



Date of Registration	13.08.2025
Date of Decision	04.06.2026
Duration	0Y 9M 22D

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE &
SPECIAL JUDGE (POCSO), PANCHMAHALS AT HALOL**

SPECIAL POCSO CASE NO. 32 OF 2025

[FIR bearing C.R.No.11207028250447/2025 Registered with Halol Town Police Station, dated 02.07.2025, for the offences punishable u/s. 137(2), 87, 64(2)(i), 64(2)(m), 69 of the Bharatiya Nyaya Sanhita and u/s. 4, 6, 12 of the Protection of Children from Sexual Offences Act, 2012]

STATE OF GUJARAT)

Represented by: Ld. Addl. Public Prosecutor)

Ms. L. R. Sheth.)

COMPLAINANT

VERSUS

SUNILBHAI RAJUBHAI NAYAK)

Age 21 years,)

Resident of Rayanvadiya village,)

Khodiyarpura, Ta.Halol,)

Dist.Panchmahal.)

ACCUSED

Appearances :-

Ms. L. R. Sheth, learned APP for the State.

Mr. V. N. Jadav, learned Advocate for the Accused.

JUDGMENT

(DATED : 4.6.2026)

Form B

DATE OF OFFENCE	23.06.2025
DATE OF FIR	02.07.2025
DATE OF CHARGE-SHEET	13.08.2025
DATE OF FRAMING OF CHARGE	25.09.2025
DATE OF COMMENCEMENT OF EVIDENCE	17.11.2025
DATE ON WHICH JUDGMENT IS RESERVED	04.06.2026
DATE OF THE JUDGMENT	04.06.2026
DATE OF THE SENTENCING ORDER, IF ANY	-

Accused Details

Sr. No.	Accused	Date of Arrest	Date of Release on Bail	Offence Charged	Whether Acquitted or Convicted	Sentence Imposed	Period of Detention Undergone
1	SUNIL BHAIRAJU BHAIRAJU NAYAK	06.07.25	22.07.25	Sec. 137(2), 87, 64(2)(i), 64(2)(m), 69 of the BNS and u/s. 4, 6, 12 of the POCSO Act.	Acquitted	-	17 days

Form C
(List of Witnesses)
Prosecution Witness

PW	Name	Nature of Evidence
1	Victim Girl (Exh.9)	Witness
2	Mother of victim (Exh.12)	Complainant
3	Kalpeshbhai Ranchhodbhai Rathva (Exh.15)	Uncle of accused
4	Sursinh Jokhnabhai Makwana (Exh.16)	Principal, Rayanvadiya Primary School, Ta. Halol
5	Bharkumar Hiralal Charel (Exh.22)	Incharge Principal, Javahar Ashramshala, Narukot, Ta.Jambughoda
6	Dr.Kinjalben Swarupsinh Patel (Exh.27)	Medical Officer, Halol Referral Hospital
7	Ketankumar Amrutlal Chaudhari (Exh.80)	Police Inspector, Halol Town Police Station (Investigating Officer)

1. Defence Witness

PW	Name	Nature of Evidence
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(List of Exhibits)
Prosecution Exhibits

SR	Exh.	Description
1	10	Consent Letter given by victim for her medical examination
2	11	Statement of victim u/s.183 of BNSS
3	13	Complaint
4	14	Consent Letter given by mother of victim for medical examination of victim
5	17	Yadi written by PI, Halol Town Police Station to the Principal, Primary School, Rayanvadiya village, Ta.Halol for verification of victim from record and for issuing leaving certificate and copy of register
6	18	Entry Form in school
7	19	Extract of General Register of school
8	20	School Leaving Certificate of victim
9	23	Yadi written by PI, Halol Town Police Station to the Principal, Javahar Ashram, Narukot, Ta.Ghoghamba for verification of victim from record and for getting leaving certificate and other documentary evidence
10	24	Extract of General Register of school
11	25	School Leaving Certificate of victim
12	26	School Leaving Certificate of victim
13	28	Yadi written by PI, Halol Town Police Station to the Medical Officer, Referral Hospital Halol for medical examination of accused and collecting necessary samples
14	29	Medical Case paper of the victim
15	30	Medical Certificate of victim given by Medical Officer, Government Hospital, Halol
16	31	Suchipatra
17	32	Attendance Register of contract labourers
18	33	Attendance Register of contract labourers

19	34	Yadi written by PI, Halol Town Police Station to the Deputy District Development Officer, District Panchayat Office, Panchmahal, Godhra for allotting government panch
20	35	Yadi written by Deputy District Development Officer, Panchmahal, Godhra to the Taluka Development Officer, Taluka Panchayat Office, Halol for allotting government panch
21	36	Yadi written by PI, Halol Town Police Station to the Taluka Development Officer, Taluka Panchayat Office, Halol for allotting government panch
22	37	Yadi written by Taluka Development Officer, Halol to Principal, Primary School, Rayanvadiya and Anganvadi Karyakar, Rayanvadiya for remaining as government panch
23	38	Yadi written by PI, Halol Town Police Station to the Taluka Development Officer, Halol for allotting government panch
24	39	Yadi written by Taluka Development Officer, Halol to Talati-Cum-Mantri, Gambhirpura Gram Panchayat, Ta.Halol and Talati-Cum-Mantri, Talavadi Gram Panchayat, Ta.Halol for allotting government panch
25	40	Yadi written by PI, Halol Town Police Station to the FSL Officer, Vadodara City
26	41	Yadi written by PI, Halol Town Police Station to the Nodal Officer, Gujarat for providing CDR, SDR and location of mobile numbers
27	42	Yadi written by PI, Halol Town Police Station to the Nodal Officer, Gujarat for providing CDR, SDR and location of mobile numbers
28	43	Yadi written by PI, Halol Town Police Station to the Principal Senior Civil Judge & Chief Judicial Magistrate, Halol for giving date and time for recording statement of victim u/s.183 of BNSS
29	44	Statement of victim u/s.183 of BNSS
30	45	Yadi written by PI, Halol Town Police Station to

		Additional District & Sessions Judge, Special Designated Court for Sessions Court (POCSO), Halol, Ta.Halol for addition of sections in FIR
31	46	Yadi written by PI, Halol Town Police Station to the Medical Officer, Referral Hospital, Halol for giving medical certificate of accused
32	47	Medical Certificate of accused issued by Medical Officer, Government Hospital, Halol
33	48	Yadi written by PI, Halol Town Police Station to the Medical Officer, Referral Hospital, Halol
34	49	Medical Case paper of the victim
35	50	Yadi written by PI, Halol Town Police Station to Medical Officer, Referral Hospital, Halol for medical examination of victim, verification of age of victim and issuing certificate
36	51	Hospital Transfer Form of victim
37	52	Yadi written by PI, Halol Town Police Station to Medical Officer, SSG Hospital for medical examination of victim, verification of age of victim and issuing certificate
38	53	Medical Case paper of the victim
39	54	Medical Case paper of the victim
40	55	Dental Age report of the victim
41	56	Yadi written by PI, Halol Town Police Station to Principal, Government School, Karsargam, Ta.Ghoghamba for verification of victim from record and for getting school leaving certificate and other documentary evidence
42	57	Extract of General Register of school
43	58	School Leaving Certificate of victim
44	59	School Leaving Certificate of victim
45	60	School Leaving Certificate of victim
46	61	School Leaving Certificate of victim
47	62	Yadi written by PI, Halol Town Police Station to the Principal, Adijati Secondary Primary School, Adadara, Ta.Kalol for verification of victim from

		record and for getting leaving certificate and other documentary evidence
48	63	Yadi written by Principal, Ashramshala Adadara, Ta.Kalol to the PI, Halol Police Station for verification of victim from record and for issuing school leaving certificate and other documentary evidences
49	64	School Leaving Certificate of victim
50	65	Mark-sheet of victim
51	66	School Leaving Certificate of victim
52	67	Yadi written by PI, Halol Town Police Station to Special POCSO Court, Halol for addition of section in FIR
53	68	Yadi written by PI, Halol Town Police Station to the District Statistical Officer, Dist.Panchmahal, Godhra for allotting government panch
54	69	Order passed by the District Statistical Officer, Godhra-Panchmahal for employees to serve as government panch
55	70	Ravangi Patrak and Authority Letter
56	71	Yadi written by FSL Officer, Vadodara to PSI, Halol Town acknowledging receipt of muddamal samples
57	72	Forwarding letter of FSL Officer, Vadodara to the PI, Halol Town Police Station
58	73	Biology and Serological Examination Report issued by FSL Officer, Vadodara
59	74	Yadi written by the PI, Halol Town Police Station to the Mamlatdar, Vadodara City for getting map of place of offence
60	75	Arrest Panchnama of accused
61	76	Certificate given by Investigating Officer u/s.63(4) (c)
62	77	Panchnama of place of offence
63	78	Panchnama of place of offence
64	79	Certificate given by Investigating Officer u/s.63(4)

	(c)
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1. Defence Exhibits

Sr. No.	Exh.	Description
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(Material Objects)

Sr. No.	Muddamal Article No.	Description
1	A	Red colour Kurta
2	B	Red colour payjama
3	C	Pink colour bra
4	D	Black colour underwear
5	E	Gray colour full sleeve shirt
6	F	Black colour jeans pant
7	G	White-blue colour blanket
8	H	Pulser Motorcycle registration No.GJ-17 CJ-8027

JUDGMENT

1. An FIR bearing C.R.No.11207028250447/2025 dated 02.07.2025 came to be lodged with Halol Town Police Station against the present accused for having committed offences punishable under Section 137(2), 87 of the Bharatiya Nyaya Sanhita ("BNS") and under Section 12 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act").

Gravamen of the FIR

2. Gravamen of the FIR is as under :

FIR is lodged by the mother of victim on 02.07.2025. It is alleged that her husband has expired and she has one daughter and one son of which the victim is her elder daughter aged 17 years 8 months. It is alleged that on 23.06.2025 at around 9 o'clock in the morning victim had gone for stitching classes along with her relatives however, she did not return even in the afternoon and hence, when she inquired from her relatives, she learnt that victim had left on the way while going to stitching classes and she did not attend the classes on that day. It was further alleged that upon making further inquiry it was learnt that the victim was seen with the accused and thereafter, upon inquiring from the father of accused, he informed that victim has gone with accused. Hence it is alleged that accused beguiled and abducted victim. Hence, present FIR came to be lodged against the accused.

INVESTIGATION

3. Pursuant to the registration of the FIR, investigation was conducted by the Police. During the course of investigation, the

present accused was arrested by the Police. The statement of the victim was recorded and even her statement under Section 183 of the B.N.S.S. was got recorded. During the course of investigation, it was revealed that offence under Section 64(2) (i), 64(2)(m), 69 of the BNS and u/s. 4, 6 of the POCSO Act were also committed. Thus, charge addition report was filed by the Investigating Officer. It further appears from the record that Panchnama was conducted by the Police. The victim was got examined by medical practitioner. Necessary recovery was made by the Police. At the conclusion of the investigation, since sufficient evidence was found against the accused, the Police filed charge-sheet against the accused before the Special POCSO Court for having committed offences punishable under Section 137(2), 87, 64(2)(i), 64(2)(m), 69 of the BNS and under Section 4, 6, 12 of the POCSO Act.

CHARGE-SHEET & REGISTRATION OF POCSO CASE

4. Pursuant to the filing of the charge-sheet, the present case came to be registered. Thereafter, process was issued upon the accused, pursuant to which, the accused appeared before the Court and engaged his Lawyer. Charge-Sheet papers were made available to the accused as per the provisions of Section 207 of the Criminal Procedure Code.

CHARGE & PLEA

5. Ld. Predecessor of this Court finding sufficient material to frame charge against the accused, was pleased to frame the following charge vide Exhibit-7 against the accused.

:: तद्दोषमन्वयम् ::

હું વિવેક નરેન્દ્ર મપારા, એડીશનલ સેસન્સ જજ અને સ્પેશ્યલ જજ(પોકસો), હાલોલ આથી તમો આરોપી સુનિલભાઈ રાજુભાઈ નાયક, ઉ.વ.આ.૨૧, ઘંઘો:મજુરી, રહેવાસી:રાયણવાડીયા ગામ, ખોડીયાર પુરા, તા.હાલોલ, જિ.પંચમહાલનાઓ સામે નીચે લખ્યા મુજબ તહોમતનામુ ફરમાવુ છું કે,

(૧). તમો આરોપીએ તા.૨૩/૦૬/૨૦૨૫ ના ક.૧૦:૦૦ વાગ્યે હાલોલ કાળી ભોંચ રોડ ૯૯ સેલવાળી દુકાન સામે રોડ પરથી આ કામના ફરિયાદીની સગીર વચની ભોગ બનનાર દિકરી ઉ.વ.આ.૧૭ વર્ષ ૮ માસ (જન્મ તા.૧૩/૧૦/૨૦૧૭) નાની ને ફરિયાદીના કાયદેસરના વાલીપણામાંથી તેમની સંમતિ વગર લલચાવી પટાવી ફોસલાવી લગ્ન તથા જારકર્મ કરવાના ઈશદે પોતાની પ્લસર મો.સા. નં.જીજે૧૭-સીજે-૮૦૨૭ પર અપહરણ કરી લઈ જઈ ભારતીય ન્યાય સંહિતા (બી.એન.એસ.) કલમ-૮૭, ૧૩૭(૨) મુજબના ગુના આ અદાલતની હકુમતમાં કરેલ છે.

(૨). ઉપરોક્ત બનાવ તારીખ અને સ્થળેથી તમો આરોપીએ ભોગ બનનાર સગીરને સાહેદ નં.૭ કલ્પેશભાઈ રણછોડભાઈ રાઠવા તથા સાહેદ નં .જીગ્નેશભાઈ અનોપભાઈ નાયકની સાથે જાંબુઘોડા ઝંડહનુમાન મંદિર ખાતે દર્શન કરવા લઈ જઈ તથા ત્યાથી પરત આવી સાહેદ નં.૭, ૮ને જણાવેલ કે ભોગ બનનારને હાલોલ છોડીને આવુ છુ તેમ કહી ભોગબનનારને પોતાની પ્લસર મો.સા. પર બેસાડી વડોદરા છાણી માર્બોકોન આઈએનસી સીમેન્ટના બ્લોક તથા અન્ય મટીરીય બનાવતા કારખાનામા આવી સાહેદ નં.૧૩ શીવમભાઈ મહેશભાઈ નાયકને પોતે લગ્ન કરીને આવેલ છે અને અહીજ રહેવાના છીએ અહી આગળ કામ કરીશુ તેમ લગ્ન કર્યાની ઓળખને દબાવી છેતરપીંડીના માધ્યમથી કારખાનામા એક રુમમા ભોગ બનનારને તા.૪/૭/૨૫ ના ક.૨૧:૦૦ વાગ્યા સુધી રાખી ભોગ બનનાર મુક્ત સંમતિ આપી શકે તેવી સ્થિતિમા ન હોવા છતા અવાર નવાર ભોગ બનનારની મરજી વિરુદ્ધ જાયિત સંભોગ (બળાત્કાર) કરી ભોગબનનાર ઉપર વારંવાર પ્રવેશ તથા ઉગ્ર પ્રવેશ જાતિય હુમલો કરી ભારતીય ન્યાય સંહિતા (બી.એન.એસ.) કલમ-૬૪(૨)(આઈ), ૬૪(૨)(એમ), ૬૯ તથા પોકસો એક્ટ ની કલમ-૪, ૬, ૧૨ મુજબનો સજાને પાત્ર ગુનો આ અદાલતની હકુમતમા કરેલ છે.

આથી હું આદેશ કરું છું કે, તમારી સામે સદરહું ગુનાની ઈન્સાફી કાર્યવાહી અત્રેની કોર્ટે કરવી."

6. To the aforesaid charge, plea of accused was recorded vide Exhibit-8, wherein accused pleaded non-guilty and demanded to be tried.

EVIDENCE AT THE TRIAL

7. Pursuant thereto, the trial commenced wherein the prosecution examined the witnesses and produced the list of documentary

evidence as narrated in Schedule reproduced herein above. Gist of oral evidence produced by the prosecution can be summarized as under :-

- (a) **PW-1 Victim Girl (Exh.9) :** Witness is Victim Girl. Since the testimony of victim is of paramount importance, I deem it appropriate to reproduce her entire testimony in verbatim as under : -

"સરતપાસ ફરીયાદ પક્ષ તરફ વિ.એ.જી.પી.શ્રી એલ.આર.શેઠ

આજરોજ ભોગ બનનાર કોઈ ઘાક ઘમકી, ડર, બીક, લોભ લાલચ કે કોઈ પણ જાતના દબાણ કે શરમ સંકોચ વગર કોર્ટમા જુબાની આપવા માટે આવેલ છે તેવી ખાતરી કર્યા બાદ ભોગ બનનાર સ્વેચ્છાએ, ની:સકોચ પણે લાલચ પ્રલોભન વગર જુબાની આપવા ઈચ્છે છે જેથી ભોગ બનનારનો પુરાવો નોંધવામાં આવે છે.

સોગંદ આપ્યા

- 1) મેં અડાદરા ખાતે આવેલ આદિજાતી સેકન્ડરી એન્ડ હાયર સેકન્ડરી આશ્રમ શાળામાં ધોરણ બાર સુધીનો અભ્યાસ કરેલ છે. ધોરણ બારનો અભ્યાસ કર્યા પછી હું મારી માતા સાથે ઘરે જ રહેતી હતી અને ત્યારબાદ તા. ૦૧ /૦૬/૨૦૨૫ થી સીવણકલાસનું કામ શીખવા માટે જાંબુડી ગામે આવેલ મંજુલાબેનને ત્યાં જતી હતી અને મારી સાથે મારા કૌટુંબિક ભાભી વર્ષાબેન તથા અંજુબેન પણ સીવણકલાસ શીખવા આવતા હતા. મારી જન્મ તારીખ ૧ ૩/૧૦/૨૦૦૭ છે.
- 2) આજથી બે વર્ષ અગાઉ અમારા ગામમાં રહેતા સુનિલકુમાર રાજુભાઈ નાયક સાથે મારે ઓળખાણ થયેલી. અને મને સુનિલે તેનો મોબાઈલ નંબર આપેલ હોવાથી અમે કેસબુક ઉપર મળતા હતા અને તે રીતે અમારા બંને વચ્ચે પ્રેમ સંબંધ થઈ ગયો હતો. સુનિલને મારા કાકાના દિકરા સાહીલ સાથે મિત્રતા હતી તેથી સાહીલની સાથે રહીને મને મળવા આવતો હતો. અને અમો બંને જણા એકબીજાને મળતા હતા. અમારા બંનેના પ્રેમ સંબંધની જાણ મારી માતાને થઈ જતાં તેણીએ મને ઠપકો આપ્યો હતો. ત્યારબાદ હું અને સુનિલ મળ્યા ન હતા.
- 3) તા. ૨૩/૦૬/૨૫ ના રોજ સવારે નવ વાગ્યે હું, વર્ષાબેન તથા અંજુબેન સીવણકલાસમાં જવા માટે ઘરેથી છકડામાં બેસીને જવા નિકળ્યા હતા અને કાળીભોઈ ચાર રસ્તા નજીક દુકાન આગળ અમે ત્રણેય જણા નીચે ઉતર્યા હતા. તે સમયે વર્ષાબેન અને અંજુબેન આગળ ચાલતા હતા અને હું પાછળ ચાલતી હતી. તે વખતે સુનિલ બાઈક લઈને આવ્યો હતો. અને મેં વર્ષાબેન તથા અંજુબેનને કહ્યું કે તમે જાવ હું આવું છું. ત્યારબાદ સુનિલે મને કહ્યું કે આપણે જાંબુઘોડા ફરવા જઈએ તુ બાઈક ઉપર બેસી જા તેથી હું બાઈક ઉપર બેસી ગઈ હતી. ત્યારબાદ તે મને હનુમાનજી દાદાના મંદિરે દર્શન કરવા લઈ ગયો હતો અને ત્યારબાદ તેના ઘરે લઈ ગયો હતો.
- 4) તે વખતે તેનો ભાઈ અને તેના દાદી હાજર હતા. ત્યારબાદ તેના બે મિત્રોને કોન કરતાં તે ઘરે આવ્યા હતા. આ બે મિત્રોના નામ મને અત્યારે યાદ નથી. ત્યારબાદ સુનિલને પાવાગઢ જવું હોવાથી તે મને બાઈક ઉપર જાંબુડી

જવાના રસ્તા ઉપર મુકવા આવ્યો હતો.પરંતુ મારી સાથે વર્ષાબેન અને અંજુબેન સીવણકલાસમાં જવા નિકળ્યા હતા તે ઘરે પહોચી ગયા હતા તેથી મને મારી મમ્મીની બીક લાગી હતી તેથી મે સુનિલને કહ્યું કે હું તારી સાથે આવીશ. અને સુનિલની સાથે હું બાઈક બેસીને અમે બંને વડોદરા આવ્યા હતા અને ત્યાં સુનિલનો મિત્ર શીવો સીમેન્ટ બનાવવાના કારખાનામાં કામ કરતો હતો તેને ત્યાં લઈ ગયા હતા અને અમોને ત્યાં પણ કામ અપાવી દીધું હતું અને ત્યાં સુનિલે શીવમને કહ્યું કે અમારા બંનેના લગ્ન થઈ ગયા છે જેથી અમો કારખાનામાં આવેલા એક રુમમાં જ્યાં શીવો રહેતો હતો તે રુમમાં હું અને સુનિલ બંને જણા એકલા સુઈ જતા હતા અને શીવો બહાર સુઈ જતો હતો.તે વખતે સુનિલે મને કહ્યું કે આપણે કોર્ટમાં લગ્ન કરી લઈશું.

5) ત્યાંથી થોડા દિવસ કામ કર્યા પછી અમે કચ્છમાં જ્યાં કાર્મ હાઉસ હતું ત્યાં મને લઈ ગયો હતો અને ત્યાં અમે અડધો કલાક રોકાયા હતા અને પોલીસ આવી જતાં અમને બંનેને લઈને હાલોલ ટાઉન પોલીસ સ્ટેશને લઈ આવ્યા હતા અને તે વખતે પોલીસે મારા મમ્મી પપ્પાને બોલાવ્યા હતા અને સામાજિક કાર્યકરને પણ બોલાવ્યા હતા અને સામાજિક કાર્યકરની હાજરીમાં પોલીસે મારી પુછપરછ કરી હતી અને તેની મે જવાબ આપ્યો હતો અને તેમાં વાંચાવ્યા બાદ મારી સહી કરાવેલ હતી.

6) ત્યારબાદ મારી મેડીકલ તપાસ કરાવવા માટે સંમતિ માંગતાં મે સંમતિ આપી હતી જે સંમતિપત્રક આ કામે નિ. ૬/૧૩ થી રજુ છે જેમાં મારી સહી છે જેને રજુ દા.આંક-૧૦.મને હાલોલ રેકરલ હોસ્પિટલમાં લઈ ગયા હતા અને ત્યાંથી મને વડોદરા સરકારી હોસ્પિટલમાં શારીરીક તપાસ કરાવવા માટે લઈ ગયા હતા.ત્યારબાદ હું મારી માતા સાથે ઘરે ગઈ હતી.પોલીસે મારા બનાવ સમયે પહેરેલ કપડાં માંગતાં મે પોલીસ સમક્ષ જણાવેલ કે મે જે કપડાં પહેર્યા છે તે જ છે તેથી અલગ રુમમાં જઈને કપડાં બદલાવીને મે પહેરેલ કપડાં રજુ કર્યા હતા જેમાં લાલ કલરનો પંજાબી કુર્તી,લાલ કલરનો પાયજામો, ગુલાબી કલરની બ્રા અને કાળા કલરની નિકર રજુ કરી હતી.તથા બનાવવાળી જગ્યા બતાવવાનું કહેતાં મે અને સુનિલે બનાવવાળી જગ્યા પોલીસને બતાવી હતી.

7) ત્યારબાદ થોડા દિવસ પછી મને કોર્ટમાં જવાનું પોલીસે જણાવતાં હું મારી માતા સાથે કોર્ટમાં ગઈ હતી અને ત્યાં બહેન જજ સાહેબે મને એકલી બોલાવી હતી અને મારી પુછપરછ કરી હતી અને મે જવાબ આપ્યા તે મુજ જજ સાહેબે મારું નિવેદન લીધા પછી તે નિવેદન વાંચ્યા બાદ મે તેમાં મારી સહી કરેલ હતી.મને એક શીલબંધ કવર નામ.કોર્ટની પરવાનગીથી ખોલીને બતાવવામાં આવે છે જેમાં મને બી. એન.એસ.એસ.કલમ-૧૮૩ નુ નિવેદન બતાવવામાં આવે છે જેમાં દરેક પાન પર મારી સહી થયેલ છે જે સહી મે નિવેદન વાંચ્યા બાદ કરેલ હતી જે હું ઓળખી બતાવું છું જેને રજુ દા.આંક-૧૧ આપવામાં આવે છે.હું આ કામના આરોપી સુનિલને ઓળખું છું જે આજરોજ નામ.કોર્ટમાં હાજર છે અને કેદી કઠેડામાં કાયની પાછળ બેઠેલ છે.

એ.પી.પી.શ્રી ની વિનંતીથી સાહેબને હોસ્ટાઈલ જાહેર કરી ઉલટતપાસમાં પુછી શકાય તેવા સવાલ પુછવા પરવાનગી આપી.

8) તે વાત ખરી છે કે મે તા.૦૬/૦૭/૨૦૨૫ ના પોલીસ રુબરુના જવાબમાં લખાવેલ છે કે શીવમ રહેતો હતો તે રુમમાં હું,સુનિલ અને શીવો રહેતા હતા જેમાં હું અને સુનિલ બંને જણા સાથે સુઈ જતા હતા અને શીવો બહાર સુઈ જતો હતો.તે વાત ખરી નથી કે મે મારા જવાબમાં લખાવેલ કે રાત્રી દરમ્યાન આ સુનિલ મને આપણે મંદિર અથવા કોર્ટમાં લગ્ન કરી લઈશું તેમ જણાવી મારી ના હોવા છતાં મારી મરજી વિરુધ્ધ મારી સાથે શારીરીક સંબંધ બાંધતો હતો અને મારી સાથે સંભોગ કરી બળાત્કાર કરતો હતો અને

આવી રીતે રોજ રાત્રીના મારી સાથે શારીરીક સંબોગ કરતો હતો. તે વાત ખરી નથી કે હું અરોપીને પ્રેમ કરતી હોવાથી તેને બચાવવા માટે સોગંદ ઉપર ખોટી જુબાની આપું છું.

સરતપાસ પુરી

ઉલટતપાસ આરોપી તરફ વિ.વ.શ્રી વી.એન.જાદવ

9) તે વાત ખરી છે કે મારે આરોપી સાથે પ્રેમ સંબંધ હતો અને મારા પ્રેમ સંબંધની જાણ મારા મમ્મીને થઈ જતાં હું મારી મરજીથી મારી માતાનું ઘર છોડીને જતી રહી હતી. તે વાત ખરી છે કે આરોપી મને કોઈ લોભ લાલચ કે ધાક ધમકી આપીને લઈ ગયો હોય તેવું બનેલ નથી. તે વાત ખરી છે કે અગાઉ હું કોર્ટમાં ગયેલી ત્યાં મેડમ જજ સાહેબ સમક્ષ શું બોલવાનું છે તે પોલીસે મને જણાવેલ હતું અને તે પ્રમાણે મે મેડમ જજ સાહેબ સમક્ષ લખાવેલ હતું.

10) તે વાત ખરી છે કે પોલીસને કપડાં મારી માતાએ આપેલા હતા. તે વાત ખરી છે કે મે પોલીસને કોઈ જગ્યા બતાવેલી હોય તેવું બનેલ નથી. તે વાત ખરી છે કે મારે આરોપી સાથે પ્રેમ હોય અને લાગણીના સંબંધ હોય અમે સાથે રહેતા હતા. તે વાત ખરી છે કે આરોપીએ મારી સાથે મારી મરજીથી કે મરજી વિરુદ્ધ શારીરીક સંબંધ બાંધેલ નથી. તે વાત ખરી છે કે હું ઘરે આવ્યા બાદ મે કોઈ ફકીકત કોઈને જણાવેલ હોય તેવું બનેલ નથી.

ઉલટ તપાસ પુરી.

ફેર તપાસ નથી."

- (b) **PW-2 Mother of victim (Exh.12) :** Witness is mother of victim, who testified that victim's date of birth is 13.10.2007. She stated that on 23.06.2025 at 9 o'clock in the morning, victim had gone for stitching classes along with other relatives, but she did not return home and upon inquiring she learnt that victim had not attended the classes and accused had abducted the victim. Witness testified that thereafter when they inquired from the house of the accused, his grandmother informed that accused had come with a girl and thereafter he left. Witness further stated thereafter they contacted father of accused, who informed that they are also searching for accused and if they find victim, they would return her. Witness stated that they waited but since there was no response from accused' father and hence, she lodged present FIR. **In cross-examination by defence,** witness admitted that she had not eyewitnessed with whom and how victim had

gone and she had not eyewitnessed the incident. Witness admitted that she was married before 22 years and one year later victim was born. Witness admitted that in the police station victim had not informed any incident to her. Witness admitted that later she came to know that victim was having love affair with the accused.

- (c) **PW-3 Kalpeshbhai Ranchhodbhai Rathva (Exh.15)** : Witness is the uncle of accused. Witness stated that before one year he along with his other cousin brother Jigneshbhai and accused Sunil were going to Pavagadh. Witness stated that along with the accused Sunil one girl was also there, who had come along with him in one bike. He further stated that accused and they all went to Zand Hanuman temple and thereafter, they returned at the house of accused. Witness stated that accused had informed that he would drop the girl at Halol and thereafter they were waiting for the accused at Timbi junction, but despite two hours, accused did not return. **In cross-examination by the defence**, witness admitted that he does not know who was girl and what was her name.
- (d) **PW-4 Sursinh Jokhnabhai Makwana (Exh.16)** : Witness is the Principal of the school. Witness stated that as per general register of the school, victim's date of birth is 13.10.2007 and her place of birth is Rayanvadiya. **In cross-examination by defence**, witness admitted that he had not given admission to the victim in their school. He further admitted that he could not say at time of admission of victim, which birth proof was produced. Witness further admitted that many times parent also gives approximate date of birth of the child. Witness

admitted that whether parent had given correct date of birth or wrong he could not say.

- (e) **PW-5 Bharatkumar Hiralal Charel (Exh.22)** : Witness is Incharge Principal of the school, wherein victim had studied. Witness stated that as per their birth register, victim's date of birth is 13.10.2007. **In cross-examination by defence**, witness admitted that admission was not given in his presence and the victim was given admission based upon school leaving certificate of previous school. Witness admitted that he could not say in previous school on what basis victim's date of birth was mentioned.
- (f) **PW-6 Dr.Kinjalben Swarupsinh Patel (Exh.27)** : Witness is the Medical Officer, who had examined the victim. Witness stated that he had recorded history given by the victim. Witness stated that upon examination there were no injuries on the victim or any presence of blood or stains. **In cross-examination by defence**, witness stated that there were no injuries on the victim and she was well developed like adult female.
- (g) **PW-7 Ketankumar Amrutlal Chaudhari (Exh.80)** : Witness is Investigating Officer, who testified the investigation work conducted by him, wherein he stated of arresting the accused from Kutch Naliya and recording statement of victim. She further testified of sending victim for medical examination and also procuring birth proof of the victim. He also testified of drawing panchnama and sending muddamal for forensic. **In cross-examination by defence**, witness admitted that FIR was belated. He further admitted that there were no eyewitness

found. He further admitted that during investigation it was revealed that accused and victim were having affair. He further admitted that there was no proof of any forcible act done by the accused with victim.

FURTHER STATEMENT OF THE ACCUSED

8. Upon closure of the prosecution evidence, further statement of the Accused was recorded, wherein the defence of the Accused was denial. Accused did not lead any evidence in support of his defence.

ARGUMENTS OF LD. APP

9. Learned APP has argued that prosecution has proved its case beyond reasonable doubt against the accused. It is submitted that even though the victim has turned hostile, however, on the strength of other evidence and testimony of the Investigating Officer, the case of the prosecution is proved beyond reasonable doubt. It is submitted that as per the evidence on record, victim is admittedly a minor. It is further submitted that even the statement of the victim under Section 183 of B.N.S.S. is incriminating. It is submitted that mother of the victim has supported prosecution case. Hence, it is submitted that on the basis of circumstantial evidence, the case against the accused is proved beyond reasonable doubt. Hence, it is prayed that the accused be held guilty as alleged.

ARGUMENTS OF THE LD. ADVOCATE FOR THE ACCUSED

10. *Per contra*, learned Advocate for the accused has vehemently submitted that the whole case of the prosecution is without any basis. It is submitted that the victim has turned hostile and

has not specifically supported the case of the prosecution in any manner. It is submitted that in absence of testimony of the prime witness, all other evidence becomes secondary in nature and cannot form the basis of conviction in such a serious offence of POCSO. It is further submitted that there is no direct or even corroborative evidence against Accused. It is submitted that victim is not proved to be a minor. Hence, it is submitted that the accused be held innocent and be acquitted from the offence as alleged.

ISSUES FOR CONSIDERATION

11. Heard learned Advocates for the parties and perused the case record. Considering the same, the following issues arise for my consideration:

A) Whether the prosecution proves beyond reasonable doubt that the victim was minor on the date of incident?

(IN AFFIRMATIVE)

B) Whether the prosecution proves beyond reasonable doubt that the accused abducted the victim from lawful custody of the complainant with an intent to coerce the victim to marry and commit forcible intercourse with her?

(IN NEGATIVE)

C) Whether the prosecution proves beyond reasonable doubt that the accused committed penetrative sexual assault upon the victim?

(IN NEGATIVE)

D) Whether the prosecution proves beyond reasonable doubt that the accused committed offence punishable under Section 137(2), 87, 64(2)(i), 64(2)(m). 69 of the Bharatiya Nayaya Sanhita and under Section 4, 6, 12 of the Protection of Children from Sexual Offences Act, 2012?

(IN NEGATIVE)

E) What final order?

(AS PER FINAL ORDER)

ANALYSIS

12. Now it is the case of the prosecution that on 23.06.2025 accused abducted victim and took her to several places on his motorbike and he had also committed forcible intercourse with victim. It is further the prosecution case that Victim was minor on the date of incident. Hence, it is alleged that the accused has committed alleged offences punishable under Section 137(2), 87, 64(2)(i), 64(2)(m), 69 of the B.N.S. and under Section 4, 6, 12 of the POCSO Act.

Age of the Victim (BIRTH CERTIFICATE)

13. The very first issue which arises for my consideration is whether the victim was minor on the date of incident. In cases under POCSO Act, the age of the victim is of paramount importance. Unless the age of the victim is proved to be below 18 years on the date of incident, no offence under the POCSO Act can be said to have been made out.

13.1. Now it is the case of prosecution that victim was aged 17 years 8 months on the date of incident and her date of birth is stated to be 13.10.2007. To prove victim's age, prosecution has

examined Principal of the school as PW-4, who testified that as per general register of the school, victim's date of birth is stated to be 13.10.2007. Mother of victim PW-2 also testified that victim was born on 13.10.2007. No specific defence has been raised by the accused to show that aforesaid date of birth is not correct or there is any anomaly in recording the true date of birth of the Victim. Defense seems to have not disputed date of birth of the Victim. Under the circumstances, the evidence on record produced by prosecution coupled with the lack of defence raised by the accused, proves that victim's date of birth is 13.10.2007. Hence, I hold that prosecution has proved beyond reasonable doubt that victim was born on 13.10.2007 and thus she was aged 17 years and 8 months on the date of incident. Hence, I answer the said issue in affirmative.

**WHETHER THE PROSECUTION PROVES THAT ACCUSED HAS
COMMITTED THE ALLEGED OFFENCE**

- 14.** Now it is prosecution case that on 23.06.2025 accused abducted the victim and took her at several places on his motorbike and he had also committed forcible intercourse with victim. In this regard, it is pertinent to note that there are no eyewitnesses to the incident, and the prosecution case pivots around sole testimony of the victim PW-1.
- 14.1.** PW-1 stated that she used to talk with the accused over facebook and they had love affair. She stated that on 23.06.2025 she along with her cousin was going for stitching classes. They had got down at one junction, and when they

were walking, at that time accused came on a bike and asked her to come with him at Jambughoda and hence she sat on bike and went to temple. Thereafter she went to the house of the accused. Victim stated that thereafter as the accused wanted to go to Pavagadh and he took his bike and came to drop her however, since her relatives had already reached home, she was afraid that her mother will admonish her hence, she told the accused that she would accompany him and would come with him. Thereafter she sat on bike with the accused and went to Vadodara, where they were working in a cement factory. Victim stated that accused had told his friend that they are already married and they were staying in the room, whereas the friend of accused was staying outside the room. Victim stated that accused had proposed her to marry. Victim stated that after working for some days they went to farm house in Kutch and there they stayed for half an hour, and thereafter police came and took them to Halol Town Police Station, where her statement was recorded and thereafter, she was sent for medical examination and thereafter, she went to her mother's house. Victim stated that she was also taken for recording her Section 183 statement in the Court.

- 14.2.** Victim did not support prosecution case and she was declared hostile. In cross-examination by Ld. APP, victim specifically denied any physical relationship built by the accused with her.
- 14.3.** In cross-examination by the defence, victim admitted that she was having love affair with the accused, but since her mother came to know about her love affair with accused, she herself on her own volition had left the house. She further stated that

accused had not beguiled or induced her nor he had coerced or pressurized her in any manner. Victim further stated that she had given her Section 183 statement as tutored. Victim admitted that accused had never built any intercourse with her.

14.4. Thus the victim specifically admitted of having affair with the accused, and having gone with the accused on her own volition. She specifically denied any physical relationship built by the accused with her. If we further peruse Section 183 statement of victim, then she had stuck to the same version that she and accused were having affair and she herself had gone with the accused.

14.5. The key ingredient to constitute offence u/s 87, 137(2) of BNS (i.e. Old Section 363 and 366 of IPC) is “takes or entices”. The term ‘takes or entices’ has been extensively interpreted by the Apex Court in celebrated decision of **S.S. Varadarajan vs State of Madras** wherein the Hon’ble Apex Court has held as under : - ¹

¹ **S.S. Varadarajan v. State Of Madras - AIR 1965 SC 942**

It must, however, be borne in mind that there is a distinction between ‘taking’ and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of Section 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what, she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. **Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.**

It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her

14.6. In case of **Thakorlal D. Vadgama**² the Hon'ble Apex Court held that the term 'entice' and 'take' have to be read together. It was held that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the Accused, then Accused cannot be said to have committed the offense u/s 361 of the IPC.

design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to 'taking'."

Whatever may be the position with respect to an offence under that section and even assuming that a minor cannot in law abandon the guardianship of her lawful guardian, for the reason which we have already stated, the accused person in whose company she is later found cannot be held guilty of having taken her out of the keeping of her guardian unless something more is established.

The view which we have taken accords with that expressed in two decisions reported in Cox's Criminal Cases. The first of them is Reg. v. Christian Olifier(1). In that case Baron Bramwell stated the law of the case to the jury thus :

"I am of opinion that if a young woman leaves her father's house without any persuasion, inducement, or blandishment held out to her by a man, so that she has got fairly away from home, and then goes to him, although it may be his moral duty to return her to her parent's custody, yet his not doing so is no infringement of this Act of Parliament (24 & 25 Vict. c. 100, s. 55) for the Act does not say he shall restore her, but only that he shall not take her away."

²**Thakorlal D. Vadgama v. State Of Gujarat - 1973 AIR SC 2313**

In the case cited reference has been made to some English decisions in which it has been stated that forwardness on the part of the girl would not avail the person taking her away from being guilty of the offence in question and that if by moral force of a willingness is created in the girl to go away with the former, the offence would be committed unless her going away is entirely voluntary. Inducements by previous promise or persuasion was held in some English decision to be sufficient to bring the case within the mischief of the statute. Broadly, the same seems to us to be the position under our law. The expression used in Section 361 IPC is "whoever takes or entices any minor". The word "takes" does not necessarily connote taking by force and it is not confined only to use of force, actual or constructive. This word merely means, "to cause to go", "to escort" or "to get into possession". No doubt it does mean physical taking, but not necessarily by use of force or fraud. The word "entice" seems to involve the idea of inducement or allurement by giving rise to hope or desire in the other. This can take many forms, difficult to visualise and describe exhaustively; some of them may be quite subtle, depending for their success on the mental state of the person at the time when the inducement is intended to operate. This may work immediately or it may create continuous and gradual but imperceptible impression culminating after some time, in achieving its ultimate purposes of successful inducement. **The two words "takes" and "entices", as used in Section 361 IPC are in our opinion, intended to be read together so that**

14.7. Thus considering the evidence on record that Victim was having affair with the Accused and the Victim herself had voluntarily accompanied the accused without any role played by the Accused to induce the Victim, then considering the aforesaid legal position, no offense of abduction can be said to have been proved against the Accused.

14.8. Moving further, Victim in her Section 183 statement stated that she and accused had built physical relationship, however, she specifically denied the same in her testimony. It is trite that statement given by the victim in Section 183 statement is not the substantive evidence. Substantial evidence is one, which is given before the Court. Since victim specifically denied any physical relationship built by the accused with her, it cannot be said that prosecution has established any such relationship between accused and victim. Incoherence with above, if we peruse the medical evidence, then no injury or any stains of semen are found on the victim. Even as per FSL report, no stains of blood or semen was found on vaginal swab of victim. Though as per FSL report on underwear and payjama of victim,

each takes to some extent its colour and content from the other. The statutory language suggests that if the minor leaves her parental home completely uninfluenced by any promise, offer or inducement emanating from the guilty party, then the latter cannot be considered to have committed the offence as defined in Section 361 IPC. But if the guilty party has laid a foundation by inducement, allurement or threat, etc. and if this can be considered to have influenced the minor or weighed with her in leaving her guardian's custody or keeping and going to the guilty party, then prima facie it would be difficult for him to plead innocence on the ground that the minor had voluntarily come to him. If he had at an earlier stage solicited or induced her in any manner to leave her father's protection, by conveying or indicating or encouraging suggestion that he would give her shelter, then the mere circumstance that his act was not the immediate cause of her leaving her parental home or guardian's custody would constitute no valid defence and would not absolve him. The question truly falls for determination on the facts and circumstances of each case.

blood was found however, the same could also be of menses and same does not *per se* prove offence of penetrative sexual assault by the accused upon victim, especially when victim herself denied any intercourse made by accused with her.

14.9. It specifically appears that victim and accused were having love affair and victim herself had gone along with accused without any force or pressure made by accused. It further appears that victim was on verge of becoming major i.e. less than four months away from becoming major. Victim herself admitted that she told the accused that she would join him and hence it cannot be said that accused in any manner had abducted the victim. Moreover, on perusal of entire evidence as well as testimony of victim, it cannot be said that accused had any sexual intend towards the victim. Moreover, as per the testimony of victim, accused had never built physical relationship with her. Hence, neither any offence of abduction or penetrative sexual assault is proved by the prosecution against accused.

15. In view of aforesaid facts and circumstances, I am of the view that the prosecution has failed to prove its case beyond reasonable doubt against the accused and hence, the accused is required to be acquitted from the offences as charged. Thus, answering issues in Negative, I proceed to pass the following final order:-

ORDER

- i.** Under Section 235(1) of the Code of Criminal Procedure, the accused namely **SUNILBHAI RAJUBHAI NAYAK** is hereby

acquitted from having committed offences punishable under Section 137(2), 87, 64(2)(i), 64(2)(m), 69 of the Bharatiya Nyaya Sanhita and under Section 4, 6, 12 of the Protection of Children from Sexual Offences Act, 2012.

- ii. Bail bonds of the accused stands canceled.
- iii. As per provisions of Section 437A of the Criminal Procedure Code, accused is directed to furnish fresh bond and like surety of Rs.5000/- (Rupees Five Thousand Only) before this Court.
- iv. Muddamal motorcycle be released and handed over to its original owner after due verification. If order regarding releasing Muddamal motorcycle is already passed, then the said order is hereby confirmed. Other Muddamal Articles to be destroyed after the Appeal period.

Pronounced in the open Court today on 4th Day of June, 2026.

Date : 04/06/2026

Place : Halol.

(Vivek Narendra Mapara)
Additional Sessions Judge &
Special Judge (POCSO),
Panchmahal at Halol
Unique ID Code No.GJ01589

N.A.Christian