



Date of Registration	23.09.2025
Date of Decision	30.07.2026
Duration	00Y 10M 07D

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

SPECIAL POCSO CASE NO. 35 OF 2025

[FIR bearing C.R.No.11207036250404/2025 Registered with Kalol Police Station, dated 07.04.2025, for the offence punishable u/s. 137(2), 87, 64(2)(i), 64(2)(m) 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

**ASHOKBHAI @PUNIYO CHANDUBHAI
MAKVANA**

Age : 26 Years, Occupation : Labour Work,
Resident of Vyasda, Vankarvas,
Ta.Kalol, Dist.Panchmahal.

ACCUSED

Appearances :-

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

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

JUDGMENT

(DATED : 30.07.2026)

Form B

DATE OF OFFENCE	10.03.2025 To 11.03.2025
DATE OF FIR	07.04.2025
DATE OF CHARGE-SHEET	23.09.2025
DATE OF FRAMING OF CHARGE	03.11.2025
DATE OF COMMENCEMENT OF EVIDENCE	20.02.2026
DATE ON WHICH JUDGMENT IS RESERVED	29.07.2026
DATE OF THE JUDGMENT	30.07.2026
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	ASHOK BHAI @PUNIYO CHANDU BHAI MAKVANA	05.06.25	25.07.25	Sec. 137(2), 87, 64(2)(i), 64(2)(m) of the B.N.S. and u/s.4, 6, 12 of the POCSO Act	Acquitted	-	1 Month 20 Days

Form C**(List of Witnesses)****Prosecution Witness**

PW	Name	Nature of Evidence
1	Deven Kanubhai Patel (Exh.09)	Talati-cum-Mantri, Bedhiya Gram Panchayat, Ta.Kalol, Dist.Panchmahal
2	Dr.Srushti Anilkumar Patel (Exh.13)	Medical Officer, Referral Hospital, Ta.Kalol, Dist.Panchmahal
3	Dr.Shivam Vijaybhai Patel (Exh.17)	Gynaecologist, Referral Hospital, Ta.Kalol, Dist.Panchmahal
4	Dr.Palak Pradipkumar Vaishnav (Exh.20)	Gynaecologist, SSG Hospital, Vadodara
5	Dr.Kuntal Babubhai Prajapati (Exh.23)	Gynaecologist, Civil Hospital, Ta.Godhra, Dist.Panchmahal
6	Victim Girl (Exh.26)	Witness (Victim)
7	Father of the victim (Exh.29)	Witness (<i>De-facto</i> Complainant)
8	Grandfather of the victim (Exh.31)	Witness
9	Grandmother of the victim (Exh.32)	Witness
10	Rakeshkumar Dahyabhai Bharvad (Exh.70)	Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal

1. Defence Witness

PW	Name	Nature of Evidence
-	-	-

(List of Exhibits)
Prosecution Exhibits

SR	Exh.	Description
1	10	Extract of Birth Register showing birth details of the victim issued by the Talati-cum-Mantri, Bedhiya Gram Panchayat, Ta.Kalol, Dist.Panchmahal
2	11	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Talati-cum-Mantri, Bedhiya Gram Panchayat, Ta.Kalol, Dist.Panchmahal for issuing the Birth Certificate of the victim
3	12	Birth Certificate of the victim issued by the Talati-cum-Mantri, Bedhiya Gram Panchayat, Ta.Kalol, Dist.Panchmahal
4	14	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Medical Officer, Referral Hospital, Ta.Kalol, Dist.Panchmahal for medical examination of the accused, collecting samples and issuing certificate
5	15	Case papers of the accused issued by the Medical Officer, Referral Hospital, Ta.Kalol, Dist.Panchmahal
6	16	MLC Certificate of the accused issued by the Medical Officer, Referral Hospital and C.H.C., Ta.Kalol, Dist.Panchmahal
7	18	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Medical Officer, Referral Hospital, Ta.Kalol, Dist.Panchmahal for medical examination of the victim, collecting samples and issuing certificate
8	19	Medical Examination Report issued by the Medical Officer, Referral Hospital, Ta.Kalol,

		Dist.Panchmahal
9	22	Medico-legal Examination Report of the victim issued by the Gynaecologist, SSG Hospital, Vadodara
10	24	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Medical Officer, Civil Hospital, Ta.Godhra, Dist.Panchmahal for providing DNA Sampling and opinion
11	25	Yadi written by the Gynaecologist, Civil Hospital, Ta.Godhra, Dist.Panchmahal to the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal for providing DNA Sampling
12	27	Consent Letter given by the victim for her medical examination
13	28	Statement of the victim u/s.183 of the B.N.S.S. before the Additional Chief Judicial Magistrate, Kalol
14	30	Complaint
15	33	Consent Letter given by the Grandmother of the victim for medical examination of the victim
16	34	Panchnama of the place of incident shown by the Complainant
17	35	Certificate u/s.63(4)(c) of the B.S.A. issued by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal
18	36	Light Bill of the house of the Complainant
19	37	Arrest Panchnama of the accused
20	38	Panchnama of the clothes of the accused
21	39	Certificate u/s.63(4)(c) of the B.S.A. issued by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal

22	40	Panchnama of the clothes of the victim and the Panchnama of the place of incident shown by the victim
23	41	Certificate u/s.63(4)(c) of the B.S.A. issued by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal
24	42	Depute Order
25	43	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the P.S.O., Kalol Police Station, Ta.Kalol, Dist.Panchmahal for registering the offence
26	44	Suchipatra
27	45	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Medical Officer, Referral Hospital, Ta.Kalol, Dist.Panchmahal for DNA Sampling of the accused
28	46	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Circle Officer, Piplaj, Ta.Vatva, Dist.Ahmedabad for preparing map of the place of incident
29	47	Forwarding Letter of the Circle Officer, Piplaj, Ta.Vatva, Dist.Ahmedabad for providing map of the place of incident
30	48	Map of the place of incident prepared by the Circle Officer, Piplaj, Ta.Vatva, Dist.Ahmedabad
31	49	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Additional District and Sessions Judge and Special POCSO Court, Halol for adding Sections in the FIR
32	50	Yadi written by the Investigating Officer, Kalol

		Police Station, Ta.Kalol, Dist.Panchmahal to the Principal Senior Civil Judge, Kalol Court for recording statement of the victim u/s.183 of the B.N.S.S.
33	51	Cover of the statement of the victim u/s.183 of the B.N.S.S.
34	52	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Deputy Engineer, MGVCL, Ta.Kalol, Dist.Panchmahal for allotting two Government panchas for conducting panchnama of the offence
35	53	Forwarding Letter of the Deputy Engineer, MGVCL, Ta.Kalol, Dist.Panchmahal to the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal regarding allotment of two Government panchas for conducting panchnama of the offence
36	54	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Deputy Engineer, MGVCL, Ta.Kalol, Dist.Panchmahal for allotting two Government panchas for conducting panchnama of the offence
37	55	Forwarding Letter of the Deputy Engineer, MGVCL, Ta.Kalol, Dist.Panchmahal to the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal regarding allotment of two Government panchas for conducting panchnama of the offence
38	56	Ravangi Patrak and Authority Letter
39	57	Acknowledgment Letter of the FSL Officer, Vadodara regarding receiving muddamal
40	58	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the

		FSL Officer, Vadodara for examination of the muddamal and issuing certificate
41	59	Forwarding Letter of the FSL Officer, Vadodara regarding examination of the muddamal
42	60	Biology and Serology Examination Report
43	61	Ravangi Patrak and Authority Letter
44	62	Acknowledgment Letter of the FSL Officer, Surat regarding receiving muddamal
45	63	Forwarding Letter of the FSL Officer, Surat regarding examination of the muddamal
46	64	Examination Report issued by the FSL Officer, Surat
47	65	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Superintendent of Police, Halol for providing certified Call Detail Records (CDR)
48	66	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Nodal Officer for providing Call Detail Records (CDR)
49	67	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Nodal Officer for providing Call Detail Records (CDR)
50	68	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Nodal Officer for providing Call Detail Records (CDR)
51	69	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the Nodal Officer for providing Call Detail Records (CDR)
52	72	Yadi written by the Investigating Officer, Kalol Police Station, Ta.Kalol, Dist.Panchmahal to the

		Medical Officer, Civil Hospital for DNA Sampling of the child of the victim
53	73	Ravangi Patrak and Authority Letter
54	74	Acknowledgment Letter of FSL, Surat regarding receiving muddamal
55	75	Yadi written by the Deputy Director, FSL, Surat to the PSI, Kalol Police Station for examination
56	76	DNA Examination Report issued by the FSL Officer, Surat

1. Defence Exhibits

Sr. No.	Exh.	Description
-	-	-

(Material Objects)

Sr. No.	Muddamal Article No.	Description
1	Mark-1	White and Brown colour full sleeve shirt with square design
2	Mark-2	Brown colour pant
3	Mark-3	Maroon colour top with floral design
4	Mark-4	Maroon colour leggings with lining design

J U D G M E N T

1. An FIR bearing C.R.No.11207036250404/2025 dated 07.04.2025 came to be lodged with Kalol Police Station against the present accused for having committed offences punishable under Sections 137(2), 87 of the Bharatiya Nyaya Sanhita ("B.N.S.") and under Sections 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 :
 - a) The FIR is lodged by the father of the victim on 07.04.2025. It is alleged that the complainant has two children of which the victim is the eldest daughter who is aged 17 years, 1 month and 9 days and she was born on 29.02.2008. Thereafter, is the younger son. It is further alleged that the wife of the complainant had expired before three years.
 - b) It is alleged that on 11.03.2025, when the complainant was at work, at that time at around 6 o'clock in the morning, the complainant's father called him and informed that at night the victim had gone somewhere and despite searching her, she is not found. Pursuant thereto, the complainant returned home and inquired from his father, who informed that after dinner, they all had gone to bed and when they woke up in the morning, at that time, the victim was not seen on her bed. Upon inquiring, they had found the backdoor of the house open. Thereafter, the father of the complainant woke up his wife and other children and went in search of the victim.

- c) It is alleged that thereafter all the family members searched for the victim, but the victim was not found. It is alleged that in the meanwhile they came to know that the present accused had beguiled and abducted the victim with intent to physically exploit her and hence, the present FIR came to be lodged.

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 the offence under Sections 64(2)(i), 64(2)(m) of the B.N.S. and under Sections 4, 6 of the POCSO Act were also committed. Thus, the charge addition report was filed by the Investigating Officer. It further appears that several Panchnamas were drawn by the Police. The victim was got examined by the medical practitioner. Necessary recovery was made by the Police. Police recorded the statement of the relevant witnesses. Muddamal Articles were seized and sent for forensic analysis. 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 Sections 137(2), 87, 64(2)(i), 64(2)(m) of the B.N.S. and under Sections 4, 6, 12 of the POCSO Act.

CHARGE-SHEET

4. Pursuant to the filing of the charge-sheet, present Spl. POCSO 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 230 of the Bharatiya Nagarik Suraksha Sanhita.

CHARGE & PLEA

5. This Court finding sufficient material to frame charge against the accused, was pleased to frame the following charge vide Exhibit-07 against the accused. The charge reads thus : -

“ત હો મ ત ના મુ

હું વિવેક નરેન્દ્ર મપારા, એડીશનલ સેસન્સ જજ અને સ્પેશ્યલ જજ(પોકસો), હાલોલ આથી તમો આરોપી :-

અશોકભાઈ ઉર્ફે પુનીયો ચંદુભાઈ મકવાણા,

ઉ.વ.આ.૨૬, ધંધો: મજૂરી,

રહેવાસી: વ્યાસડા વણકરવાસ, તા.કાલોલ,

જિ.પંચમહાલ,

—નાઓ સામે નીચે લખ્યા મુજબ તહોમતનામુ ફરમાવુ છું કે,

(૧). તમો આરોપીએ તા.૧૦/૩/૨૦૨૫ ના ક.૨૨:૦૦ થી તા.૧૧/૩/૨૦૨૫ ના ક.૬:૦૦ વાગ્યા દરમ્યાન કોઈપણ સમયે મોજે કાલોલ વૃંદાવન સોસાયટી-૨ મુકામેથી આ કામના ફરિયાદીની સગીર વયની દિકરી, ભોગ બનનાર ઉ.વ.આ.૧૭ વર્ષ ૧૦ દિવસનાનીને ફરિયાદીના કાયદેસરના વાલીપણામાંથી તેમની સંમતિ વગર લલચાવી પટાવી ફોસલાવી લગ્ન તથા જારકર્મ કરવાના ઈરાદે 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 ફરિયાદીના કાયદેસરના વાલીપણામાંથી અપહરણ કરી લઈ જઈ અમદાવાદ ખાતે રૂમમા રાખી, ભોગ બનનાર મુક્ત સંમતિ આપી શકે તેવી સ્થિતિમા ન હોવા છતાં અવાર નવાર ભોગ બનનારની મરજી વિરુદ્ધ શારીરીક સંભોગ (દુષ્કર્મ) આચરી ભોગબનનારને ગર્ભવતી બનાવી ભોગબનનાર ઉપર વારંવાર પ્રવેશ તથા ઉગ્ર પ્રવેશ જાતિય હુમલો કરી ભારતીય ન્યાય સંહિતા (બી.એન.એસ.) કલમ-૬૪(૨)(આઈ)(એમ) તથા પોકસો એક્ટની 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 the accused was recorded *vide* Exhibit-08 The accused pleaded not 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 Deven Kanubhai Patel (Exh.09) :

- Witness is the Talati-cum-Mantri of Bedhiya Gram Panchayat, Ta.Kalol, Dist.Panchmahal. Witness stated that as per the Birth Register's Entry No.18, the victim's date of birth is 29.02.2008 and the same was registered on 12.03.2008. Witness stated that the victim's place of birth is mentioned as “Bedhiya” and the information with respect to the victim's birth was given by one “Jashodaben Udabhai”.

- **In cross-examination by the defence,** witness admitted that he has not registered the victim's date of birth. Witness further admitted that he cannot not say that before his predecessor what evidence was produced with respect to the victim's birth. Witness further admitted that the victim's date of birth was not got registered by her parents. Witness further admitted stated that he cannot say that who is "Jashodaben", who had got victim's date of birth registered and on the basis of what evidence she had got the victim's date of birth registered.

(b)PW-2 Dr.Srushti Anilkumar Patel (Exh.13) :

- Witness is the Medical Officer, who had examined the accused. Witness stated that she had collected the biological specimens of the accused. Witness stated that the accused was competent to build physical relationship.
- **In cross-examination by the defence,** witness admitted that there were no injury marks or any blood stains / semen stains on the accused.

(c) PW-3 Dr.Shivam Vijaybhai Patel (Exh.17) :

- Witness is the Gynaecologist, who had examined the victim and he had recorded her history. Witness stated that victim's UPT Test was positive and she was having 14 weeks of pregnancy. Witness stated that the secondary sexual characteristics of the victim were developed.
- **In cross-examination ,** witness admitted that there were no injury marks or any signs of force upon the victim.

- Witness admitted that the victim's physical characteristics were developed like an elder female.

(d)PW-4 Dr.Palak Pradipkumar Vaishnav (Exh.20) :

- Witness is the Gynaecologist, who had examined the victim. Witness stated that the UPT Test of the victim was positive and she was having 14 weeks of pregnancy. Witness stated that the victim had denied her consent for terminating her pregnancy. Witness stated that secondary sexual characteristics of the victim were developed and there were no injury marks on the victim.
- **In cross-examination by the defence,** witness admitted that there were no injury marks on the victim and her external characteristics were completely developed. Witness admitted that they had not conducted the ossification test of the victim. Witness further admitted that the victim had given the history of love affair with the accused. Witness further admitted that they had not taken the samples for DNA.

(e)PW-5 Dr.Kuntal Babubhai Prajapati (Exh.23) :

- Witness is the another Gynaecologist. Witness stated that the Police had sent Yadi for DNA sample of the child. Witness stated that he had given an opinion to take the DNA sample of the child after the birth.

(f) PW-6 Victim Girl (Exh.26) : Since the testimony of the victim is of paramount importance, I deem it appropriate to reproduce her entire testimony in verbatim as under :-

આજરોજ ભોગબનનાર કોઈ ધાક ધમક, ડર, બીક, લોભ લાલચ કે કોઈ પણ જાતના દબાણ કે શરમ સંકોચ વગર કોર્ટમાં જુબાની આપવા માટે આવેલ છે તેવી ખાતરી કર્યા બાદ ભોગબનનાર સ્વેચ્છાએ, નિઃસંકોચપણે, લાલચ પ્રલોભન વગર જુબાની આપવા ઈચ્છે છે જેથી ભોગબનનારનો પુરાવો નોંધવામાં આવે છે.

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

સોગંદ આપ્યા

- 1) અમે બે ભાઈ બહેનો છીએ જેમાં હું મોટી છું અને મારાથી નાનો ભાઈ છે.આજથી ચાર વર્ષ અગાઉ મારી માતા મરણ ગયેલ છે તેથી અમો મારા પિતા,મારો ભાઈ અને હું તથા દાદા દાદી અમે સાથે રહીએ છીએ.મારા પિતા વાઘોડીયા ખાતે કંપનીમાં નોકરી કરે છે.હું ધોરણ ૮ સુધી ભણેલી છું મારી જન્મ તારીખ ૨૯-૦૨-૨૦૦૮ છે.
- 2) આજથી બે વર્ષ અગાઉ વ્યાસડા ગમના અશોક ઉર્ફે પુનીયો કાલોલ રહેતો હતો અને તે અમારા ઘરની પાછળના ભાગે તેના મિત્રના ઘરે અવાર નવાર આવતો હતો અને હું પણ મારા ઘરની પાછળના ભાગે બેસીને ઘરનું કામકાજ કરતી હતી.તે દરમિયાન અમારા બંને વચ્ચે ઓળખાણ થયેલી અને અમારા બંને વચ્ચે પ્રેમ થઈ ગયો હતો અને અશોકે મને સાદો ફોન આપેલો હતો.તે ફોનથી હું તથા અશોક દરરોજ વાતચીત કરતા હતા.
- 3) મારા પિતા વાઘોડીયા સર્વિસ કરતા હતા અને ત્યાં રહેતા હતા.હું,મારા દાદા,દાદી અને મારો ભાઈ અમે ઘરે રહેતા હતા તે વખતે હું પાછળના ભાગે એકલી બેડરુમમાં સુતી હતી તે વખતે અમુક વખત રાતના હું અશોકને બોલાવતી હતી અને તે મારા ઘરે પાછળના દરવાજેથી આવતો હતો અને અમે બંને જણા વાતો કરી છુટા પડતા હતા.
- 4) હું ફોન ઉપર વાતો કરતી હતી ત્યારે મારા દાદા મને જોઈ ગયા હતા અને મારી પાસેથી ફોન લઈને મારા દાદાએ સીમકાર્ડ ફોનમાંથી કાઢીને તોડી નાખેલ હતું.અને મારા દાદા અને દાદી મને લડ્યા હતા તે હકીકત મે અશોકને જણાવી હતી ત્યારબાદ મારા પપ્પા વાઘોડીયા હતા અને મારો ભાઈ મારા ફોઈના ઘરે બેઠીયા ગયો હતો તે વખતે મે અને અશોકે નક્કી કર્યા મુજબ અમો ઘરેથી ભાગી ગયા હતા અને અશોકે મને લગ્ન કરવાનું જણાવ્યું હતું.
- 5) હું ઘરેથી નિકળી ત્યારે મે કોઈપણ સરસામાન મારા ઘરેથી લીધો ન હતો.અને અમે બંને જણા કાલોલથી ખાનગી વાહનમાં બેસીને વડોદરા ગયા હતા.વડોદરાથી ટ્રેનમાં બેસી અમદાવાદ ગયા હતા અને ત્યાં તેના ઓળખીતાના ઘરે ગયા હતા અને તેઓએ અમોને નારોલ ખાતે ગણેશનગર સોસાયટીમાં એક પતરાની છત વાળી રુમ રહેવા માટે અપાવી હતી અને તેમાં અમે બંને જણા રહેતા હતા અને અશોક અમદાવાદમાં છુટક મજૂરીકામે જતો હતો.અને રાતના સમયે અમે બંને જણા પતિપત્ની તરીકે રહેતા હતા અને અમારી બંનેની મરજીથી શરીરસંબંધ બાંધેલો હતો.
- 6) ત્યારબાદ મને લાગેલ કે મને પ્રેગનન્સી રહી ગયેલ છે તેથી અમદાવાદમાં આવેલ એલ.જી.હોસ્પિટલમાં સારવાર માટે ગયા હતા અને ત્યારે અમોને ખબર પડેલ કે મને પ્રેગનન્સી છે.ત્યારબાદ અમો બંને જણા બીજી વખત એલ.જી.હોસ્પિટલમાં ગયા હતા તે વખતે કાલોલની પોલીસ આવીને અમને બંને જણાને પકડીને કાલોલ પો.સ્ટે.લઈ આવી હતી.
- 7) ત્યારબાદ કાલોલ પો.સ્ટે.ના સાહેબે મહિલા પોલીસની હાજરીમાં મારી પુછપરછ કરી હતી અને મારું નિવેદન મારા લખાવ્યા મુજબનું લખ્યું હતું અને ત્યારબાદ મને સહી કરવાનું કહેતાં મે સહી કરી આપી હતી.ત્યારબાદ મારી મેડીકલ તપાસ કરાવવાનું જણાવતાં મે મેડીકલ તપાસ કરાવવા માટે સંમતિ

આપી હતી જે સંમતિપત્રક આ કામે નિ.૬/૧૯થી રજુ છે જેમાં મારી સહી છે જે હું ઓળખું છું જેને રજુ દા.આંક-૨૭.

8) ત્યારબાદ મને પુછતાં કે તમારે ક્યાં જવું છે તો મે મારા માતાપિતાના ઘરે જવાની ના પાડી હતી અને હું નારી સંરક્ષણ કેન્દ્ર ગોધરા મુકામે ગઈ હતી.ડોક્ટરે મને ગર્ભ રદ્દા અંગે જણાવ્યું હતું અને તેઓએ મને પુછેલ કે ગર્ભપાત કરાવવો છે કે કેમ તો મે ના પાડી હતી.ત્યારબાદ પોલીસે મને નારી સંરક્ષણગૃહ માંથી પોલીસ સ્ટેશને બોલાવી હતી અને ગુનાવાળી જગ્યા બતાવવાનું કહેતાં હુ,મહિલા પોલીસ,અને બીજા બે ખાનગી માણસો હતા અને પોલીસવાળા હતા તે રીતના અમે અમદાવાદમાં અમે જ્યાં રહેતા હતા તે જગ્યા પોલીસને બતાવી હતી તેમજ બનાવ સમયે પહેરેલાં કપડાં આપવાનું કહેતાં મે બાથરુમ ઉપર એક બેગ મુકી હતી તે નીચે ઉતારી મે તેમાંથી એક મરુન કલરનું ફૂલભાતની ડીઝાઈન વાળું ટોપ,અને મરુન કલરની તુટક રેખાની ડીઝાઈન વાળી લેંગી રજુ કરી હતી અને તે પોલીસે અમારી હાજરીમાં શીલબંધ કરીને કબજે લીધી હતી.ત્યારબાદ મને પોલીસ નારીસંરક્ષણગૃહ માં મુકી આવી હતી.

1) મને મુદ્દામાલ આર્ટિકલ નં.૩ કે જે સફેદ કાગળના પડીકામાં શીલબંધ છે તેનું શીલ નામ.કોર્ટની પરવાનગીથી ખોલીને તેમાંથી નિકળેલ મરુન કલરનું ફૂલભાતની ડીઝાઈન વાળું ટોપ બતાવવામાં આવે છે જે મે રજુ કરેલ હતું તે જ છે (નોંધ- તેમાંથી નિકળેલ પંચોની સહી વાળી કાપલીને નિ.૨૬/૧ થી કામમાં સામેલ રાખવામાં આવે છે.)

2) મને મુદ્દામાલ આર્ટિકલ નં.૪ કે જે સફેદ કાગળના પડીકામાં શીલબંધ છે તેનું શીલ નામ.કોર્ટની પરવાનગીથી ખોલીને તેમાંથી નિકળેલ મરુન કલરની તુટક રેખાની ડીઝાઈન વાળી લેંગી બતાવવામાં આવે છે જે મે રજુ કરેલ હતી તે જ છે (નોંધ- તેમાંથી નિકળેલ પંચોની સહી વાળી કાપલીને નિ.૨૬/૨ થી કામમાં સામેલ રાખવામાં આવે છે.)

9) ત્યારબાદ હું નારીસંરક્ષણગૃહમાં હતી તે વખતે પોલીસે મને કાલોલ કોર્ટમાં જવાનું કહેતાં મને નારીસંરક્ષણ કેન્દ્રના બહેન સાથે કાલોલ કોર્ટમાં ગઈ હતી અને ત્યાં મને જજ સાહેબે કોર્ટમાં એકલી બોલાવી હતી અને તેમણે મને પ્રશ્ન પુછ્યા હતા તેના મે જવાબ આપ્યા હતા અને તે જજ સાહેબે લખી લીધા પછી તે લખાણ મને વાંચવાનું કહેતાં તે વાંચ્યા બાદ મે સહી કરી હતી.મને એક આછા વાદળી કવર જે શીલબંધ છે તેનું શીલ નામ.કોર્ટની પરવાનગીથી ખોલીને તેમાંથી નિકળેલ બી.એન.એસ.એસ. કલમ-૧૮૩ નું નિવેદન બતાવવામાં આવે છે જે જોઈને કહું છું કે તેમાં મારી સહી છે જેને રજુ દા.આંક-૨૮.

10) ત્યારબાદ મારા પિતા તથા મારા દાદા મને નારીસંરક્ષણકેન્દ્રમાં લેવા આવતાં હું તેમની સાથે મારી સ્પેરછાએ ગઈ હતી.ત્યારબાદ તા.૧૫-૧૧-૨૦૨૫ ના રોજ મારે ત્યાં દિકરીનો જન્મ થયો હતો અને મારી દિકરીના પિતા આ કામના આરોપી અશોકભાઈ છે.હું સ્પેરછાએ જણાવું છું કે મારી ઉંમર ૧૮ વર્ષ ઉપરાંતની થઈ ગયેલ છે અને હું આ કામના આરોપી અશોક સાથે લગ્ન કરી તેના ઘરે જવા માંગું છું.હું આ કામના આરોપીને ઓળખું છું જે આજરોજ નામ.કોર્ટમાં હાજર છે અને કેદી કહેડામાં કાચની પાછળ બેસેલ છે.

11) એવું બનેલ નહિ કે હું રાતના અશોકને બોલાવતી હતી તે વખતે અશોક મારા ઘરે પાછલા બારણે આવીને મારી સાથે શરીરસંબંધ બાંધતો હતો.

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

12) તે વાત ખરી નથી કે મે તા.૦૫-૦૬-૨૦૨૫ના જવાબમાં લખાવેલ છે કે "હું રાતના અશોકને બોલાવતી હતી તે વખતે અશોક મારા ઘરે પાછલા બારણે આવીને મારી સાથે શરીરસંબંધ બાંધતો હતો.
સરતપાસ પુરી

ઉલટપાસ આરોપી તરફે વિ.વ.શ્રી વી.એન.જાદવ

13) તે વાત ખરી છે કે આ કામના આરોપી અશોક સાથે મારે બે વર્ષથી પ્રેમ સંબંધ હતો.તે વાત ખરી છે કે હું અશોક સાથે ફોન પર વાતો કરતી હતી તે ની જાણ મારા દાદાને થઈ જતાં મારા દાદાએ ફોન લઈ લીધેલો હતો.તે વાત ખરી છે કે મારા દાદાએ મને ઠપકો આપેલ હોવાથી હું મારી મરજીથી સ્વેચ્છાએ મારા દાદા-પિતાનું ઘર છોડીને અમદાવાદ મુકામે જતી રહેલ હતી.તે વાત ખરી છે કે આ કામના આરોપીએ મને કોઈ લોભ લાલચ કે પ્રલોભન કે ધાક ધમકી આપેલ નથી કે દાબ દબાણ કરેલ નથી કે મારી સાથે ક્યારેય કોઈપણ જાતની બળજબરી કરેલ નથી.

14) તે વાત ખરી છે કે આ કામના આરોપી સાથે મારે પ્રેમ અને લાગણીના સંબંધો હતા તેથી અમે અમદાવાદ મુકામે સાથે રહેતા હતા.
ઉલટપાસ પુરી

કોર્ટ પ્રશ્ન

15) સવાલ - આ સંતાન તમારા કહેવા પ્રમાણે આરોપીનું છે ?

જવાબ - જી હા.

સવાલ- આ સંતાન હાલ કોણ સાચવે છે ?

જવાબ - હું તથા મારા દાદા દાદી સાચવીએ છીએ.

સવાલ- આરોપી આ સમય દરમિયાન ક્યારેય મળવા આવેલો કે સારસંભાળ લેવા આવેલો તેવું બનેલું.

જવાબ - જી ના, કેસ ચાલું હોય આરોપી મને મળવા આવી શકતો નથી.

સવાલ - આરોપીએ તમને કોઈ રીતે ખોટું પ્રલોભન આપીને શરીરસંબંધ બાંધેલો હોય તેવું બનેલ છે ?

જવાબ- આરોપી અને મે લગ્ન કરવાનું નક્કી કરેલું છે પરંતુ મારા ઘરવાળા ના પાડતા હોય તેથી લગ્ન થઈ શકતા નથી પરંતુ મારે આરોપી સાથે જ લગ્ન કરવા છે.

સવાલ- આરોપીએ ક્યારેય લગ્ન કરવાની ના પાડેલ હોય અથવા ખોટા વાયદા કરેલ હોય તેવું લાગેલું.

જવાબ - જી ના મારે અને આરોપી વચ્ચે સાચો પ્રેમ અને લાગણી છે અને આરોપીએ મને ક્યારેય ખોટું કહેલ નથી કે દગો આપેલ નથી અને મને વિશ્વાસ અને બાંહેધરી છે કે આરોપી અને હું પરણી જઈશું અને તે અમને બંનેને સારી રીતે સાચવશે.

સવાલ- તમારે કોઈને બીજું કાઈ જણાવવું છે.

જવાબ - મારે આરોપી સાથે જ જવું છે મારી ઉંમર ૧૮ વર્ષની ઉપર થઈ ગયેલ છે પરંતુ મારા ઘરના મને ઘરે ગોંધી રાખે છે અને જવા દેતા નથી મને આરોપીની સાથે રહેવું છે તેથી મને સહાય કરી આપો.

સવાલ- તમને તમારા ઘરના લોકો તરફથી કોઈ જાતની મારામારી કરવામાં આવે છે?

જવાબ- જી ના મારામારી કરતા નથી પરંતુ મને ધાક ધમકી આપે છે કે તું છોકરા જોડે બોલીશ તો તને જીવતી નહિ રાખીએ.

કોર્ટ સવાલ પુરા

ઉલટપાસ પુરી

ફેરતપાસ નથી.

**(g)PW-7 Father of the victim – the *de-facto* Complainant
(Exh.29) :**

- Witness is the father of the victim. Witness stated that the victim's date of birth is 29.02.2008. Witness further stated that on 11.03.2025 when he was at work, at that time, his father had called him and informed that the victim had gone missing thereafter, he returned home and when he inquired, he came to know that after the family had gone to sleep and thereafter at early morning 6 o'clock, the victim was not found on her bed. Witness further stated that when they were inquiring about the victim, they came to know that the accused had taken the victim and hence, he had lodged the FIR.
- Witness stated after one month, the accused and the victim had brought at the Police Station. Witness stated that at the Police Station, the victim had informed that the accused had threatened her and taken her. Witness further stated that the victim was pregnant.
- Witness stated that the victim did not want to return come and hence, she was sent to the Women Shelter House at Godhra. Witness stated that fifteen days later, they brought the victim from the Women Shelter House. Witness further stated that the victim refused to terminate her pregnancy and hence, the victim thereafter had given the birth to a child. Witness stated that the victim and her child were currently staying with them.

- **In cross-examination by the defence**, witness admitted that he was married before 21 years and two years later, the victim was born. Witness admitted that the incident had occurred on 11.03.2025 whereas he had lodged the FIR on 07.04.2025.
- Witness admitted that he has not eye-witnessed the incident and he has no personal information about the same. Witness further admitted that he has not got victim's birth registered.

(h)PW-8 Grandfather of the victim (Exh.31) :

- Witness is the Grandfather of the victim. Witness stated that he does not remember victim's date of birth. Witness stated that on 10.03.2025, when they woke up in the morning at 6 o'clock, the victim was not found on her bed. Thereafter, they searched for the victim, but she was not found. Pursuant thereto, they informed the father of the victim and thereafter, he immediately returned home and they all searched for the victim, but the victim was not found. Thereafter, they came to know that the accused had taken the victim and hence, the present FIR was lodged. One month later, the accused and the victim were brought at the Police Station. Witness stated that the victim did not want to return home and hence, she was sent to the Women Shelter House. Fifteen days later, the victim returned home. Witness stated that the victim was pregnant and she refused to terminate her pregnancy. Thereafter, the victim had given birth to a child.

- Witness stated that the accused had threatened the victim and had beguiled and had taken her without the consent of her parents. Witness stated that the accused has no parents and he also does not have proper house and he is living a nomadic life and he had wrongfully induced the victim.
- **In cross-examination by the defence,** witness admitted that he has not eye-witnessed with whom and how the victim had gone. Witness further admitted that the father of the victim was married before 21 years and two years later, the victim was born. Witness admitted that he does not know the victim's date of birth.

(i) PW-9 Grandmother of the victim (Exh.32) :

- Witness is the Grandmother of the victim. Witness stated that she does not remember the victim's date of birth, but at the time of incident the victim was 17 years of age. Witness stated that on 10.03.2025, when they all had gone to the bed thereafter, at the morning, the victim was not found in her room. Thereafter, they found that the backdoor of the house opened. Witness stated that despite searching of the victim, she was not found. Thereafter, they came to know that the accused had taken the victim and hence, the present FIR was lodged.
- Witness stated that after 5-6 months, the Police had brought the accused and the victim and thereafter, the victim's statement was recorded. Witness stated that the victim was pregnant.

- Witness stated that the victim did not want to return home and hence, she was sent to the Women Shelter House at Godhra. 15 days later, she was returned home.
- Witness stated that the victim had refused to terminate her pregnancy and thereafter, she had given birth to a child. Witness stated that they both are residing with them. Witness stated that the accused had threatened the victim and had beguiled her. Witness stated that the accused does not have family or any relatives and he also does not have own house. Witness stated that the accused is living a nomadic life and he has wrongfully induced the victim.
- **In cross-examination by the defence,** witness admitted that she has not eye-witnessed with whom and how the victim had gone. Witness further admitted that the victim was born at her mother's parental house. Witness further admitted that she is illiterate.

(j) PW-10 Rakeshkumar Dahyabhai Bharvad (Exh.70) :

- Witness is the Investigating Officer. Witness testified the investigation conducted by him. Witness stated that he had filed the charge-sheet.
- **In cross-examination by the defence,** witness admitted that there were no eye-witnesses to the incident. Witness further admitted that it was revealed during his investigation that there were love affair between the accused and the victim. Witness further admitted that the accused did not commit any force with the victim.

FURTHER STATEMENT OF THE ACCUSED

8. Upon closure of the prosecution evidence, further statement of the Accused was recorded, wherein Accused stated that he was having love affair with the Victim since 1 year. He further stated that child born to the Victim belongs to him and he is ready and willing to keep Victim and Child both.

ARGUMENTS OF LD. APP

9. Ld. A.P.P. has submitted that no doubt the victim has thoroughly testified about of having love affair with the accused, however, it is submitted that consent of having love affair is not defence under the POCSO Act. It is submitted that as per the Birth Certificate of the victim, the victim is admittedly a minor aged around 17 years, 1 month and 9 days. Under the circumstances, it is submitted that the victim is clearly protected under the POCSO Act. It is further submitted that the victim has admittedly given a birth to a child and even as admitted by the defence, the said child belongs to the accused. Thus, it is submitted that offence of penetrative sexual assault is clearly made out against the accused. It is further submitted that the accused is living a nomadic life and the victim is not safe with the accused. Hence, it is submitted that it is proved beyond reasonable doubt that the accused had beguiled and abducted the victim and he had also built penetrative sexual assault upon the victim. Under the circumstances it is submitted that prosecution has proved its case beyond reasonable doubt and hence prays that accused be convicted as charged.

ARGUMENTS OF THE LD. ADVOCATE FOR THE ACCUSED

10. *Per contra*, learned Advocate for the accused has submitted that the victim is not proved to be a minor since the Birth Certificate of the victim is not reliable. It is submitted that authenticity of the Victim's birth document are not proved by the prosecution. It is submitted that no ossification test of the Victim is got conducted. Hence it is submitted that Victim cannot be held to be minor beyond reasonable doubt.
- 10.1. It is submitted that it is an admitted position on record that the accused and the victim were having love affair. It is further submitted that the accused has very candidly admitted that the child born to the victim, is of the accused and that the accused also wants to marry the victim. However, it is submitted that there is family opposition, and hence the accused and victim are not able to get married. It is submitted that family members of the Victim has resistance and hostility against the Accused and hence the present false prosecution is lodged against the Accused.
- 10.2. It is further submitted that the accused has assured that he would keep the victim happy, which the accused had has specifically stated even in his further statement. It is submitted that accused had also passed pursis admitted that Child born to Victim is his child. Hence it is submitted that intention of the Accused are clean. It is submitted that the love is not a crime. Hence, it is submitted that the accused has not committed any offense and hence it is prayed to acquit the accused for the offenses as charged.

ISSUES FOR CONSIDERATION

11. Heard the 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 NEGATIVE)

B) Whether the prosecution proves beyond reasonable doubt that the accused beguiled and abducted the victim from the lawful custody of the complainant with intent to physically exploit her and committed 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 Sections 137(2), 87, 64(2)(i), 64(2)(m) of the Bharatiya Nyaya Sanhita and under Sections 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. At the outset, it is required to be noted that this is evidently a case of consensual love affair between the accused and the victim. It is also an evident from the testimony of the family members of the Victim, that the relationship between the Accused and the Victim is opposed by the family members of the victim, which has given rise to the present prosecution. The Investigating Officer (PW-10) also admitted that it was revealed during his investigation that there were love affair between the accused and the victim and there was no evidence found that the accused had committed any force upon the victim. Moreover, the victim's own testimony in no uncertain terms bespeak of deep sense of affection and love for the accused. I have already reproduced the entire testimony of the victim in verbatim in the foregoing paragraph. For lucid appreciation, let me re-appreciate victims testimony.
- 12.1. Victim stated that accused used to come near her house at his friend's house and at that time, they got acquainted with each other. Thereafter, there was love affair between them. The accused had brought her one simple mobile phone through which, they used to regularly talk with each other. Victim stated that she used to sleep alone in the bedroom in the rear part of the house, where she used to call the accused. The accused used to come from the backdoor and thereafter, they used to talk with each other and then get separated.

- 12.2.** Victim stated that once when she was talking on the phone, at that time she was caught by her grandfather. Thereafter, her grandfather took her mobile phone and broke the Sim Card. Victim stated that both her grandparents had admonished her. Victim stated that she informed the accused about the said incident, pursuant to which, she and accused decided to elope and get married.
- 12.3.** Thereafter, she left the house without informing anyone. Thereafter, from Kalol they went in a private vehicle to Vadodara and from Vadodara they went to Ahmedabad. At Ahmedabad, they stayed at some relative's house. Victim stated that the accused used to go for labour work and at night, they used to live like husband and wife and with her consent, they used to build physical relationship.
- 12.4.** Victim stated that thereafter she got pregnant and hence, they went to L. G. Hospital, Ahmedabad. Victim stated that thereafter, again they went to L. G. Hospital and at that time, the Kalol Police caught them. Victim further stated that thereafter she was sent for medical examination and she was interrogated by the Police. Victim stated that she had refused to go to her parents house and hence, she was sent to the Women Shelter House.
- 12.5.** Victim further stated that she had refused to terminate her pregnancy. Victim further testified that she had participated in other investigation work with the Police. Victim stated that thereafter she returned to her parents house. Thereafter, on 15.11.2025, she had give birth to a child.

- 12.6.** Victim stated that her child is taken care of by her father. Victim further volunteered that currently she is 18 years of age and she wants to marry the accused and go with the accused. Victim denied that the accused used to come behind her house and used to commit intercourse with her.
- 12.7.** In cross-examination, victim admitted that she was having affair with the accused since last two years. She further admitted that she used to talk with the accused over the phone, which was caught by her grandfather and thereafter, they had taken her phone. Victim admitted that her grandfather admonished her and hence, she had left the house on her own volition and went to Ahmedabad. Victim admitted that the accused had not beguiled her or induced her in any manner. Victim further admitted that the accused had never committed force upon her. Victim admitted that she was having love and affection for the accused and hence, she was staying with the accused at Ahmedabad.
- 12.8.** Considering the aforesaid testimony of the victim, this Court has examined the victim wherein the victim stated that the child belongs to the accused. Victim further stated that the child is taken care of by her grandparents. When this Court inquired from the victim that the accused had ever come to meet her or having taken care of a child, to which the victim answered in negative and she stated that since the present case is pending, the accused is not able to come to see her. Victim stated that she want to get marry accused only, but family is in opposition.

- 12.9.** Victim further stated that she and accused are having true love and the accused has never cheated her or lied to her and she has confidence and assurance that the accused would marry her and he would take care of her and her child. Victim further volunteered that she has already 18 years of age, but her family is confining her. She further prayed for the Court's assistance. Victim stated that her parents are not assaulting her, but they are only threatening her.
- 12.10.** At this stage it will also be pertinent to refer to Victim's Section 183 statement, wherein Victim had stated that she had gone with the accused on her willingness and there was no force meted by the accused. Similarly, even in her medical history the victim stated that she was having love affair with the accused.
- 12.11.** Thus, there is no modicum of doubt in the mind of the Court that the accused and the victim were having love affair and the victim had eloped with the accused willingly and voluntarily without any threat, pressure or inducement from the accused. Upon perusal of the testimony of the grandparents and the father of the victim, it is apparent that they are against the relationship of the victim with the accused as the accused does not have any family background and he also does not have his own house and he is living a nomadic life. The concern of the family members is certainly not misplaced, but even the wishes of the victim cannot be ignored. Moreover in consensual relationship, accused alone cannot be blamed and be made a scapegoat.

12.12. In the present case, it is evident that this is purely a case of consensual love affair between the accused and the victim. The entire relationship was built with the consent of the victim and no force or any inducement was meted by the accused upon the victim. Out of the said relationship even one child born. There is no evidence on record that Accused had any ill-will for the Victim or that his intention was to exploit the Victim. The fact that Accused has candidly admitted that the child belongs to him and that he want to keep the Victim and Child clearly shows his *bona fide*. Moreover, there is nothing on record before me to suspect any foul play. Thus, the facts are totally undisputed that accused and victim were having love affair, and out of their consensual relationship Victim had given birth to a Child.

12.13. Now, the only decisive factor is the Age of the Victim. If the Victim is proved to be minor below 18 year of age, then notwithstanding the consensual love affair between the parties or the wishes of the Victim, the Accused will still have to found guilty of having committed alleged offenses under the POCSO Act.

12.14. Hence let us now appreciate the evidence on record to see whether the prosecution has proved beyond reasonable doubt that the Victim was minor i.e. below 18 years of age, on the date incident. It has to be noted unless the Victim is positively proved to below 18 years of age on the date of incident, the offense under the POCSO Act will not applicable.

AGE OF THE VICTIM

13. At the outset, it is required to be noted that even as per the prosecution case the victim was aged 17 years, 1 month and 9 days on the date of incident and her date of birth is stated to be 29.02.2008. Thus, the victim was less than a year away from attaining her majority. The victim can be said to have been on the verge of becoming major. As noted hereinabove, this is purely a case of consensual love affair. Hence, it is only and only the age factor, that to with a margin of less than a year in Victim attaining majority, which will determine the fate of the Accused. Hence, it is extremely cardinal to thoroughly verify the age proof of the victim, in case of uncertainty, benefit has to be accorded to Accused.¹

13.1. Now, to prove the age of the victim, the prosecution has examined Talati-cum-Mantri of Bedhiya Gram Panchayat as PW-1, who testified that as per the Birth Register Entry No.18, the victim's date of birth is 29.02.2008 and her place of birth is "Bedhiya. The information with respect to her birth was given by one "Jashodaben Udabhai". In cross-examination, witness admitted that he had not registered the victim's birth and he cannot say that what evidence was produced before his predecessor.

¹ **State vs. Hitesh -2025 DHC : 944**

24. In cases like the present one, where the prosecutrix is nearly 17 years old (16 years, 10 months, and 21 days), and there is no conclusive proof of age as required under Section 94 of the JJ Act, it is unsafe to apply the provisions of the POCSO Act against the accused/respondent. I am of view that to convict an individual under the POCSO Act without definitive proof of the age of the prosecutrix, especially when the age difference between the prosecutrix and the age of majority is of only one or two years, would be harsh and unjust.

13.2. Thus, the victim's date of birth was not registered on the basis of Hospital Yadi or any contemporary birth documents of the victim, but it was registered only on the basis of information given by one "Jashodaben Udabhai". It may be noted that PW-1 testified that he cannot say who is this "Jashodaben Udabhai" and on what basis she had given information about Victim's Birth, however, from the charge-sheet papers it appears that "Jashodaben Udabhai" is the grandmother of the victim. Since the source of information with respect to Victim's birth registration is not any contemporary birth proof of the Victim, but is only the information furnished by 'Jashodaben', it is cardinal that prosecution proves the authenticity of source of information.²

² Alamelu & Anr vs State Rep.By Inspector Of Police - ABC 2012 (I) 217 SC

[...] However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined. [...]

39. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of Birad Mal Singhvi Vs. Anand Purohit¹, observed as follows:-

"The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents 1988 (Supp) SCC 604 have no probative value and the dates of birth as mentioned therein could not be accepted." [xxx]

40. In our opinion, the aforesaid burden of proof has not been discharged by the prosecution.

13.3. This Court had examined the grandmother of the victim as PW-9, who testified that she does not remember victim's date of birth. More importantly, PW-9 nowhere testified in her testimony that she had gone at the Birth Office for registering Victim's birth. She further stated that she is illiterate. As noted herein above, the victim's date of birth was not registered on the basis of any Hospital Yadi or any contemporary documents. Hence the authenticity of source of information on the basis of which Victim's date of birth was registered at the birth office was required to be established by the prosecution. However, the authenticity of the said information is not established in view of the testimony of PW-9, who specifically stated that she does not remember victim's date of birth and more importantly, she never testified of having given the victim's date of birth at the Birth Office.

13.4. It may further be noted that the prosecution has also examined the father of the victim as PW-7, who specifically admitted in cross-examination that he has not got the victim's date of birth registered at the Birth Office. Moreover, the grandfather of the victim stated that he does not know the victim's date of birth. Thus in view of the testimony of PW-7 and PW-9, there is no evidence that who had given Victim's date of birth at the Birth Office. Thus the prosecution has failed to prove the authenticity of the source of information, and hence such birth certificate of the Victim cannot be relied upon for want of probative value.

13.5.It is trite that though Entry made in Birth Register is admissible u/s 35 of the Evidence Act, however, it is also trite that admissibility of a document is one thing and the probative value of the document is another. A document may be admissible in evidence but still it cannot be relied upon for want of its probative value. The prosecution is required to not only prove the document but is also required to prove the correctness and authenticity of the contents of such document by leading cogent evidence.³

³ **Madan Mohan Singh And Others v. Rajni Kant – 2010 (9) SCC 209**

17. In *State of Bihar v. Radha Krishna Singh* (1983) 3 SCC 118 this Court dealt with a similar contention and held as under: (SCC pp.138,143&171, paras 40, 53 & 145)

“40. ... Admissibility of a document is one thing and its probative value quite another—these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.

53. ... where a report is given by a responsible officer, which is based on evidence of witnesses and documents and has a statutory flavour in that it is given not merely by an administrative officer but under the authority of a statute, its probative value would indeed be very high so as to be entitled to great weight.

145. (4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.”

18. Therefore, a document may be admissible, but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The aforesaid legal proposition stands fortified by the judgments of this Court in [xxxxxxx]. **In these cases, it has been held that even if the entry was made in an official record by the official concerned in the discharge of his official duty, it may have weight but still may require corroboration by the person on whose information the entry has been made and as to whether the entry so made has been exhibited and proved. The standard of proof required herein is the same as in other civil and criminal cases.**

19. Such entries may be in any public document i.e school register, voters' list or family register prepared under the Rules and Regulations, etc. in force, and may be admissible under Section 35 of the Evidence Act as held in *Mohd. Ikram Hussain v. State of U.P* AIR 1964 SC 1625 , (1964) 2 Cri LJ 590 and *Santenu Mitra v. State Of W.B .* (1998) 5 SCC 697 , AIR 1999 SC 1587

20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

13.6. Merely producing the Birth Register by itself would not prove the correctness of the Victim's date of birth entered therein. Prosecution is also required to prove the authenticity of the information based upon which such date was entered. Merely because some Birth Date is recorded in the Birth Register, it would not *ipso facto*, make such date of birth correct and genuine. The authenticity of the information, based upon which such date of birth was entered in the register, has to be proved by prosecution by examining the person on whose information such date was entered, and such person must specifically testify his personal knowledge about such information and vouchsafe to the truthfulness and correctness of such date of birth entered in the register.⁴ *Sans*, such evidence on record, Victim date of birth entry cannot be relied upon.

22. If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 and 61, etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time, etc. mentioned therein. (Vide Updesh Kumar v. Prithvi Singh [(2001) 2 SCC 524 : 2001 SCC (Cri) 1300 : 2001 SCC (L&S) 1063] and State of Punjab v. Mohinder Singh [(2005) 3 SCC 702 : AIR 2005 SC 1868].)

⁴Birad Mal Singhvi v. Anand Purohit - 1988 AIR SC 1796

An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded

In Raja Janaki Nath Roy v. Jyotish Chandra Acharya Chowdhury AIR 1941 Cal 41 a Division Bench of the Calcutta High Court discarded the entry in school register about the age of a party to the suit on the ground that there was no evidence to show on what material the entry in the register about the age of the plaintiff was made. The principle so laid down has been accepted by almost all the High Courts in the country, see Jagan Nath v. Mali Ram AIR 1951 Punj 377, Sakhi Ram v. Presiding Officer AIR 1966 Pat 459, Ghanchi Vora Samsuddisn Isabhai v. State of Gujarat AIR 1970 Guj 178 and Radha Kishan Tickoo v. Bhushan Lal Tickoo AIR 1971 J&K 62, In addition to these decisions the High Courts of Allahabad, Bombay, Madras have considered the question of probative value of an entry regarding the date of birth made in the scholar's register or in school certificate in election cases. The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made, is examined, [xxx]

13.7. The father of the victim PW-7 testified that the victim's date of birth is 29.02.2008, however, he admits the fact that he was married before 21 years and two years later the victim was born. If we accept the said timeline, then victim would be somewhere between 18-19 years on the date of incident, making the birth date testified by PW-7 doubtful.⁵ Though, the Victim testified her own date of birth but the same cannot be relied upon as being hearsay.⁶

⁵ SHYAM SINGH vs. STATE – 2025 : DHC : 1116 (Delhi High Court)

21. The chronology of the birth of his children as given above by PW-2 is detailed in the below table:-

<u>Age of PW-2 at the time of his marriage - 18 years</u>		
No. of the children of PW-2	Age of PW-2 at the time of birth of his children	Years after his marriage
1 st	20-21	2-3
2 nd		
(1 year after 1 st child)	21-22	3-4
3 rd		
(2 year after 2 nd child)	23-24	5-6
4 th		
(1 year after 3 rd child)	24-25	6-7

22. From the above calculation, if the age of the father is considered as 42 years on the date of his testimony, the age of the prosecutrix would be about 17 years on the date of the incident. However, on 22.08.2014, when PW-2 filed the missing complaint (Ex. PW-2/A), he stated his age to be 50 years old on the date of the complaint and as per this statement, the age of the prosecutrix would be about 24/25 years on the date of the incident.

23. Therefore, from the above discussion, it is clear that there is no clinching evidence with regard to the date of birth of the prosecutrix and the age of the prosecutrix at the date of the incident has been calculated primarily on guess work and speculation.

⁶Vithhal Ramaji Kamathe vs. State of Maharashtra : 2026:BHC-NAG:3414

8. As regards the date of birth and the age of the Victim is concerned, the evidence of the Victim's mother (PW-1) shows that, she did not remember the Victim's date of birth. **Though, the Victim herself deposed of her own date of birth, it would be inadmissible being hearsay.**

xxx

Therefore, it was necessary for the prosecution in the case at hand to prove the authenticity of the said birth certificate. Close scrutiny of the same shows that, the date of issue was 08.02.2021, which is undisputedly, after the FIR was lodged. Therefore, said Exh.51 cannot be considered to prove the date of birth and the age of the Victim. In absence of any other admissible evidence in respect of date of birth of the Victim, without hesitation, it is observed that, the prosecution failed to prove that, the Victim was the 'child' as defined under Section 2(d) of the POCSO i.e the Victim was below 18 years of age.

(Also See Naresh Ganbaji Kawankure vs. State of Maharashtra - 2026:BHC-NAG:4308)

13.8. Moreover, as per the evidence of the Medical Officer, victim's physical characteristics were developed like adult female. In such situation, prosecution ought to have got ossification test of the victim, however, no such test is performed. Under the circumstances besides the fact that authenticity of the birth certificate of the Victim being not established by the prosecution, the above surrounding circumstances cast reasonable doubt if the Victim was actually minor on the date of incident.

13.9. Victim's date of birth plays vital role in applying the harsh and draconian provisions of the POCSO Act, which also cast reverse burden upon the Accused and presumes the Accused to be guilty. Hence, if the victim's date of birth is not established by the prosecution by way of a full proof concrete evidence, in line with the provisions of the Evidence Act, then it will not be safe to apply the rigors of the POCSO Act upon the accused. Merely because some date of birth is entered in the Birth Register the same *ipso facto* cannot be taken to be true and correct, in absence of prosecution establishing its veracity and authenticity. The age of the Victim has to be determined by the Court as “fact in issue”, which has to be established by the prosecution by leading primary and cogent evidence. Even the surrounding circumstances has to be taken into consideration while determine the age of the Victim. It is trite that “harsher the law, stricter is the proof”.

6. [...] The evidence of the Victim in respect of her own date of birth is inadmissible being hearsay. [...]

13.10. At this stage I may profitably refer to the decision of Hon'ble Apex Court in case of **Manak Chand @ Mani**⁷, wherein it was a case of consensual love affair like the present case. The Victim was alleged to be 15 years of age, and Accused was 20 years of age. The Apex Court considered that the only factor which would make love affair a crime was age factor. In the said case, the only evidence produced for determination of Victim's age was School Register. The said school register was rendered doubtful. The Apex Court observed that in given situation, it would not be safe to only rely upon the School Register so as to determine the age of the Victim, and held that prosecution ought to had got ossification test for determination of the age of the Victim, which was not done. The Apex Court then considered the medical evidence which evinced that victim's secondary sexual characteristics were well developed, and that her external genitalia were fully developed and normal, and there were no injury mark on Victim. The Court then proceeded to record that it was probably a case of consensual love affair, and the age of the Accused-Boy was also 20 years of age. In such situation, the only factor which would make a crime was the age factor. Hence, considering that the only evidence presented by the prosecution was School Register, and there being no ossification test, the Hon'ble Apex Court held that no definite conclusion with respect to the Victim's age could be reached and thus acquitted the Accused.

⁷Manak Chand @ Mani vs. State of Haryana – 2023 INSC 959

13.11. The ratio laid down by the Hon'ble Apex Court in case of *Manak Chand @ Mani*, would squarely apply to the facts of the present case. I would deem it appropriate to reproduce the relevant observations as under:-

“In our opinion, the proof submitted by the prosecution with regard to the age of the prosecutrix in the form of the school register was not sufficient to arrive at a finding that the prosecutrix was less than sixteen years of age, especially when there were contradictory evidences before the Trial Court as to the age of the prosecutrix. It was neither safe nor fair to convict the accused, particularly when the age of the prosecutrix was such a crucial factor in the case.

Secondly, we cannot lose sight of the fact that since age was such a crucial factor in the present case, the prosecution should have done a bone ossification test for determination of the age of the prosecutrix. This has not been done in the present case. On the other hand, as per the clinical examination of the prosecutrix which was done by PW-1, Dr. Kulwinder Kaur on 28.10.2000 and which has also been referred to in the preceding paragraph of the present judgment, we find that the secondary sex characteristics of the prosecutrix were well developed. The doctor in her report mentions that the prosecutrix is a “well built adult female”. At another place it mentions “well developed pubic hair” and “external genitalia were fully developed and normal”. It then records her age as sixteen years as told to her by the mother of the prosecutrix. The report records that there were no external marks of injury over her breast, neck, face, abdomen and thigh. The report then concludes, inter alia, about her age as under:

“At the time of medical examination of the patient, no force seems to have been used against her. I cannot opine about the age of the patient on the basis of development of her pubic hairs and genitalia etc. The patient was habitual to sexual intercourse because her labia minora was hypertrophied and hymen admitted two fingers.”

The doctor has refrained from giving an opinion herself as to the age, but in the same report the age is recorded as sixteen years. Under the facts and circumstances of the case, what was required to be done was a bone ossification test in order to come to some reliable conclusion as to the age of the prosecutrix. This has evidently not been done. Moreover, it has also come in evidence that the mother of the prosecutrix too had said that her daughter was sixteen years of age.

10. We must also keep another relevant factor into consideration. This would be the relative age of the prosecutrix and the accused. The accused at the relevant time was less than 20 years of age, or about 20 years of age, as his age is mentioned as 20 years at the time of recording of his statement under Section 313, which is months later to the alleged incident. The fact that the prosecution has a case that initially the proposal of the marriage of prosecutrix with the appellant

was accepted by the family of the appellant and only when the appellant refused the offer of marriage that the FIR was finally lodged. All these factors point out towards the fact that what was alleged as rape was not rape but could be a consensual act. The only factor which could have made the consensual aspect immaterial and made it a case of 'rape' was the age of the prosecutrix. The medical evidence, however, points out that she is more than 16 years of age. The only evidence placed by the prosecution for establishing the DOB as 04.04.1987 i.e., the school register has not been conclusively proved.

11. Under these facts, and on the weight of the evidence placed before the Trial Court, we are of the considered opinion that as regarding the age of the prosecutrix, no definite conclusion could have been made. The prosecution has not successfully proved that the prosecutrix was less than sixteen years of age at the time of the alleged commission of the crime, and therefore the benefit ought to have been given to the appellant. Secondly, as to the factum of rape itself, we are not convinced that an offence of rape is made out in this case as it does not meet the ingredients of Rape as defined under Section 375 of the IPC, as we do not find any evidence which may suggest that the appellant, even though had sexual intercourse with the prosecutrix, it was against her will or without her consent.”

13.12. As noted hereinabove, this is a purely case of consensual love affair between the accused and the victim and only the demarcating factor is the age of the victim, however, as the age of the victim is doubtful and further considering that she was on the verge of majority and considering such half-baked, uncorroborated and unauthentic proof with respect to the age of the victim, I am of the view that it cannot be said to have been proved beyond reasonable doubt that the victim was minor on the date of incident.⁸ Under the circumstance benefit of the doubt has to be accorded to the Accused, and the Accused deserves to be acquitted from the offenses as charged.

⁸ **BIRKA SHIVA vs. THE STATE OF TELANGANA - 2025 INSC 863**

12. Well, suffice it to say that Courts of law cannot make a determination of guilt in thin air, based on estimations. In the present facts and circumstances, the proof submitted by the prosecution in the form of Ex.P11 (birth certificate issued by the school) was not sufficient to arrive at a finding that the prosecutrix was less than sixteen/eighteen years of age, especially when such a document was not sufficiently corroborated. Therefore, it was neither safe nor fair to convict the appellant based on it, particularly in the context where the age of the victim was such a pivotal factor.

14. Considering the aforesaid facts and circumstances and considering that the victim is not proved to be a minor and further considering that this is a case of consensual love affair between the accused and the victim and further specifically considering the testimony of the victim, I am of the view that no offence can be said to have been proved by the prosecution. Hence the Accused deserves to be acquitted from the offenses as charged. Under the circumstances, I pass the following order :

ORDER

- i. Under Section 258(1) of the Bharatiya Nagarik Suraksha Sanhita, the accused, namely, **ASHOKBHAI @PUNIYO CHANDUBHAI MAKVANA** is hereby **ACQUITTED** for the offences punishable under Sections 137(2), 87, 64(2)(i), 64(2)(m) of the Bharatiya Nyaya Sanhita and u/s. 4, 6, 12 of the Protection of Children from Sexual Offences Act.
- ii. Bail bonds of the accused stands canceled.
- iii. As per provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, the accused is directed to furnish fresh bond and like surety of Rs.5000/- before this Court.
- iv. Muddamal Articles to be destroyed after the Appeal period.

Pronounced in the open Court on 30th Day of July, 2026.

Date : 30/07/2026

Place : Halol.

Mustakim Bhala

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