, on different days, while she was going to her maternal uncle's farm to collect dung, forcibly had sexual intercourse with her twice against her consent. Further, he has deposed that, it has never happened that, this accused Jusab Ghulam Shiroo has ever made forcibly sexual intercourse with his victim daughter against her consent at any place and his victim daughter has ever told them such fact.

14.1 As this witness has not supported case of the prosecution, Ld. P.P. has declared this witness **hostile**. After declared this witness hostile, the Ld. P.P. with permission of this Court, cross examined the witness in detail but the prosecution has totally failed to bring anything important on record which helpful to the case of the prosecution.

14.2 Further, the present witness was cross-examined by the learned advocate for the accused. In his cross-examination, this witness has admitted that, he had not read what the police had written in his statement. Further, this witness has admitted that his victim daughter has never informed her about any fact such as the accused having raped her. Further, he has admitted that since the accused lives in his neighbourhood, he know him.

15] The prosecution has further examined the **PW-3 - Victim** at **Exh.17**. In her deposition, the victim has deposed in examination-in-chief that, During the period of incident, her mother and she used to have quarrel over household chores and her mother used to scold her frequently for household chores and used to tell her to complain to her father, so she felt very upset and she used to be afraid of her father. Further, she has deposed that, whenever she used to have quarrel with her mother over household chores, she felt upset and she used to leave her house and go to places where she enjoyed and liked and after two or three hours her anger would cool down and she would come home. Further, she has deposed that, during the incident, once she used to have an quarrel with her mother over household chores so she got bored and left her house and stayed in a secluded place in the village and after two or three hours as she thought of her parents, she came to home. Further, she has deposed that, as she used to leave home without telling anyone during the incident and since she was ill at that time, her mother suspected that something had happened to her, so she lodged a complaint with the police based on her suspicions. Further, she has deposed that, when her parents questioned her, she clearly told her parents that nothing had happened to her and also told her parents that as she used to have quarrel- dispute with her mother, she used to go to a

secluded place in the village and from there she would come home after calming down and except that, nothing has happened with her. Further, she has deposed that, it has never happened that when she used to go to her uncle's farm to collect dung, on different days, the accused Jusab Ghulam Shiru by taking advantage of her aloneness, forcibly had sexual intercourse with her twice against her consent. Further, she has deposed that, as accused Jusab Ghulam Shiru is from her village, she has only heard about him but never met him. Further, she has deposed that, it has never happened that, the accused Jusab Ghulam Shiru ever had sexual intercourse with her against her consent and by force at any place. Further, she has deposed that she had clearly informed her parents about this matter after her mother filed a complaint and she had also clearly informed her parents that this accused Jusab Ghulam Shiru had never committed misdeed with her. Further, she has deposed that, it has not happened that, after lodging the complaint by her mother the police took her to any hospital for medical examination. Further, she has deposed that, it has not happened that the police seized any clothes from her. Further, she has deposed that, it has not happened that the police took her to the Mandvi court to give her statement and she do not know anything about it at present. Further original statement of victim U/s. 183 of BNSS is shown to her,

in which she identified her signature and the same is exhibited vide Exh.- 18. Further, the accused is shown to the victim through the TV screen but the victim after seeing the accused, told that she does not know this person. Hence, the victim has not identified the accused before the Court. Additionally, the victim also stated that he has never seen this person or met this person, thus stating that he does not know the accused.

15.1 As this witness has not supported case of the prosecution, Ld. P.P. has declared this witness **hostile**. After declared this witness hostile, the Ld. P.P. with permission of this Court, cross examined the witness in detail but the prosecution has totally failed to bring anything important on record which helpful to the case of the prosecution.

15.2 Further, the present witness was cross-examined by the learned advocate for the accused. In her cross-examination, this witness has admitted that, the present accused has never committed any misdeed with her at any place. Further, she has admitted that, she did not read what the police wrote in her reply, she just signed it. Further, she has admitted that, apart from the fact that as she used to have quarrel with her mother about work, she used to leave angrily without informing her parents, nothing has happened to her.

16] The prosecution has examined **PW-4 – Dr. Chirag Dilipbhai Kanani** at **Exh.28**. In his examination-in-chief, this witness has deposed that, on 17/12/2025 while he was on duty as Medical Officer at SDH, Mandvi, victim was sent by Mandvi Police Station along with Yadi for medical examination. The victim was 15 years, 11 months and 22 days old. She was brought by her mother. They started the physical examination of the victim at 9 p.m. Before conducting the physical examination of the victim, her consent was obtained for which the thumb impression of the victim and her mother was obtained. The victim had an old wound on the forehead as an identifying mark on the body. Further, he has deposed that, when the victim was asked about the history of the incident, she stated, " I used to talk and meet Jusab Ghulam Shiru Wala, who lives near our house, for the last two to three years and he used to forcibly call me to the yard near my house to meet me and he has repeatedly forcibly had physical intercourse with me and the last time he had made physical intercourse was about three to four months ago." Further, he has deposed that, the victim had taken a bath and changed clothes. Further, he has deposed that, no external injury marks were found on the victim's body. Further, he has deposed that, the victim's hymen was torn. Further, he has deposed that, during the physical examination of the victim, the following samples were taken: (1) Nails,

(2) Head hair, (3) Pubic hair, (4) Saliva, (5) Urethral swab. (6) Vaginal swab, (7) Cervical swab, (8) Vaginal slide, (9) Blood samples were taken and the samples were sealed and sent to Mandvi Police Station with a seal sample in the forwarding letter. Further, he has deposed that, Gynecologist Dr. Shwetaben Shah was present with him during the physical examination of the victim. Further, he has deposed that, after the medical examination, in their opinion, the victim was pregnant, from which it can be said that physical intercourse had taken place. Further, he has deposed that, on 18.12.2025 he received the Yadi from Mandvi Police Station for collecting DNA Sample of the accused and in accordance with the said letter, they collected blood sample of accused for DNA and accused made his singature on DNA profile form in their presence. This witness has referred and identified the documents at Exh.30 to 33 in his deposition.

16.1 This witness was cross-examined by learned advocate for the accused. In his cross-examination, the witness has denied that, the police did not send the victim before him for examination or that he did not collect the samples as per their instructions. Further, he has denied that, the victim did not give any history to him and they wrote the history himself on the instructions of the police. Further, he has

denied that, the victim was not pregnant. Further, he has denied that, the police did not present the accused before him for DNA sample or that he did not collect any of his blood sample. Further, he has denied that, the signature of the accused was taken on the prepared paper. Further, he has denied that, a false certificate was given on the instructions of the police.

- 17] The prosecution has examined **PW-5 – Dr. Shubhra Virendrakumar Shrivastav** at **Exh.34**. In his examination-in-chief, this witness has deposed that on 18/12/2025, she was on duty as a Gynecologist at Bhuj G.K. General Hospital when the victim came with her mother. Further, she has deposed that, the victim was 15 years, 11 months and 22 days old. Further, she has deposed that they conducted a physical examination of the victim. Further, she has deposed that before conducting the physical examination of the victim, her consent was obtained for which the thumb impression of the victim and her mother was obtained. Further, she has deposed that when the victim was asked about the history of the incident, she stated, “I used to talk and meet Jusab Ghulam Shiru Wala, who lives near our house, for the last two to three years and he used to forcibly call me to the yard near my house to meet and he has repeatedly had physical intercourse with me and last had sexual intercourse about three to four months

ago.” Further she has deposed that, on physical examination of the victim, she was seven and a half months pregnant. Further she has deposed that the baby in the victim's womb was normal and she sent the victim for sonography and other blood reports. Further, she has deposed that, then again the victim came before her on 8/2/2026 at G.K. General Hospital. At that time she admitted the victim to the hospital and as her pregnancy period was over and she was in labor pain and she could not have a normal delivery at that time, so a caesarean operation was performed on the victim and after the birth of the child, procedure was conducted to take the child's DNA sample and then the custody of the victim's child was handed over to the victim. This witness has also produced and identified the document at Exh.-34 before the Court.

17.1 This witness was cross-examined by learned advocate for the accused, in which she has denied that the victim was not referred to her for examination and she did not conduct any examination of her. Further, she has denied that, she did not send the victim for sonography or blood sample collection. Further, she has denied that, the victim did not give any history to her and she wrote the history herself on the instructions of the police. Further, she has denied that, the victim was not admitted to her hospital as an

indoor patient again on 8/2/2026 nor was her delivery done by caesarean in their hospital. Further, she has denied that, false documentary evidence was created at the behest of the police.

- 18]** The prosecution has examined **PW-6 – Chetak Yogeshkumar Barot** at **Exh.38** who is the Investigating Officer in the instant case. The said witness in his deposition has deposed that, on 17/12/2025, when he was on duty as a Police Inspector at Mandvi Police Station, the complainant came before him and wrote down the details of the complaint regarding the incident that happened with his minor daughter and the witness has written down the details of the complaint as written by him and the complainant has signed before him and the witness has signed it personally. Further, he has deposed that, after that, the complaint was given to the PSO for registration of offence and after the offence was registered, he himself took over the investigation. Further, he has deposed that, for the purpose of investigation, he recorded the statements of the relevant witnesses and a panchnama of the local place was conducted in the presence of the panchs. Further, he has deposed that for the purpose of investigation, the statement of the victim was recorded and procedure was conducted to obtain the statement of the victim as per Section 183 of the BNSS. Further, he

has deposed that the clothes worn by the victim at the time of the incident were seized as per the details of the Panchnama and procedure was conducted to get the victim medically examined. Further, he has deposed that, as during the investigation, the accused was found, he was arrested as per the details of the Panchnama. Further, he has deposed that, procedure was conducted to get the accused medically examined for the investigation. Further, he has deposed that, as the Medical samples of the victim and the accused were came from the hospital, the same were seized as per the details of the Panchnama. Further, he has deposed that, the victim's birth certificate was obtained and kept in the investigation. Further, he has deposed that, the seized muddamal was sent to the FSL for examination. Further, he has deposed that, at the end of the investigation, as there was sufficient evidence against the accused, a charge sheet was filed in the Hon'ble court. Further, he identified the accused before the Court. This witness has referred and identified the documents at Exh.39 to 64, in his deposition.

- 18.1 This witness was cross-examined by learned advocate for the accused. In his cross-examination, this witness has denied that, the they have wrongly seized the muddamal for investigation. Further, he has denied that, they have wrongly seized the DNA samples of the

victim and the accused for the investigation. Further, he has denied that, the school leaving certificate and the birth certificate have been wrongly seized. Further, he has denied that, he has prepared the statements of the witnesses himself. Further, he has denied that, the Panchnamas have been prepared sitting in the office and the signatures of the Panchs have been obtained later. Further, he has denied that, despite the absence of any evidence against the accused, by conducting false investigation and by creating false evidences, a false charge-sheet has been filed.

- 19]** On perusal and appreciation of the depositions of the witnesses i.e. parents of the victim (PW1 & PW2) who have been examined by the prosecution vide Exh.14 & 16 respectively. They have not supported the case of prosecution in their deposition. They have mainly deposed that, the incident took place about four months ago and during the period of incident, the victim and mother of victim used to have frequent quarrel over household chores and mother of victim used to scold her victim daughter over household chores and tell her to make her complaint to her father, so that her victim daughter would often leave the house without telling anyone for two to three hours and then return home by herself after her anger subsided. Further, they have clearly deposed that, as victim of mother used to scold her victim daughter

frequently over household chores, which She did not like it, so she used to go without informing them and during this period, as victim's health was not good, her mother suspected that there must have been some rift with her, so on the basis of suspicion mother of victim filed a complaint with the police and apart from this, nothing else happened with victim. Further, they have clearly stated in their deposition that, after filed the complaint, victim informed them that she used to leave the house for short periods due to frequent quarrels with her mother regarding household chores. Apart from this, she did not state any other facts regarding anything happening to her. Thereafter, they have clearly deposed that it has never happened that despite knowing that her victim daughter is minor, the accused Jusab Ghulam , by taking advantage of aloneness of her victim daughter, while she was going to her maternal uncle's farm to collect dung, forcibly had sexual intercourse with her twice against her consent on different days. Further, they have also deposed that, it has never happened that, this accused Jusab Ghulam Shiroo has ever made forcibly sexual intercourse with their victim daughter against her consent at any place and her victim daughter has ever told them such fact. Thus, these witnesses i.e. parents of victim have not supported the case of the prosecution and therefore, they have been declared hostile by the prosecution side.

Moreover, in their cross-examination conducted by defence side, they have admitted that, they had not read what the police had written in the complaint as well statement. Further, they have clearly admitted that victim has never informed them about any fact such as the accused having raped her. Thus, parents of victim have not supported to the prosecution's case and hence, the case of the prosecution becomes doubtful. Further looking to their evidence, it's appeared that no any material facts have come out which involved this accused in this offence.

- 20] Further, on perusal and appreciation of the deposition of the main witness i.e. the victim (PW-3) who has been examined by the prosecution at Exh.-17, she has also not supported the case of the prosecution and therefore, she has been declared hostile by the prosecution side. Moreover, it transpires from her deposition at Exh.-17 that, ,During the period of incident, her mother and victim used to have quarrel over household chores and her mother used to scold her frequently for household chores and used to tell her to complain to her father, so she felt very upset and she used to be afraid of her father and whenever she used to have quarrel with her mother over household chores, she felt upset and she used to leave her house and go to places where she enjoyed and liked and after two or three hours her anger would

cool down and she would come home. Thereafter, she has also deposed that, during the incident, once she used to have an quarrel with her mother over household chores so she got bored and left her house and stayed in a secluded place in the village and after two or three hours as she thought of her parents, she came to home. Further, she has deposed that, as she used to leave home without telling anyone during the incident and since she was ill at that time, her mother suspected that something had happened to her, so she lodged a complaint with the police based on her suspicions. So, it transpires from her deposition that the complaint was lodged on the basis of only suspicion. Further, she has deposed that, when her parents questioned her, she clearly told her parents that nothing had happened to her and also told her parents that as she used to have quarrel- dispute with her mother, she used to go to a secluded place in the village and from there she would come home after calming down and except that, nothing has happened with her. Then, she has clearly stated in her deposition that, it has never happened that when she used to go to her uncle's farm to collect dung, the accused Jusab Ghulam Shiru by taking advantage of her aloneness, forcibly had sexual intercourse with her twice against her consent on different days. Further, she has deposed that, as accused Jusab Ghulam Shiru is from her village, she has only heard about him but never

met him. Further, she has deposed that, it has never happened that, the accused Jusab Ghulam Shiru ever had sexual intercourse with her against her consent and by force at any place. Even, she has deposed that she had clearly informed her parents about this matter after her mother filed a complaint and she had also clearly informed her parents that this accused Jusab Ghulam Shiru had never committed misdeed with her. Further, she has deposed that, it has not happened that, after lodging the complaint by her mother the police took her to any hospital for medical examination. Even she has also deposed that, it has not happened that the police took her to the Mandvi court to give her statement and she do not know anything about it at present. Further, the accused is shown to the victim through the TV screen but the victim after seeing the accused, told that she does not know this person. Hence, the victim has also not identified the accused before the Court. Additionally, the victim also stated that he has never seen this person or met this person. Thus, this main witness i.e. victim has not supported the case of the prosecution. Therefore, Ld. P.P. has declared this witness hostile. After declared this witness hostile, the Ld. P.P. with permission of this Court, cross examined the witness in detail but the prosecution has totally failed to bring anything important on record which helpful to the case of the prosecution. Moreover, in

her cross-examination conducted by defence side, she has admitted that, the present accused has never committed any misdeed with her at any place. Further, she has admitted that, she did not read what the police wrote in her reply, she just signed it. Further, she has admitted that, apart from the fact that as she used to have quarrel with her mother about work, she used to leave angrily without informing her parents, nothing has happened to her. Thus, the main witness of this case, the victim, in her examination in chief as well as in her cross-examination, has not supported the case of the prosecution. At the outset if we evaluate the material oral evidences of the prosecution which is produced vide PW-1 to PW-3 i.e. the parents of the victim and victim herself and combined reading of the testimony of the above witnesses, it's clearly appeared that, the evidence of the material witnesses of the prosecution i.e. victim and her parents, it does not suggest that, the accused has ever made physical relation with the victim either with her consent or against her consent or made forcefully physical relation with her. A combined reading of the testimony provided by the victim and her parents it's clearly reveals that, as victim had quarrel with her mother about work, she left the house without informing her parents and apart from that nothing has happened with the victim. Further looking to evidence of the victim and her parents, it's

clearly appeared that no any material facts have come out in the deposition of the said witnesses which involved this accused in this offence.

21]. Further, the FSL report which is produced on record at Exh.55 does not suggests the act of sexual intercourse by the accused with the victim. Also, no any material was found on any Muddamal article or in the samples which collected during investigation and thus, the FSL report also does not support the case of the prosecution. It is required to note that considering reports of DFS, Gandhinagar, which is produced on record vide Exh. 64, wherein reported that the victim is consistent as Biological Mother of Baby girl. **Whereas, Jusab Gulam Shiru i.e. accused is Excluded as biological father of baby girl of Victim.** Hence, the DNA report which produced on record does not helps the case of prosecution.

21.1 Hence, as per DFS report at Exh.-64 Jusab Gulam Shiru i.e. accused is Excluded as biological father of baby girl of Victim. Thus, as discussed above, in light of the depositions of the victim and her parents, read alongside the medical evidence, FSL report, and DNA report, it does not appear that the accused, Jusab Ghulam Shiru, ever established a physical relationship with the victim either with her consent or against her consent and made forcefully physical relation with the victim.

22] Further, it is to be noted that as discussed above, it's appeared that the main prosecution witnesses i.e. parents of the victim and victim herself are not supporting the case of prosecution, therefore, it can be noted that primary evidences of the prosecution are not supporting to the prosecution case. It is further noted that the other evidence which produced on record by prosecution like statement u/s. 183 of BNSS of the victim and history which recorded by the medical officers, etc, these all evidences are corroborative piece of evidence and it is settled principle of law that the corroborative piece of evidence (supporting evidence) can not take place of primary evidence (main evidence). Even victim has stated in her evidence that it has not happened that, police took her to any hospital for medical examination. Under these circumstances, this Court is of view that the prosecution has absolutely failed to prove beyond reasonable doubt that the accused despite knowing that the victim was minor, he developed the friendship with her and and when she went to collect dung, at that time taking advantage of her aloneness, the accused made physical relation with the victim twice against her consent and made her pregnant and also threatened to kill her if she told any one about this matter and thereby committed a serious offence under Sections 64(2)(m), 65(1), 351(3) of the BNS read with

Sections 4(2), 5 (j)(ii), 5(1) 6 of the POCSO Act by leading cogent and reliable evidence and therefore, Issue No.2 is answered in the negative and for Issue No.3, following final order is passed:

:: ORDER ::-

1. The **Accused Jushab @ Jusso Gulam Shiru**, R/o.Mafatnagar, Village, Shirva, Taluka:- Mandvi-Kachchh is hereby acquitted from the charges under Sections 64(2)(m), 65(1), 351(3) of the BNS, read with Sections 4(2), 5(j)(ii), 5(1), 6 of the Protection of Children from Sexual Offence Act, 2012.
2. Bail bond executed by the accused at the time of releasing him on bail stands cancelled. Issue a release warrant qua the concerned accused immediately, if not require in judicial custody for any other offence.
3. The accused shall execute bail bond of Rs.05,000/- (Rupees Five Thousand only) with surety of the like amount in compliance with Section 481 of the BNSS, to appear before the higher Court as and when such Court issues notice in respect of an appeal or revision/petition.

4. Non-valuable Muddamal like clothes, samples etc. seized in this case shall be destroyed as per rules after the expiration of the Appeal period and in case Appeal is preferred, then as per the decision in the said appeal.

**Signed and Pronounced in open Court today
i.e. on 04th day of May, 2026.**

sd/-

Place: Bhuj.

Date: 04.05.2026

Hiren Dave

(J.A. THAKKAR)

**Special Judge (POCSO) &
Additional Sessions Judge,
Bhuj- Kachchh.
(GJ-00631).**