



GJKT010005902019



Exh-A/140

Received on : 04.02.2019

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Decided on : 18.04.2026

Duration : 07 02 14

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ADDITIONAL SESSIONS JUDGE, KACHCHH AT BHUJ****Before Mr.J.A. Thakkar****Special Judge (POCSO)****Special (POCSO) Case No.04 of 2019****Details of FIR/Crime and Police Station**

Police Station	:	Mankuva Police Station
Crime/FIR No.	:	First C.R. No.16/2017
Complainant	:	The State of Gujarat
Represented By	:	Mr.H. B. Jadeja, learned PP
Accused	:	Maheshkumar Mohanlal Pandya, Aged 25 Years,



A1	Maheshkumar Mohanlal Pandya	12.11.2018	13.02.2019	U/s.363, 366, 376, 114 of the IPC read with Section 4, 5(1) of POCSO Act, 2012	Acquitted	-----	03 Months and 01 days.
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**FORM – C**

<b>LIST OF PROSECUTION/DEFENCE/COURT WITNESSES</b>			
<b>A. Prosecution Witnesses:</b>			
<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>	<b>EXHIBIT</b>
PW-1	Dilavarsinh Natvarsinh Jadeja	Panch Witness	14
PW-2	Harjibhai Kanjibhai Koli	Panch Witness	17
PW-3	Vinodbhai Ramujubhai Koli	Panch Witness	19
PW-4	Kanjibhai Jashabhai Jogi	Panch Witness	20
PW-5	Jushab Mamad Lohar	Panch Witness	26
PW-6	Ramjan Fakirmamad Hingorja	Panch Witness	30
PW-7	Victim	Victim	87
PW-8	Father of Victim	Complainant	103

PW-9	Kasam Kara Sameja	Panch Witness	107
PW-10	Bhikhalal Sale Koli	Panch Witness	109
PW-11	Kanjibhai Pala Makwana	Panch Witness	110
PW-12	Vikramsinh Sajjansinh Champavat	Police witness (Investigating Officer)	118
PW-13	M.J.Boksha	Police witness (Investigating Officer)	123
<b>B. Defence Witnesses, if any:</b>			
<b>RAN K</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>	
<b>NIL</b>			
<b>C. Court Witnesses, if any:</b>			
<b>RAN K</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>	
<b>NIL</b>			

<b>LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS</b>
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<b>A. Prosecution Exhibits:</b>
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<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ex.15, 124	Muddamal Clothes worn by the victim at the time of incident recovered panchnamu
2	Ex.102	Statement U/s. 164 of Cr.P.C.
3	Ex.104	Complaint
4	Ex.108, 126	Panchnama of recovery of medical samples
5	Ex.111	Panchnama of place of offence
6	Ex.119	Letter to FSL for examination of Muddamal
7	Ex.120	Dispatch Note of Muddamal to FSL department for analysis
8	Ex.121	Forwarding letter of FSL along with biological report
9	Ex.122	FSL Report of muddamal (Serological)
10	Ex.125	Arrest Panchnama of accused
11	Ex.127	Birth Certificate of victim
12	Ex.128	School Leaving Certificate of victim
13	Ex.129	Letter to M.O. for collecting medical samples of victim and conducting medical examination
14	Ex.130	Medical Examination Report for Sexual Assault of victim
15	Ex.131	Letter to medical officer for medical examination of accused
16	Ex.132	Medical Examination Report of the accused
17	Ex.133	Acknowledgment of FSL regarding receipt of Muddamal

<b>A. Defence Exhibits, if any:</b>		
<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
<b>NIL</b>		

<b>B. Court Exhibits, if any:</b>		
<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
<b>NIL</b>		

**: J U D G M E N T :**

1. The accused namely Maheshkumar Mohanlal Pandya stand charged for the offences punishable under Sections 363, 366, 376, 114 of the Indian Penal Code, 1860 (hereinafter referred as “IPC”) read with Sections 4, 5(1) of the Protection of Children from Sexual Offence Act, 2012 (hereinafter referred as “POCSO Act”) for kidnapping the victim under 18 years of age from her lawful guardianship and abetting the co-accused for committing rape upon her repeatedly and committing aggravated penetrative sexual assault on the victim.
- 1.1] 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 IPC, disclosure of identity of the victim is not made.

- 2] The prosecution case, in brief, is that on 14.03.2017 at about 03.30 hrs. to 06.00 hrs. the present accused made a phone call to the minor victim daughter of the complainant and by giving lure of marriage, took away her to Bhuj bus station and handed over to other accused Ashok Dilipbhai Nayak and other accused Ashok, took the minor victim to Modasa and Bedhiyapur village in the Panchmahal district and made physical relation with her against the consent of victim frequently and thus, the present accused helped the co-accused in abducting the victim and thereby committed a serious offence under Sections 363, 366, 376, 114 of IPC read with Sections 4, 5(1) of the POCSO Act.
- 2.1 It is pertinent to note that, as the present accused was absconded, the Charge-sheet had previously been registered in this offence against only other accused Ashok Dilipbhai Nayak vide Special Case (POCSO) No. 12/2017 and the trial against the said main accused has already been conducted and the judgment therein was pronounced on 30/03/2019. Thereafter, as the present accused was found, the supplementary charge-sheet was filed against him and the present case was registered against him. Therefore, it is to be noted that, the previous case against the main accused POCSO case No. 12/2017 has already decided on detailed merit regarding the main accused Ashok Dilipbhai Nayak. Therefore, it is to be noted that, in this case there is no any requirement to discuss about the merit regarding that case as well as main accused Ashok Dilipbhai Nayak.

Therefore, in this case, only evidence which produced by the prosecution regarding the present accused is required to be evaluated and discussed. Therefore, it is hereby clarified and noted that, any evaluation and discssuion of evidence of this case cannot be applicable to the merit of the POCSO case No. 12/2017

- 3] 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 363, 366, 376, 114 of IPC read with Sections 4, 5(1) of the POCSO Act. The plea of the accused were recorded to which the accused pleaded not guilty and claimed for trial.
- 4] The prosecution, thereafter, led the evidence and after leading evidence, submitted a closing pursis. Thereafter, further statement of accused under section 313 of Criminal Procedure Code, 1973 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.
- 5] Heard learned PP Mr.H.B.Jadeja for the State and learned Learned LADC Mr. K. M. Charaniya for the accused at length.
- 6] Upon 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 14.03.2017 at about 03.30 hrs. to 06.00 hrs. the present accused made a phone call to the minor victim daughter of the complainant and by giving lure of marriage, took her from the lawful guardianship of her parents to the Bhuj Bus Station, and handed over to other accused Ashok Dilipbhai Nayak and other accused Ashok, took the minor victim to different places and made physical relation with her against the consent of victim frequently and thus, the present accused aided or abetted the other accused in abducting the victim and thereby committed a serious offence under Sections 363, 366, 376, 114 of IPC read with Sections 4, 5(1) of the POCSO Act?
- (3) What order?

7] My answers to the above points are as under:

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

**Submissions on behalf of the State:**

- 8] Learned PP Mr.H.B.Jadeja for the State has vehemently submitted that the present accused has committed the aforementioned offences against the minor victim girl below 18 years. He has further submitted that as per the complaint, it reveals that the other main accused with the help of present accused took away the victim out of lawful guardianship and abused her sexually. He has further submitted that the victim aged below 18 years kidnapped and has been subjected to sexual assault by the accused. The learned PP has further submitted that the complainant, victim as well as police witnesses have clearly supported the prosecution's case. Thus, the prosecution proved beyond reasonable doubt that the present accused has committed aforementioned serious offence against the victim. He has, therefore submitted that the accused be held guilty for the offences for which they are charged.

**Submissions on behalf of accused:**

- 9] Learned LADC Mr. K. M. Charaniya for the accused has filed written submission vide Exh.-138 which is carefully read by me. Further, he has also vehemently submitted that the accused is 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 complainant i.e. father of victim and the victim 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 person. He has also submitted that if the entire

evidence of the prosecution is read, there is no proof on record to show that the present accused person has committed alleged offences. He has also drawn attention of this Court to the depositions of the material witnesses i.e. complainant i.e. victim's father and victim and submitted that 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 164 of Cr.P.C. was recorded after considerable period and as there is contradiction in the deposition of victim, thus though has been exhibited, their contentions are not proved by the prosecution against present accused. He has further submitted that if the depositions of panch witnesses are seen, it does not support the case of the prosecution. The FSL report also does not inspire any confidence or show involvement of the present accused in the alleged offences. He has, therefore, submitted the prosecution fails to prove the charges against the present accused beyond reasonable doubt and hence, has submitted that the accused be acquitted.

: **REASONS** :

**Point No.(1)**

- 10] 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.

- 10.1 Herein the present case, the complainant/ father of victim in the complaint mentioned the age of the victim as 15 years and 11 months and date of birth of victim as 02.04.2001 and the alleged incident was occurred on 14.03.2017. Further, the copy of birth certificate as well as school leaving certificate of the victim are produced on record vide Exh.-127 &128 respectively. On perusal of the same, the date of birth of the victim is mentioned as 02.04.2001. Further, the above birth certificate and school leaving certificate referred in evidence of I.O Mr. M.J.Boksha at Exh.-123. Even victim has stated in her deposition at Exh.-87 that her date of birth is 02.04.2001.

Besides that, father of the victim has also stated in his deposition at Exh.-103 that at the time of incident age of her victim daughter was 16 years. It is pertinent to note that, the defence side has not taken denial for the same. The birth certificate of the victim is public record and therefore considering the oral evidence of the victim and other relevant witnesses, nothing adverse to the said document has come on record. Even defence side, they have not challenged the same. Besides that, my learned predecessor, after duly considering both the oral and documentary evidence regarding the age of the victim, had undertaken a detailed discussion on this issue while delivering the judgment against main accused in Special Case (POCSO) No. 12/2017 on 30/03/2019, and concluded that the victim was a minor at the time of the incident. So, considering all these facts and circumstances, as discussed above, the prosecution has succeeded to prove that at the time of incident victim was minor Hence, I answer issue no.1 in “Affirmative.”

**Point no.(2)**

- 11] In order to prove the guilt of the accused in the offences under Sections 363, 366, 376, 114 of IPC read with Sections 4, 5(1) of the POCSO Act, the prosecution has examined 13 witnesses and tendered the documentary evidence.
- 12] The prosecution side has examined **PW-1- Dilavarsinh N. Jadeja** vide **Ex.14**. This witness is Panch in Panchnama of recovered of clothes of victim. Except identifying his signature on Panchnama as well as panchslip, this witness

has not supported the Panchnama. As this panch 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.

This witness was not cross-examined by defence side.

- 13] The prosecution side has examined **PW-2- Harjibhai Kanjibhai Koli** vide **Ex.17**. This witness is Panch in Panchnama of recovered of clothes of accused. Except identifying his signature on Panchnama and panchslip, this witness has not supported the Panchnama. As this panch 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.

This witness was not cross-examined by defence side.

- 14] The prosecution side has examined **PW-3- Vinodbhai Ramjubhai Koli** vide **Ex.19**. This witness is Panch in Panchnama of recovered of clothes of accused. Except identifying his signature on Panchnama and panchslip, this witness has not supported the Panchnama. As this panch 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.

This witness was not cross-examined by defence side.

- 15] The prosecution side has examined **PW-4- Kanjibhai Jasabhai Jogi** vide **Ex.20**. This witness is Panch in Panchnama of recovery of medical samples of accused. Except identifying his signature on Panchnama, this witness has not supported the Panchnama. As this panch 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.

This witness was not cross-examined by defence side.

- 16] Thereafter, the prosecution side has examined **PW-5- Jusab Mamad Luhar** vide **Ex.26**. This witness is Panch in Panchnama of recovery of clothes of victim. Except identifying his signature on Panchnama, this witness has not supported the Panchnama. As this panch 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.

This witness was cross-examined by defence side, in which he as admitted that, he had signed in the prepared panchnama on the behest of police. Further, he has admitted that, being a driver by profession, refusal to sign as per the instructions of the police would create difficulties for him.

- 17] The prosecution side has examined **PW-6- Ramjan Fakirmamad Hingorja** vide **Ex.30**. This witness is Panch in Panchnama of recovery of medical samples of accused. Except identifying his signature on Panchnama, this witness has not supported the Panchnama. As this panch 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.

This witness was not cross-examined by defence side.

- 18] Thereafter, the prosecution has examined **PW-7 Victim at Exh.87**. In her deposition, she has deposed in examination-in-chief that, at the time of the incident, she was living with her family at Baldiya. Further, she has deposed that, her family consists of her parents and three sisters including her and one brother. Further, she has deposed that, her date of birth is 2-4-2001 and she studied up to standard 7. Further, she has deposed that, the incident took place about six years ago. Further, she has deposed that on the day of the incident, accused Mahesh made a phone call to her and told her to come to the bank at

Baldiya village. So when she went to the bank, accused Ashok was also present there. Further, she has deposed that, from Baldiya, Mahesh (present accused) and Ashok took her to Bhuj in a Chhakda and from Bhuj, Mahesh bought a bus ticket and she, Ashok and Mahesh went to Modasa in the bus and at Modasa they went to house of sister of Mahesh. Further, she has deposed that, when Mahesh called her near the bank, they had been in a relationship of conversation for two years, therefore, he took her from Baladiya. Further, she has deposed that, she and Mahesh stayed at Modasa in his sister's house for one night. Subsequently, Mahesh took her to house of his paternal aunt (foi) in another village. She further deposed that Mahesh eventually left her, but she do not remember the exact location where he departed.

- 18.1 Further, the victim has deposed in her examination-in-chief that, after leaving her home, both Ashok and Mahesh were with her. They took her to Modasa, where Ashok brought her to his sister's house. Further she deposed that Mahesh left from there, while she and Ashok stayed at his sister's house for one day, during which Ashok had physical relations with her two to three times. She further deposed that Ashok subsequently took her to the house of his paternal aunt (Foi), where they stayed for one night and Ashok again had physical relations with her two to three times. She further deposed that when they were leaving his sister's house for his parental aunt's house, she had asked Ashok about whereabouts of Mahesh, to which Ashok replied that Mahesh would not be coming and by telling this, Ashok took her from there. Further, she has

deposed that, she had met Mahesh when he used to visit house of his maternal aunt (masi) in Baldiya and they had exchanged mobile numbers and spoke over the phone and there was a love relationship between her and Mahesh. She has further deposed that, Mahesh, Ashok, and she had traveled together from Baldiya to house of maternal aunt of Ashok, where Mahesh left her with Ashok and departed. She further deposed that, because of her relationship with Mahesh, she had gone with him, but Mahesh had betrayed her by leaving her with Ashok, which ruined her life and despite she loved Mahesh, he had left her alone with Ashok. Further, she deposed that the police had interrogated her and recorded her statement. Further, she has deposed that, thereafter, the police took her to the Bhuj court for recording her statement before magistrate, where she recorded the same facts and as per instruction of magistrate, she signed in it. Further, she has identified true copy of her statement under Section 164 of Cr.P.C. which was given by her before the Court. The same is exhibited vide Exh.102 (Original statement was produced in Special (POCSO) Case No. 12/2017 vide Exh.-35). Further, she has deposed that, thereafter, police took her to the G.K. General Hospital, Bhuj for medical examination. Further, she has deposed that, police seized her clothes worn at the time of incident. Further, the witness has identified the accused before the Court.

18.2 The present witness – victim was cross-examined by the defence side. In her cross-examination, this witness has denied that, while she was with Ashok, she had called Rameshbhai, a resident of Adipur, from mobile number 99096 99418 and

informed him to tell her parents not to try to find her, as she is alright, and not to try to find her, otherwise she would die and her dead body would come to their home. She made a phone call to son of her paternal aunt named Mahesh, at that time and informed him of the aforementioned facts. Further, she has denied that she had then given the phone to Ashok and that Ashok had stated that “I am Ashok speaking and your victim daughter is with me”. Further, she has denied that in her statement before the police dated 19/03/2017, she had recorded that “a love affair between her and Ashok is in existence since last two years and that they both used to meet frequently and talk on the phone”. Further, she has denied that, in her statement before the police dated 19/03/2017, she had further recorded that she had been engaged to Paresh Valji Badiya of Khari Rohar village for the past two years, but since she had fallen in love with Ashok, she had decided to marry him. Further, she has denied that, she had informed her parents that, “since Ashok had called her, she had gone with him to Modasa and village of Ashok at Bedhiyapur, that Ashok had never told her that he was already married and that she had been lured by his desire to marry her. Further, she has denied that, when she went for her medical examination, she has not informed the doctor in her history that she had gone with Mahesh Mohanlal Pandya. Further, she has denied that, she had never gone anywhere with the accused, Mahesh. While she was with Ashok, she had met Ashok’s sister. Further, she has denied that while she was with Ashok, she had traveled with him freely. Then, she has admitted that, while she was with Ashok, no any discussion made regarding her age with Ashok or his sister or brother-in-law. Further, she has admitted that she had not discussed

about Mahesh with sister and brother-in-law of Ashok. Further, she denied that Mahesh had never taken her anywhere or had never come to pick up her . Further, she has denied that she had gone with Ashok on her own consent. Further, she denied that, she had voluntarily eloped with Ashok because she wanted to marry him and to prevent her family from marrying her with Paresh Valji Badiya. Further, she has denied that she had called Ashok on 13.03.2017, and that they both had planned to run away on the next day and she had no conversation with Mahesh on that day for coming home to pickup her. Further, she has denied that she had no conversation with Mahesh on the day of the incident or a day or two prior to it. Further, She has denied that she ever previously stated before the police or anywhere else that she had a love affair with Mahesh, which was why she had gone with him, or that Mahesh had betrayed her by handing her over to a boy named Ashok and ruined her life and despite she loved Mahesh, he had left her alone with Ashok and went away. She has further denied that she is habitual of speaking lie and given false statements before the police and the Judge on every occasion. She has denied that Mahesh never came to pick her up, eventhough she is giving false testimony on oath today to implicate him. Finally, she has denied that the facts stated during her examination-in-chief under oath are false.

- 19] Thereafter, the prosecution has examined **PW8 – father of Victim [complainant) at Exh.103**. This witness in his examination-in-chief mainly deposed that, at the time of the incident, he was living with his family in Baladiya village. His family consists of his wife, three daughters and one son. His

victim daughter was aged about 16 years old at the time of the incident. Further, he has deposed that, on the day of the incident, when his relative Karamshibhai died in an accident, they all went to the hospital and all the children were sleeping at home and when his wife woke up early in the morning, his victim daughter was nowhere to be seen. Further, he has deposed that, thereafter, he checked the surroundings and relatives but his victim daughter was not found, so he filed a complaint before the police. Further, this witness has identified the true copy of original complaint before the Court and the same is exhibited vide Exh.-104. (Original complaint is produced vide Exh.-44 in Special (POCSO) Case No. 12/2017). Further, he has deposed that, after he filed the complaint, a person named Mahesh was not seen and his brother Gopal received a call on his phone informing that “I am with Ashok and do not worry about me, otherwise my dead body will come home”, therefor he got suspicious that Mahesh would be with her. Further, the witness has identified the accused before the Court.

- 19.1 The present witness- the complainant was cross-examined by the Defence Side. In his cross-examination, this witness has admitted that, he has not personally witnessed that the accused -Mahesh came to the house to pickup his victim daughter. He has further admitted that in the original complaint, he had neither mentioned the name or address of the accused who took his daughter from the house nor expressed suspicion toward any specific person. Further, he stated that, he had recorded all

these facts in his further statement only after his daughter was found. Further, he has denied that, in his statement recorded before the police dated 20/03/2017, he had stated that when his daughter returned home, she informed him that, as after Ashok had called her, she had gone with Ashok to Modasa and his village- Bedhiyapur, that Ashok had never told her he was already married and that he wanted to marry her and that she had been came in his lure. Further, he has admitted that, they had gone to Modasa to search for his daughter, but they did not find Mahesh there. Further, he denied that the reason for not finding Mahesh was his presence at the Mankuva Police Station at that time. Further, he has admitted that when the police informed them to take his victim daughter, Ashok and the victim daughter were present at the police station. Further, he has denied that, his victim daughter used to threaten them by stating she would marry Ashok and refused to marry at the place where her engagement had been fixed. Further, he has also denied that his daughter had a love affair with the accused Ashok and he had taken her from his house but he has given the police statements against the accused Mahesh for the purpose of falsely implicating him in the case. Further, he has denied that, they had filed a police complaint with false facts despite having prior knowledge of the love affair between the accused Ashok and his daughter and the statements in accordance with that complaint are recorded incorrectly by himself. Further, he has denied that, despite not knowing the facts stated during the examination-in-chief, he had written them falsely on oath.

20] Then, the prosecution side has examined **PW09- Kasam Kara Sameja** vide **Ex.107**. This witness is Panch in Panchnama of recovery of medical samples of victim. Except identifying his signature on Panchnama, this witness has not supported the Panchnama. As this panch 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.

This witness was not cross-examined by defence side.

21] The prosecution side has examined **PW10- Bhikhalal Sale Koli** vide **Ex.109**. This witness is Panch in Panchnama of recovery of medical samples of victim. Except identifying his signature on Panchnama, this witness has not supported the Panchnama. As this panch 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.

This witness was not cross-examined by defence side.

22] Thereafter, the prosecution side has examined **PW11- Kanjibhai Palabhai Makwana** vide **Ex.110**. This witness is Panch in Panchnama of place of incident. Except identifying his signature on Panchnama, this witness has not

supported the Panchnama. As this panch 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.

22.1 This witness was cross-examined by defence side in which he has admitted that by asking his name and address, police took his signature in prepared writing.

23] The prosecution has further examined **PW-12 – Vikramsinh Sajjansinh Champavat** at **Exh.118** who is the Investigating Officer in the instant case. It is pertinent to note that, the said investigating officer is retired and aged person and remaining ill and cannot appear in court and the prosecution has requested that the evidence of the above-mentioned witness be recorded through video conference in the Zoom application platform and the defense has no objection, accordingly, as per the order passed below application of the prosecution at Exh.- 117, the evidence of the present witness has been recorded through video conference.

23.1 The said witness in his deposition has deposed that, in February 2019, he was serving as P.I. of Mankuva Police Station, meantime the investigation of Mankuva Police Station vide First I-C.R. No. 16/2017 was handed over to him. He further stated that he had studied the documents of the prior investigation, which had previously been conducted by P.I. M.J. Boksha and M.J. Jalu. Further

he has deposed that, the investigation was almost concluded. Further, he has deposed that, muddamal seized for the purpose of investigation was sent to FSL for examination. Further, he has deposed that, as the muddamal examination report came from FSL Rajkot, the same was kept with investigation papers. Further, he has deposed that after completion of investigation, as there was sufficient evidence against the accused, the charge-sheet was filed before the Hon'ble Court. Further, this witness has referred and identified the documents at Ex.119 to 122 in his deposition.

23.2 This witness was cross-examined by defence side. In his cross-examination, this witness has admitted that, he had not recorded statements of any witnesses nor had he drawn up any *Panchnamas*. He further admitted that he had not met the *Panchas* of the *Panchnamas* prepared by the previous investigating officer, nor had he met the victim or the witnesses in this case. Further he has denied that, the investigation conducted by the previous Investigating Officer was falsely conducted, eventhough he had filed a false supplementary charge-sheet against the present accused before the Hon'ble Court. He further denied that no offence was found against the present accused during his entire investigation, eventhough he had filed a false charge-sheet against present accused. Further, he denied that he has given false testimony.

24] Thereafter, the prosecution has examined **PW-13 – Maheshkumar Jashkaran Boksha** at **Exh.123** who is the Investigating Officer in the instant case. The said witness in his deposition has deposed that, On 15/3/2017, when he was on

duty as a Police Inspector at Mankuva Police Station, the complainant came before him and wrote a detailed complaint in his presence about the incident that happened with his minor daughter, which he has written as recorded by him. Further, on showing the true copy of original complaint at Exh.-104, he has identified his signature as well as signature of the complainant. Further, he has deposed that, based on the said complaint, he has given the offence to PSO to register a case and then PSI V.R.Sonara took over the investigation of the said case and then as the investigation of said offence, came towards him, he took over the investigation. Further, he has deposed that, he had recorded the statements of concerned witnesses and recorded the statement of the victim and based on the statement of the victim, as the offence was constituted under Section-4 5(L) etc. of the POCSO Act and Section-376 etc. of the IPC, the report of addition of section was filed before the Hon'ble Court. Further, he has deposed that, procedure was conducted to obtain the statement of the victim under Section-164 of the Cr.Pro. Code. Further, he has deposed that, the clothes worn by the victim at the time of the incident were seized as per details of the Panchnama and the procedure was conducted to get the victim medically examined. Further, he has deposed that, as during the investigation, the accused Ashok was found, the clothes worn at the time of the incident were seized as per details of the Panchnama. Further, he has deposed that, the procedure was conducted to get the accused medically examined. Further, he has deposed that, when the medical samples of the accused Ashok came from the hospital, they were

seized as per details of the Panchnama. Further he has deposed that, he obtained the birth certificate of the victim and kept with investigation papers. Further, he has deposed that, thereafter, as he got transferred, the investigation of this offence was handed over to PI Shri M.J. Jalu. Further this witness has identified and referred the documents produced vide Exh.- 124 to 133 in his deposition.

- 25] This witness was cross-examined by defence side. In his cross-examination, this witness has admitted that, during his investigation, it was revealed that there was a love affair between the accused Ashok and the victim. Further, he has admitted that while the victim was with the accused, a call was made to the mobile phone of Rameshbhai, a resident of Adipur, from mobile number 99096 99418. During this call, the victim spoke and told Ramesh to inform her parents not to try and find her, stating that she was fine, and warned that if they attempted to find her, she would die and her dead body would come at home and thereafter, she handed the phone to a boy who spoke to Ramesh and identified himself as Ashok, confirming that the victim was with him. Further, he has admitted that his investigation revealed that mobile number 99096 99418 belonged to the accused, Ashok. Further, he has admitted that when the victim was found, she was found with the accused Ashok. Further, he has admitted that the accused Ashok, had called the victim from the aforementioned mobile number 99096 99418. Further, he has denied that when the F.I.R. of the present case was filed, the accused, Mahesh, was present at the Mankuva Police

Station with his sister. Further, he has admitted that during his investigation, the specific bus route or the details of the bus in which the victim traveled to Modasa could not be found. Further, he has denied that it was revealed that the accused, Mahesh, was not involved in this offence. Further, he has denied that he recorded the statements of the witnesses and the Panchnamas in a manner to support the complaint. Further, he has denied that, he has falsely conducted the investigation of alleged complaint. Further, he has denied that the facts stated during the examination-in-chief are being stated falsely under oath.

- 26] Upon perusal and appreciation of the deposition of the material witness i.e. father of the victim (PW7) who has been examined by the prosecution, he has mainly stated in his deposition at Exh.-103 that, on the day of the incident, when his relative Karamshibhai died in an accident, they all went to the hospital and all the children were sleeping at home and when his wife woke up early in the morning, his victim daughter was nowhere to be seen. Further, he has deposed that, thereafter, he checked the surroundings and relatives but his victim daughter was not found, so he filed a complaint before the police. Further, he has deposed that, after he filed the complaint, a person named Mahesh was also not seen and a call of victim came to his brother Gopal's phone saying that *"I am with Ashok and do not worry about me, otherwise my dead body will come home"*, therefore he got suspicious that Mahesh would be with her. Hence, it transpires from his examination-in-chief that, he had lodged the complaint against present accused on the basis of

only suspicion. Furthermore, it is also evident from his examination-in-chief that the victim had called her brother, in which she herself states that she is with Ashok

26.1 Further, with this fact, if we look to the cross-examination of the complainant/ father of victim conducted by defence side, wherein he has clearly admitted that, he has not personally witnessed that the accused -Mahesh came to the house to pickup his victim daughter. He has also admitted that in the original complaint, he had neither mentioned the name or address of the accused who took his daughter from the house nor expressed suspicion toward any specific person. Further, he stated that, he had recorded all these facts in his further statement only after his daughter was found. He has also admitted that, they had gone to Modasa to search for his daughter, but they did not find Mahesh there. Further, he has admitted that when the police informed them to take his victim daughter, Ashok and the victim daughter were present at the police station.

26.2 If we look to the entire evidence of the complainant/ father of victim, there is so many drawbacks. As per his deposition, he lodged the complaint on the basis of only suspicion. Besides that, it is also evident from his examination-in-chief that the victim had called her brother, in which she herself states that she is with Ashok Further, this witness has admitted in his cross-examination conducted by defence that, he has not personally witnessed that the accused -Mahesh came to the house

to pickup his victim daughter. He has also admitted that in the original complaint, he had neither mentioned the name or address of the accused who took his daughter from the house nor expressed suspicion toward any specific person and he had recorded all these facts in his further statement only after his daughter was found. He has also admitted that, they had gone to Modasa to search for his daughter, but they did not find Mahesh there. Hence, it appears from the deposition of the complainant/father of victim that, as his victim daughter was not found after searching the surroundings and relatives and a person named Mahesh was also not seen, he got suspicious and filed the complaint on the basis of only suspicion. Even he has not personally witnessed that the accused -Mahesh came to the house to pickup his victim daughter. Further, he has neither mentioned the name or address of the accused who took his daughter from the house nor expressed suspicion toward any specific person in the original complaint and he had recorded all these facts in his further statement only after his daughter was found. So, it creates so many doubts about the involvement of the present accused in this offence. It also transpires from his deposition that, they had gone to Modasa to search for his victim daughter, but they did not find Mahesh there. So, looking to the deposition of this witness, it creates so many doubts regarding the involvement of the present accused in the present offence. Therefore, looking to the above evidence, case of the prosecution and complaint against the present accused becomes doubtful.

27] Now, upon perusal and appreciation of the deposition of the main witness i.e. victim (PW1) at Exh.-21, she has mainly deposed that, the incident took place about six years ago and on the day of the incident, accused Mahesh made a phone call and told her to come to the Bank of Baldiya village. So when she went to the bank, co-accused Ashok was also present there. Further, she has deposed that, from Baldiya, Mahesh (present accused) and Ashok took her to Bhuj in a bus and from Bhuj, Mahesh bought a bus ticket and she, Ashok and Mahesh went to Modasa in the bus, and at Modasa they went to house of sister of Mahesh. Further, she has deposed that, when Mahesh called her near the bank, they had been in a relationship of conversation since two years, therefore, he took her from Baladiya. Further, she has deposed that, she and Mahesh stayed at Modasa in his sister's house for one night. Thereafter, Mahesh took her to house of his paternal aunt (foi) in another village. She further deposed that Mahesh eventually left her, but she do not remember the exact location where he departed. After that, in her further examination-in-chief conducted on 03.01.2026 she deposed that after leaving her home, both Ashok and Mahesh were with her. They took her to Modasa, where Ashok brought her to his sister's house. Further she deposed that Mahesh left from there, while she and Ashok stayed at his sister's house for one day, during which Ashok had physical relations with her two to three times. Further, she deposed that Ashok subsequently took her to the house of his paternal aunt (Foi), where they stayed for one night and Ashok again had physical relations with her two to three times. She further deposed that when they were

leaving his sister's house for house of his paternal aunt (Foi), she had asked Ashok about whereabouts of Mahesh, to which Ashok replied that Mahesh would not be coming and by telling this, Ashok took her from there. Further, she has deposed that, she had met Mahesh when he visited house of his maternal aunt (masi) in Baldiya. They had exchanged mobile numbers and spoke over the phone and there was a love relationship between her and Mahesh. She has further deposed that, Mahesh, Ashok, and she had traveled together from Baldiya to house of paternal aunt of Ashok, where Mahesh left her with Ashok and departed. She further deposed that, because of her love affair with Mahesh, she had gone with him, but Mahesh had betrayed her by leaving her with Ashok, which ruined her life and despite she loved Mahesh, he had left her alone with Ashok. Further, she has deposed that, thereafter, the police took her to the Bhuj court for recording her statement before magistrate, where she recorded the same facts and as per instruction of magistrate, she signed it. Further, she has deposed that, thereafter, police took her to the G.K. General Hospital, Bhuj for medical examination. Further, she has deposed that, police seized her clothes worn at the time of incident.

27.1 Hence, if we look to the examination-in-chief of victim, in which initially she has stated that, she, Ashok and Mahesh went to Modasa in the bus, and at Modasa they went to house of sister of Mahesh. Further, she has deposed that, she and Mahesh stayed at Modasa in his sister's house for one night. Subsequently, Mahesh took her to house of his paternal aunt

(foi) in another village. She further deposed that Mahesh eventually left her, but she do not remember the exact location where he departed. Thereafter, again in her further chief examination conducted on 03.01.2026, she has deposed that, after leaving her home, both Ashok and Mahesh were with her. They took her to Modasa, where Ashok brought her to his sister's house. Further she deposed that Mahesh left from there, while she and Ashok stayed at his sister's house for one day, thereafter Ashok took her to the house of his paternal aunt (Foi), where they stayed for one night. Hence, there is clear contradiction in her deposition. The victim's testimony contains significant material contradictions regarding the sequence of events and the specific roles of the present accused which undermines the credibility of the prosecution's case. In the first part of her chief examination, she claims she and Mahesh stayed at the house of sister of Mahesh in Modasa and then Mahesh took her to his paternal aunt's (Foi) house. Later in the further examination-in-chief, she reverses this, stating Ashok brought her to his sister's house at Modasa and Mahesh left immediately, and Ashok was the one who took her to the paternal aunt's house. Further, her statement under Section 164 of Cr.P.C. ( copy of the same produced at Exh-102) shows a third version, claiming they had gone to sister of either Ashok or Mahesh where Mahesh did not come at all, which directly conflicts with her court deposition. Thus, looking to the deposition of this main witness, there is clear contradiction revealed in her deposition as well as her statement U/s. 164 of Cr.P.C. which creates so many doubts regarding the involvement of present accused in the alleged incident. Therefore, looking to the above

evidence, case of the prosecution and allegation against the present accused becomes doubtful.

28] Further, upon perusal and appreciation of the deposition of the Investigating Officer, P.I. M.J.Boksha at Exh.-123, he has clearly admitted in his cross-examination that, in his investigation, it was revealed that there was a love affair between the accused Ashok and the victim. Further, he has admitted that while the victim was with the accused, a call was made to the mobile phone of Rameshbhai, a resident of Adipur, from mobile number 99096 99418. During this call, the victim spoke and told Ramesh to inform her parents not to try and find her, stating that she was fine, and warned that if they attempted to find her, she would die and her dead body would come at home and thereafter, she handed the phone to a boy who spoke to Ramesh and identified himself as Ashok, confirming that the victim was with him. Further, he has admitted that his investigation revealed that mobile number 99096 99418 belonged to the accused Ashok. Further, he has admitted that when the victim was found, she was found with the accused Ashok. Further, he has admitted that the accused Ashok, had called the victim from the aforementioned mobile number 99096 99418. Even, he has admitted that during his investigation, the specific bus route or the details of the bus in which the victim traveled to Modasa could not be found.

28.1 Upon careful appreciation of the evidence on record, particularly the deposition of P.I. M.J. Boksha (Exh. 123), this Court finds that there is no material to establish that the present

accused had taken away the victim. The Investigating Officer Mr. M.J.Boksha has, in his cross-examination, clearly admitted that the investigation revealed the existence of a love affair between the victim and the accused Ashok. It has further come on record that while the victim was with Ashok, a call was made from mobile number 99096 99418 to one Rameshbhai of Adipur. During the said call, the victim handed over the phone to a boy who identified himself as Ashok and confirmed that the victim was with him. The Investigating Officer has also admitted that the said mobile number belonged to accused Ashok. Moreover, the evidence shows that when the victim was traced, she was found in the company of accused Ashok. He has also admitted that Ashok had called the victim from the said mobile . Further,, the Investigating Officer has admitted that the investigation could not ascertain the specific bus route or details of the bus allegedly used by the victim to travel to Modasa. This creates a gap in the prosecution case regarding the manner of alleged abduction by the present accused. In light of these admissions, the prosecution has failed to establish that the present accused had kidnapped the victim or handed her over to the main accused Ashok. Further, he has admitted that the accused Ashok, had called the victim from the aforementioned mobile number 99096 99418. Even, he has admitted that during his investigation, the specific bus route or the details of the bus in which the victim traveled to Modasa could not be found. Hence, the testimony of the Investigating Officer does not disclose any material showing the involvement of the present accused in the alleged act of kidnapping and then handing over to the main accused Ashok. Even looking to the deposition of other investigating officer,

Mr. Vikramsinh Sajjansinh Champavat vide Exh.-118, nothing fruitful facts to the case of the prosecution, has come out from his deposition.

- 29] Thus, as discussed above, there are contradiction in the deposition of material prosecution witnesses. Therefore, it can be noted that primary evidences of the prosecution are not supporting to the prosecution case. It is further noted, as discussed above, the statement of the victim recorded under Section 164 of the Cr.P.C. stands in material contradiction to her subsequent deposition before this Court. Further, the name of present accused is also not mentioned in the history of victim recorded by the medical officer produced at Exh.-130. Even my learned predecessor, while delivering the judgment against main accused in Special Case (POCSO) No. 12/2017 on 30/03/2019 also held in para- 43 that " પરંતુ આરોપી સાથે ભોગબનનાર જાતે ગયેલા, પોતાની મરજીથી ઘણો સમય રહેલા છે, તેમને કોઈ ભગાડીને લઈ ગયેલ હોય તેવું બનેલ નથી જેથી ભારતીય દંડ સંહિતાની કલમ.૩૬૩ હેઠળનો કોઈ ગુનો બનતો નથી." Now, looking to the all above discussion, it is reason to believe that, as noted this Court the all evaluation of the evidence of the victim as well as the complainant and the evidence of the I.O. it is reason to believe that the evidence of the victim as well as the complainant have no any consistency regarding the offence qua the present accused. There are so many contradictions found in the evidence of the victim and complainant. Further, looking to the evidence of the victim and complainant, it is clearly found that, there is contradictory version of both the witnesses and if we look at the

evidence of the I.O. it is clearly appeared that the victim as well as the complainant has deposed some false facts regarding the involvement of present accused. Further, it is also found that looking to the evidence of the complainant with the evidence of the I.O. it's clearly appeared that, the victim and complainant has suppressed some material facts in their evidence regarding the present accused. If we consider the evidence of I.O., it is clearly appeared that the different stories stated by the victim and complainant in statement before the police and in their deposition which is clearly stated by the I.O. in his evidence. Therefore it is the reason to believe that, the victim and complainant have deposed contradictory facts in their evidence. Therefore, as noted above the evidence of the victim as well as the complainant have contained so many contradiction and suppression of the material facts, therefore, this fact has created so many doubts regarding the involvement of the present accused in this offence. The prosecution has fully failed to prove the clear abetment of the present accused in the present offence, therefore looking to the contradictory evidence of the victim and complainant and as noted above the victim and complainant have suppressed the material facts in their evidence, it is reason to believe that the evidence of the victim as well as complainant are not found honest, reliable and natural regarding the allegation against present accused. Further, it is to be noted that looking to the all above discussion, as the evidence of the victim as well as complainant is found contradictory and victim and complainant have suppressed some material facts in their evidence, therefore it is reason to believe that the evidence of the victim

and complainant are not able to inspire confidence of this Court. In these circumstances, on over all appreciation of evidence and discussions made herein above and looking to the entire evidence which produced in this case, this Court concludes that the prosecution has failed to prove beyond reasonable doubt that on 14.03.2017 at about 03.30 hrs. to 06.00 hrs. the present accused made a phone call to the minor victim daughter of the complainant and by giving lure of marriage, took her from the lawful guardianship of her parents to the Bhuj Bus Station, and handed over to other accused Ashok Dilipbhai Nayak and thereby the present accused aided or abetted the other accused in abducting the victim and thus, prosecution is not succeeded to prove the charge of the offence punishable u/s.363, 366, 376, 114 of the IPC read with Section 4, 5(l) of the POCSO Act beyond reasonable doubt by leading cogent and reliable evidence and Therefore, Point No.2 is answered in the negative and for Point No.3, following final order is passed:

**:: ORDER ::-**

1. The **Accused Maheshkumar Mohanlal Pandya**, Age:-25, R/o. Kesharpura Kampa, Taluka:- Modasa, District:- Arravali is hereby acquitted of the charges under Sections 363, 366, 376, 114 of the Indian Penal Code, 1860, read with Sections 4, 5(l) of the Protection of Children from Sexual Offence Act, 2012.
2. Bail bonds executed by the accused at the time of releasing him on bail stand cancelled.

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 437A of the Code of Criminal Procedure, 1973, to appear before the higher Court as and when such Court issues notice in respect of an appeal or revision/petition.

**Signed and Pronounced in open Court today**

**i.e. on 18<sup>th</sup> day of April, 2026.**

sd/-

**Place: Bhuj.**

**Date: 18.04.2026**

*Hiren Dave*

**(J.A. THAKKAR)**

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