



Received on : 13.06.2022  
Decided on : 25.03.2026  
Duration : 3Y 9M 12D

**FORM - A**

**Exh.\_\_\_\_\_**

<p align="center"><b>IN THE COURT OF SPECIAL (POCSO) JUDGE &amp; 3<sup>rd</sup> ADDITIONAL SESSIONS JUDGE, SURAT AT BARDOLI</b></p> <p align="center"><b>Present: PREET KAMAL TIRATH RAM</b></p> <p align="center">Date of Judgment : 25-03-2026</p> <p align="center"><b>Special POCSO Case No.72/2022</b></p> <p align="center">Kadodara GIDC Police Station</p> <p align="center">Part-A-Cr.R.No.11214023220397/2022</p>	
COMPLAINANT :	State of Gujarat
REPRESENTED BY :	Learned A.P.P. Mr. N.H. Patel
ACCUSED:	<b>Shyam Sureshbhai Mahadu Savant (Rajput)</b> Age : 24 years, Occupation : job Resi. of : House No. 133, Harekrishna Society, behind Sarvottam Hotel, Bagumara, Taluka : Palsana, District : Surat. Native : Village-Varud, Taluka : Singkheda, District : Dhuliya (Maharashtra)
REPRESENTED BY	Ld. Adv. Mr. C.B. Desai

**FORM - B**

Date of Offence	18-04-2022
Date of FIR	19-04-2022
Date of Charge-sheet	11-06-2022
Date of Framing of Charges	15-09-2022

Date of commencement of evidence	09-10-2024
Date on which judgment is reserved	20-03-2026
Date of the Judgment	25-03-2026
Date of the Sentencing Order, if any	Not applicable since the accused has been acquitted.

**Accused Details**

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or Convicted	Sentence	Period of Detention Undergone during Trial for purpose of section 428, Cr. PC
1	Shyam Sureshbhai Mahadusavant (Rajput)	22.04.2022	03.09.2022	Sec.363, 366 of IPC, sec. 3(1)(w)(i), 3(2)(5) of SC-ST Act, sec. 8 of POCSO Act	acquitted	--	4 months 19 days

**(A) Prosecution oral evidence:-**

Sr. No.	P.W.	Name of the witness	Ex.
1.	1	Vijaybhai Rambhai Patil, Panch witness	13
2.	2	Jijabrao Yograj Patil, Panch witness	15
3.	3	Nagraj Bhattubhai Patil, Panch witness	16
4.	4	Rajendra Bhurabhai Patil, Panch witness	18

5.	5	Complainant (father of complainant)	20
6.	6	Victim girl	24
7.	7	Dr. Arvind Maheshwarilal Ashthana, Medical Officer	29
8.	8	Bhargav Vinodray Pandya, Deputy Superintendent of Police	32
9.	9	Manish Manilal Chaudhari, Head Constable	35
10.	10	Sunilkumar Manubhai Patel, P.I.	41

**(B) List of Prosecution documentary evidence:-**

<b>Sr.No.</b>	<b>Particulars</b>	<b>Ex.</b>
1.	Order to take charge	36
2.	Index	37
3.	Complaint of the complainant and special statement and report to add section	21
4.	Panchnama of seizure clothes of the victim	14
5.	Panchnama of body conditions of the accused	17
6.	School Leaving Certificate of the victim	22
7.	Caste certificate of the complainant	23
8.	Report of general examination and sample taken of the victim by the PHC, Kadodara	30
9.	Medical certificate of the victim given by the New Civil Hospital, Surat	33
10.	Report of general examination and sample taken of the accused by the PHC, Kadodara	26
11.	Dispatch note and authority certificate	42
12.	FSL Receipt of muddamal	43
13.	Forwarding letter of Report of FSL biology examination	44
14.	Report of FSL biology examination	45

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

**1.** Accused Shyam Sureshbhai Mahadu Savant

(Rajput), aged about : 24 years is facing trial emanating from FIR being I C.R.No. 11214023220397/2022 registered at Kadodara GIDC Police Station, Surat for the offence punishable under sections 363, 366 of Indian Penal Code ('the IPC" for short) and under sections 3(1)(w)(i), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('the SC-ST Act" for short) and under section 8 of Protection of Children From Sexual Offences Act, 2012 (' the POCSO Act' for short).

2. It is to be noted that to conceal the identity of the victim girl and her family members, the names of the victim girl and her family members have not been mentioned in the judgment. Hereinafter whenever the reference of the victim girl would come in the judgment, the same shall be called and referred to as the victim girl and whenever the reference of her family members would come in the judgment, the same shall be called and referred to as the mother, father, brother, sister etc. of the victim girl.

### **CASE OF THE PROSECUTION :**

3. Succinctly stated the case of the prosecution is that the father of the victim lodged the complaint in Kadodara GIDC police station stating therein that he belong to SC-ST community and the accused on dated 19-04-2022 at around 11.00 hours abducted his minor victim daughter aged 15 years, took her to Ahmedabad stayed there for three days by alluring her under the promise of marriage from his lawful guardianship. Therefore, FIR came to be registered against the accused under the aforementioned sections.

4. On the basis of the aforesaid complaint, police registered the FIR being I C.R.No. 11214023220397/2022 and on the basis of the said FIR, the Investigating Officer had recorded the statements U/s.161 of the Criminal Procedure Code (hereinafter referred as to “Cr.P.C.”) of the witnesses who were acquainted with the facts and circumstances of the incident. During the course of investigation various Panchnams were drawn. Yadi had been sent to Magistrate for recording statement of prosecutrix u/s.164 of Cr.P.C., obtained statement of the victim recorded u/s.164 of Cr.P.C., Muddamal had been sent for examination to FSL, obtained FSL receipt. After completion of investigation, i.o. has submitted the charge-sheet against accused Shyam Sureshbhai Mahadu Savant (Rajput) under sections 363, 366 of IPC, under sections 3(1)(w)(i), 3(2)(5) of the Scheduled Castes and Scheduled Tribes Act and under section 8 of Protection of Children From Sexual Offences Act, 2012 which came to be registered as special POCSO case no.72/2022.

5. The accused was arrested and was released on bail.

6. So, the summons was issued to the accused and the accused remained present before this court through his learned advocate and the accused has been given the free of cost copies of the police report and other documents U/s. 207 of the Cr.P.C. and the accused has engaged advocate for his defence. Thereafter, the charge was framed U/s. 228 of the Cr.P.C. vide Ex.9 on dated: 15-09-2022 by my learned Predecessor and it was read over to the accused. The accused pleaded not guilty in his plea recorded vide Ex.10 and claimed for trial.

7. In order to prove its case, the prosecution has examined as many as ten witnesses.

8. The learned A.P.P. has tendered closing Pursis vide Ex.46 stating that the prosecution does not want to examine more witnesses and closed its evidence by this Pursis.

**STATEMENT OF ACCUSED U/S. 313 Cr.P.C.:**

9. After completion of the evidence of the prosecution, all the incriminatory evidences put to the accused and his statement was recorded under section 313 of Cr.P.C. The accused denied all the incriminatory material and he took the defence that he is innocent and he has been falsely implicated in the alleged offence. He further stated that he does not wish to examine any witness or led any documentary evidences for his defence. Therefore, the case was fixed for final arguments.

**ARGUMENTS :-**

10. Learned Additional Public Prosecutor vehemently submitted that the age of the victim was 15 years at the time of incident. He further submitted that he has proved the case beyond reasonable doubt against the accused. It is further submitted that to prove its case the prosecution has examined the doctor and the I.O. Therefore the accused be held guilty for the commission of the offence.

11. On the other hand, Ld. Advocate Mr. C.B. Desai for the accused vehemently submitted that the material witnesses of the prosecution have turned hostile. He further submitted that the prosecution has miserably failed to prove that the age of the victim girl is less than 18 years. He further submitted that the complaint came to be lodged by the complainant against the

accused on the basis of suspicion. Nobody has seen the accused taking away the victim on the date of offence. He further submits that there is no substantial evidence against the present accused. Therefore, the accused cannot be convicted only the basis of the corroborative evidence of the doctor, Panch witnesses and Investigating Officer. Therefore, the accused is required to be acquitted from all the charges.

12. I have heard both the Id. Advocates and perused the case file carefully.

13. Upon hearing arguments, in the light of facts and circumstances available on record and as per section 354(1)(b) of the Criminal Procedure Code following points for determination arise in the present case:

**POINTS FOR DETERMINATION**

1. Whether the prosecution proves that on dated 18-04-2022, the victim was minor ?
2. Whether the prosecution proves beyond reasonable doubt that, the accused knowing well that victim belongs to SC-ST community and accused on dated 18-04-2022 at around 11.00 hours abducted minor victim daughter aged 15 years from lawful guardianship of the complainant, took her to Ahmedabad stayed there for three days by enticing her under the promise of marriage thereby committed the offence punishable under sections 363, 366 of IPC, under sections 3(1)(w)(i), 3(2)(5) of SC-ST Act and under section 8 of POCSO Act ?
3. What order ?

**ANSWERS TO THE AFORESAID POINTS OF DETERMINATION:**

**14.** The answers to the aforesaid points of determination are as under:

- (1) In Negative
- (2) In Negative
- (3) As per final order

**: REASONS :**

**ISSUE No. 1:**

**15.** As per sections (2)(d) of POCSO Act, the prosecution is required to firstly prove that the victim was below 18 years when the offence was committed. Before discussing the evidence on record with regard to age of victim, following provisions and pronouncements are required to be considered.

***Juvenile Justice Care and Protection of Children Act, 2015.***

***S.94 Presumption and determination of age.***

*(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*

*(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-*

*(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*

*(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;*

*(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical*

*age determination test conducted on the orders of the Committee or the Board:*

*Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.*

*(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.*

**16. The Hon'ble Apex Court in case of *Jarnail Singh vs State of Haryana, (2013) 7 SCC 263*, held that :-**

*“Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.”*

**17. Considering the above settled legal position,**

perusing the testimony of complainant who is father of victim, he has been examined as PW-5 vide Exh.20, wherein he has stated that victim is aged 15 years but he does not remember his date of birth. He has also produced xerox copy of school leaving certificate vide Exh. 22 in which her date of birth is mentioned as 16-03-2007. During his cross examination he has stated that he did not produce the school leaving certificate at the time of filing of the complaint. He further states that he did not enter the date of birth of victim in office of birth and death registrar. He further states that he did not mention date of birth of victim in the complaint. He further states that the victim is working in the factory an year prior to the alleged incident. He further states that he is aware of the fact that a person above 18 years of age is hired in the factory in the labour work.

**18.** The minor victim is examined as PW-6 vide Exh.24. She stated that she is residing at Surat and her date of birth is 16-03-2007. They are five brother and sisters, her mother had died 7 years ago. She is third child of her parents. During her cross examination she stated that she was working in a company and was getting salary from the company. She further states that she did not mention her date of birth in her statement before the police.

**19.** At the very outset it can be said that as per requirements of section 94 of JJ Act the prosecution has produced xerox copy of school leaving certificate of the victim as available at Exhibit:22, which also appears to be relevant under section 35 of the IEA. Section 35 OF IEA is as follows:

***S.35 : Relevancy of entry in public record [or an electronic record] made in performance of duty: An entry in any public or***

*other official book, register or 1[record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or 1[record or an electronic record] is kept, is itself a relevant fact.*

But the important question which arises here is that even though the prosecution has exhibited the xerox copy of document as available at Exhibit: 22 but whether the prosecution has also proved the contents of the same to be true ?

20. It has been held by Hon'ble Supreme Court in **Mousam Singha Roy & Ors. Versus State of West Bengal reported in 2003 12 SCC 377,**

*“28. It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.”*

21. In light of aforesaid well settled legal proposition it is necessary to examine the nature of the document as available at Exhibit: 22 which even though exhibited but can not be said to be proved since same is not a primary evidence as per requirement of section 62 of IEA.

22. It is a well settled law that *“mere exhibition of the documents does not dispense with its proof”*. Reference in this context is invited to ratio decided culled out by **Hon'ble Supreme Court in “Sait Tarajee Khim Chand and other Vs. Yelamarti Satyam and others” reported in 1971 AIR SC 1865,** which has subsequently been followed by the various other judgments.

In the case of **Narbada Devi Gupta Vs. Birendra Kumar Jaiswal reported in (2003) 8 SCC 745,** wherein Hon'ble

Supreme Court has observed as follows:-

*“The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the “evidence of those persons who can vouchsafe for the truth of the facts in issue.”*

23. As such a xerox copy (Exhibit:22 in the present case) can not be admitted in the evidence as the contents of the document has not been proved. Further, its issuance has not been proved by the prosecution by examining the concerned witness from the school of the victim. In the considered opinion of this Court the victim of the present case is not a person to prove the aforesaid document in absence of examination of such a material witness from school of the victim. That being the position in absence of any proof Exhibit: 22 even though it has been exhibited can not be relied upon for the purposes of proving the age of the victim. More when complainant i.e father of victim in his testimony has sated that her victim daughter was aged 15 years but he does not remember the date of birth of the victim.

It would also be apt to refer para-25 of the judgment of the Supreme Court in **Sunil v. State of Haryana reported in 2010 (1) SCC 742** to the effect that,

*"25. The prosecution also failed to produce any Admission Form of the school which would have been primary evidence regarding the age of the prosecutrix. The School Leaving Certificate produced by the prosecution was also procured on 12.9.1996, six days after the incident and three days after the arrest of the appellant. As per that certificate also, she joined the school in the middle of the session and left the school in the middle of the session. The attendance in the school of 100 days is also not reliable. The prosecutrix was admitted in the school by Ashok Kumar, her brother. The said Ashok Kumar was not examined. The alleged School Leaving Certificate on the basis of which the age was entered in the school was not produced."*

24. The victim in her deposition before the court has

stated her date of birth is 16-03-2007. Perusal of the Exh.22 reveals that the prosecution has produced xerox copy of school leaving certificate of the victim of 4th standard from District Primary School, Babukwadi, District : Dhule. The prosecution did not examine any witness from the school of the victim to prove the said document nor has produced the original certificate. It is further pertinent to mention that prosecution did not produce original certificate nor any record/ certificate from her school to prove age of victim nor has recorded the statement of the Principle of the school.

25. Perusal of the Exh. 22 xerox copy of school leaving certificate of victim reveals that the date of birth of the victim is mentioned as 16-03-2007 but the same could not have been duly proved.

26. In the wake of cumulative effect of aforementioned factual and legal position this Court is of the considered opinion, that the prosecution has failed to prove the age of victim as well as the fact that the victim was a minor child as on the day of occurrence beyond the shadow of reasonable doubt.

Hence, point for determination no.1 is hereby answered in Negative.

**ISSUE No. 2 & 3.**

27. As per settled principle of law, the prosecution has to prove its case beyond all reasonable doubts, whereas, the accused has to raise probable defence. However, in the POCSO Act vide sections 29 & 30, a mandatory presumption is required to be drawn against the accused. But such presumption would be drawn only when the prosecution successfully proves its basic case against the accused. Considering above principle of law, the

evidence of prosecution is discussed as below.

**27.1.** In every criminal trial, the trial begins with the presumption that the accused is innocent according to main principles of the criminal justice system. Under normal circumstances, the burden of proof in criminal proceedings rests with the complainant side. In the present case, the accused is charged with offences under the POCSO Act. The significance of the testimony of the prosecutrix in case of rape under this Act, General in the Sessions Cases, the injured person is considered more than witness. If the prosecutrix's testimony is found to be credible by the court, the testimony of such a prosecutrix does not require other supporting evidence and based on the evidence of the sole prosecutrix, the accused can be found guilty in the case. In this regard, in the judgments of Hon'ble Supreme Court as well as the Hon'ble Gujarat High Court have made it clear that the testimony or evidence of the prosecutrix does not become unreliable due to the contradictions or exaggerated stories or flows in the minor details filed during the testimony of such prosecutrix. In view of such legal situation, it remains to evaluate the evidence produced by the complainant side in the present case.

**28.** I have considered the submissions of learned advocates for the parties and record. It is settled proposition of law that the prosecution has to prove the case beyond reasonable doubt. It is also settled proposition of law the prosecution has to stand its own leg and it can not take the benefit of weakness of the defense of the accused.

**28.1** When there is a significant discrepancy between the

evidence of the star witness/prosecutrix/eye witness of the case and the medical evidence and especially who has not provided any supporting evidence to the case of prosecution side, the accused may not be found guilty. Such an advantage should be given to the accused only when there is a contradiction which is important and the main contradiction which affects the origin of the case. In addition when the prosecutrix in its deposition voluntarily states before the court that there was no incident as per the prosecution's side case and when other witnesses support her, there is no reason to doubt such evidence or reject such evidence. If the medical opinion indicates alternative possibility then it cannot be accepted as final.

**29.** Now, in the light of the aforesaid guidelines, the Court shall advert to discuss the oral and documentary evidence led by the prosecution to prove the guilt of the accused.

**30.** In the present case, the prosecution has examined as many as ten witnesses. The prosecution has examined the **Victim Girl** as **PW-6** at Ex.24 deposed that she is residing with her parents including five siblings. Her date of birth is 16-03-2007. Her mother died seven years ago. She is the third number child of her parents. She knows accused. On dated 18-04-2022 accused abducted her on his motorcycle while she was going near his house and took her to Sai Baba Temple. Thereafter, he took her to Ahmedabad through luxury bus. She was 15 years at that time. He took her to his sister's house but since victim was below the age of 18 years therefore, his sisters and brother in law refused to keep them in their house, hence, they stayed at railway station platform. Accused did not establish physical relation with her and

they came back after 3 days through luxury bus and went to Kadodara Police station. She was taken for medical check up. During her cross examination she refused to love affair with accused. She stated that on dated 21-04-2022 during her statement before police, she stated that she was working in H.S. Company and came in contact with Shyam Sureshbhai Savant. She many times used to talk with accused during night hours from his father's mobile. Therefore, they developed love affair and she used to frequently asked accused to take her from parental house. She further stated that she did not say that the accused took the advantage of her innocence before the police. She stated that she could understand her well being. She had no idea if someone commits crime than police would take him/her. She further deposed that during her statement before police on dated 21-04-2022 she had stated that from 18-04-2022 to 21-04-2022 she was with accused and during this period, accused neither establish physical relationship with her nor molested her nor they stayed in any guest house. She came back as she was minor and accused Shyam may get engulfed in criminal case. She herself went with accused. She refused that she called accused previous night. She further deposed that during her statement before police on dated 21-04-2022 she stated that in the night of 17-04-2022 she had whats app conversation with accused, she herself asked him to take her from her parents house but Shyam told her to talk to her father and not to take such steps as she is very young, but she insisted him and next day accused came on motorcycle and at 11.00 hours on 18-04-2022 in street No. 6 and she came there and went with him. She further stated that she was working in a company and was taking salary. She further

stated that she did not mention her date of birth during her statement before the police. She refused to have love affair with accused and accused kidnapped her.

In the nutshell, looking to the cross examination of the victim has exaggerated during many questions and there is lot of improvement in her statement before the court. There are many contradictions in her statement before the police and before the Court. In her statement before the police she did not say that it was the accused who took her to Ahmedabad through luxury bus rather during her statement before police on dated 21-04-2022 she stated that in the night of 17-04-2022 she had whats app conversation with accused, she herself asked him to take her from her parents house but Shyam told her to talk to her father and not to take such steps as she is very young, but she insisted him and next day accused came on motorcycle and at 11.00 hours on 18-04-2022 in street No. 6 and she left her house on her own and herself came there and went with him. At the same time she had categorically denied of establishing physical relationship by accused with her or any molestation at the hands of accused. It clearly transpires that she had made various improvements during her testimony, therefore, the victim cannot be considered as sterling witness whose deposition could have been relied upon without corroboration.

**31.** The prosecution has also examined the **father of Victim** as **PW-5** at **Ex.20**. He deposed that he is doing labour work and is residing along with his family including his four daughters and a son. Victim was aged 15 years on the date of alleged incident. He does not remember her date of birth of the victim. On the day of alleged incident i.e. on 18-04-2022 he was

away to Kadodara Char Rasta for labour work and victim was alone at home. Since, he could not get any work on that day, therefore, he came back home at 2.00 o'clock. He did not find her victim daughter and started searching her in the neighbourhood and from her relative also, but since victim was not found, he filed complaint before Kadodara police station. Thereafter, he got to know that Shyam has abducted her victim daughter. Victim is conversant with Hindi and Marathi language. Thereafter, police recovered her from Ahmedabad. Thereafter, her victim daughter told her that accused took her to Ahmedabad but why accused took her to Ahmedabad, he does not know. He belongs to schedule tribe Vagh community. During his cross examination he has stated that he did not name accused in his complaint. He did not produce school leaving certificate and caste certificate along with complaint. He further states that he did not enter the date of birth of victim in office of birth and death registrar. He further states that he did not mention date of birth of victim in the complaint. He further states that he is aware of the fact that a person above 18 years of age is hired in the factory in the labour work. He further states that the victim is working in the factory an year prior to the alleged incident. He further states that he did not mention that he belongs to scheduled caste Vagh community during his statement before the police. He further states that he mention during his statement before the police that his daughter was found and she told him that she was having love affair with Shyam Sureshbhai Savant and she asked her to took her to Ahmedabad, where they stayed near railway station, Maninagar, they did not stay in any guest house or any room nor Shyam established physical relationship with her. He further stated that

he went for admission of her victim daughter in school and some form was filled at their instance, he does not remember whether her date of birth proof was produced or not. He denied that her victim daughter went on her own and her victim daughter was above the age of 18 years.

In the nutshell, although, the complainant has stated that her daughter was below the age of 18 years and abducted by the accused but at the same time, he is stating that her victim daughter was working in a factory where the person above the age of 18 years of age hired for labour work. It appears that deposition of of the complainant is self contradictory. Further, he has not seen the accused abducting her victim daughter and it was victim who later told him about it, hence it can be safely assumed that he is hearsay witness. Further, it clearly transpires that she had made various improvements during his testimony before the Court.

**32.** The prosecution has examined **PW-1 to PW-4** namely Vijaybhai Rambhau at Ex.13, Jijabrao PW-2 vide Exh.15, Nagraj Batttubhai Patil vide Exh. 16, PW-4 Rajendra Bhurabhai Patil vide Exh. 18 wherein, they stated that Police called him in the police station where they had signed the already prepared Panchmana at Ex.14 and 17. However, they denied the contents of the Panchnama except their signatures.

**33.** The prosecution has examined **Dr. Arvind Maheshwarilal Ashthana has been examined** as **PW-7** vide **Exh.29** who had examined the victim. On dated 21-04-2022 victim was brought before him by W.P.C. Kabitaben along with the police Yadi had produced medical certificate vide Exh. 30 of victim. He has stated that the victim was 15 years old and was

unmarried. She has stated the history of the incident. Upon local examination of the victim, there was no internal or external marks present on the body of victim. There was no injury on her private part. Samples of blood, oral swab, pubic hairs, nail of the victim were collected and sent to FSL for examination and thereafter victim was referred Gynaec Department and for age determination to New Civil Hospital, Surat.

He proved the certificate vide Exh. P/30. During cross examination he stated that when the victim was brought before him she was physically and mentally normal. Consent of the mother of the victim was obtained before examination. He denied that victim has not disclosed any history and he has prepared the certificate as per police yadi.

**34.** The prosecution has also examined **Dy. S.P. Bhargav Vinodrao Pandya** as **PW-8** vide **Ex.32**, wherein he stated that he was serving as Dy. S.P. SC-ST Cell, Surat rural on dated 19-04-2022 a complaint was lodged under Section 363, the initial investigation was conducted by PSI S.M. Patel, since the complainant belonged to SC-ST community therefore, the same was handed over to him. Having sufficient evidence against the accused he filed charge-sheet against the accused. During cross examination he has stated that on dated 18-05-2022 he examined the certificate of date of birth of victim before making application for addition of section 8 of POCSO Act. He saw the medical certificate of the victim. He denied that no offence under section 8 of POCSO act is made out against the accused. He denied that Panchnama is required to be drawn before recovering any document. He voluntarily stated that the caste certificate was

procured by PSI S.M. Patil and, thereafter, the section under SC-ST Act was also added.

35. The prosecution has also examined **Manishbhai Manilal Chaudhari** as **PW-9** vide **Ex.35**, wherein he stated that he was serving in Kadodara GIDC police station on dated 19-04-2022 he was in charge of PSA, the complainant lodged a complaint before him and appended his thumb impression. Thereafter, he also signed. He has stated that complainant has registered the complaint vide CR No. 0397/2022 under section 363 of IPC and for further investigation the case was handed over to Mr. S.M. Patel. He identified his signatures on the charge order, index, station diary as available at Exh. P/36 to P/38 respectively.

36. The prosecution has also examined **P.I. Sunilkumar Manubhai Patel** as **PW-10** vide **Ex.41**, wherein he has stated that he was on his duty as a Police Inspector, Kadodara Police station and he had been forwarded this investigation by the P.S.O. Manish Manilal Chaudhary. On dated 21-04-2022 he recorded the statement of complainant and made an application for addition of section 366 of IPC. Thereafter, recorded the statement of victim, prepared Panchnama of clothes of victim and accused, arrest Panchnama of the accused. Thereafter, recorded statement of other witnesses, attached caste certificate of the victim with this case and as the case is atrocity, the same was handed over to Mr. Bhargav Pandya, SC-ST Cell for further investigation. Prepared dispatch note and forwarded the same to FSL, attached the FSL report with this case. He identified his signatures in

dispatch note, authority letter, FSL receipt of Muddamal, Report of FSL, forwarding letter for biological examination to FSL, report of biological examination by the FSL as available at Exh. P/42 to P/45.

In his cross examination he has stated that if any vehicle is used in any offence, the said vehicle should be seized. He has admitted that motorcycle of the accused has not been seized. He has admitted that he has neither gone to Ahmedabad for investigation nor recorded statement of driver of luxury bus. He has admitted that he has not recorded statement of sister and brother in law of the accused. He has admitted that statement of victim was recorded on 21-04-2022 and thereafter, accused was arrested on 22-04-2022. He has admitted that Panchnama of caste certificate and school leaving certificate of the victim was not done. He has admitted that he has not recorded statement of Principal or clerk of the school where the victim was studying. He has denied that false charge-sheet has been filed against the accused. He has admitted that mobile phone of accused and victim was not seized.

**37.** In the present case, neither the prosecutrix nor complainant i.e. her father have fully supported the facts of the case of the prosecution in their testimony vide Ex.20 and Ex.24. Perusal of the testimony of the I.O. further reveals that he neither went to Maninagar, Ahmedabad for investigation nor recorded the statement of sister and brother-in-law were they went.

**38.** For the offence under Section 363 and 366 of IPC the prosecution must establish the specific ingredients beyond

reasonable doubt. Section 363 requires to prove that the victim was minor and that accused took or enticed her out of her lawful guardian without consent of her guardian. Similarly, section 366 requires that the accused kidnapped or abducted a woman with the intent that she may be compelled or knowing that she will likely be compelled to marry against her will or forced into illicit intercourse. If it is proved on record that the victim was not a minor at a relevant point of time and was a consenting major who voluntarily accompanied the accused and even requested to take her, the foundational ingredients taking, enticement and absence of consent of the woman herself stands negated. In such circumstances, there is neither kidnapping from the lawful guardianship under section 363 nor requisite intent or compulsion under section 363 IPC, therefore, accused cannot be held to be liable or convicted under these provisions.

**39.** Coming to the present case, as already discussed in Issue no.1 that the prosecution failed to prove beyond reasonable doubt that the victim was minor at the time of the alleged incident. Further, it has also come on record that victim and accused got acquainted with each other while the victim was working in the factory, it is admitted by the victim that she used to call accused from her father's mobile phone. It has further come on record that the victim did not seek any help while she was being kidnapped by accused on his motor cycle or while she was being boarding in the luxury bus, since the bus stand is not an isolated place and she could have easily sought help but record does not reveal that any such efforts were being made by her. Not only this, but the victim, during her testimony has

specially stated that they were denied stay by the sister and brother-in-law of the accused in their house and therefore, they spent whole night at the railway station, Maninagar, Ahmedabad which again is place where there is constant movement of people, looking to testimony of the victim, it does not appear that she sought any help at this place. Hence, it appears that the victim being major had voluntarily accompanied the accused without any active persuasion or force by the accused and it does not constitute abduction or kidnapping. Further, the victim during her testimony never alleged any enticing or allurements for marriage or establishing physical relationship by the accused rather the victim in her testimony has denied of any molestation at the instance of the accused.

**40.** So far the allegation under sections 3(1)(w)(i), 3(2)(5) of Atro Act are concerned, to secure conviction under the section it is settled principle that prosecution must prove not only the commission of alleged act but must also prove the essential ingredient that the accused had the knowledge of the caste of the victim or triable identity of the victim. The offences under the Act are not made out merely by happening of the incident. Such knowledge is crucial element because the offence under the act is predicative on the victim belonging to scheduled caste or scheduled tribe and the accused intentionally targeted on that basis. Mere commission of an offence who happens to belong to protected category is not sufficient. It must be shown that accused was aware of the caste status of the victim at the time of the incident. Perusing the testimony of the victim, it is clear that the accused was not residing in the vicinity of the victim nor their

families had any proximity with each other. Rather it has come on record that the victim came in contact with accused 6-7 months ago while she was working in the factory. Hence in view of the discussion prosecution failed to establish as to whether the accused had the knowledge of the caste of the victim.

**41.** Based on above discussion and perusing the entire evidence of prosecution witnesses, it appears that the prosecution has utterly failed to prove that victim was minor and accused had kidnapped the victim girl to Ahmedabad and molested her. Moreover, when basic case of prosecution is not proved, there remains no question to raise presumption against the accused as per sections 29 of POCSO Act. Therefore, the accused is required to be acquitted from all the charges leveled against him and the benefit of doubt is required to be extended to accused. Hence, I decide point No.2 in the negative.

**ISSUE NO.3 :**

**42.** Considering the above discussion, I pass the following order in respect of issue No.3 :

**ORDER**

**[1]** Accused Shyam Sureshbhai Mahadu Savant (Rajput) is hereby acquitted from all the charges leveled against him vide I C.R.No. 11214023220397/2022 registered at Kadodara GIDC Police Station, Surat, for the offences punishable under sections 363, 366 of Indian Penal Code and under sections 3(1)(w)(i), 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 8 of Protection of Children From Sexual Offences Act, 2012.

[2] Muddamal articles, if any, be destroyed after expiry period of appeal. If appeal is preferred, then Muddamal be dealt with subject to order of Hon'ble Appellate Court.

[3] Bail bond stands canceled and surety is discharged, forthwith.

[4] The accused is directed to furnish a personal bond of **Rs.10,000/- (Rupees Ten Thousand Only)** and one surety of the like amount in accordance with section 437-A of the Code of Criminal Procedure,1973, to appear before the Higher Court, if any appeal is preferred against the judgment and the said bail bond shall be in force for a period of six months.

Pronounced in the Open Court today on **25<sup>th</sup> day of March, 2026.**

Date : 25/03/2026  
Place: Bardoli.

**(Preet Kamal Tirath Ram)**  
Special (POCSO) Judge & 3<sup>rd</sup> Additional  
Sessions Judge, Surat at Bardoli.  
UID. No.GJ 01594