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**IN THE FAST TRACK SPECIAL COURT OF
PROTECTION OF CHILDREN FROM SEXUAL
OFFENCES ACT CASE, SURAT &
IN COURT OF THE 2nd ADDITIONAL SESSIONS
JUDGE SURAT**

SPECIAL (POCSO) CASE NO. 283 / 2025

FORM-A

THE STATE OF GUJARAT	)	
Through Learned APP	)	COMPLAINANT
District & Sessions Court,	)	
Surat	)	

VERSUS

HARDIK DHIRUBHAI PARMAR	)	
Add:- New Padana Tenement, Village:	)	ACCUSED
Padana, Ta.: Lalpur, Jamnagar.	)	

**OFFENCE PUNISHABLE U/S 137(2),87,64(2)(M) OF THE
BHARATIYA NYAYA SANHITA, 2023 AND SECTIONS
4,6,11(4),12, OF THE POCSO**

APPEARANCES :

Learned APP **Shri. U. A. Patil** for the State.

Ld. Advocate **Shri. B. H. Sharma** for accused.

FORM -B

DATE OF OFFENCE	09/07/2025
DATE OF FIR	10/07/2025
DATE OF CHARGE-SHEET	20/08/2025
DATE OF FRAMING OF CHARGE	11/12/2025
DATE OF COMMENCEMENT OF EVIDENCE	03/01/2026
DATE ON WHICH JUDGMENT IS RESERVED	10/02/2026
DATE OF THE JUDGMENT	17/02/2026
DATE OF THE SENTENCING ORDER, IF ANY	-

ACCUSED DETAILS

Sr. No .	Accused	Date of Arrest	Date of Release on Bail	Offence Charged	Acquitted / Convicted	Sentence	Period of Detention
1	HARDIK DHIRUBHAI PARMAR	12/07/2025	29/07/2025	S.137(2),87,64(2)(M) OF THE BHARATIYA NYAYA SANHITA, 2023 AND SECTIONS 4,6,11(4),12, OF THE POCSO.	Acquitted	No	

FORM-C**(A) Prosecution witness:-**

Sr. No.	Rank	Exh No.	Name	Nature of Evidence
1	PW1	09	Father of the victim	Complainant
2	PW2	11	Victim	Witness
3	PW3	13	Dr. Hiren Dineshchandr Jadawala	Medical officer
4	PW4	18	Dr. Nisha Aashif Solanki	Medical officer
5	PW5	23	Mother of the victim	Witness
6	PW6	24	Kamalaben Kadubhai Rathod	Police witness
7	PW7	26	Atulbhai Bhanabhai Chaudhary	Police witness
8	PW8	28	Dr. Nidhi Lalitbhai Thummar	Medical officer
9	PW9	34	Sanjivkumar Ramnandbhai Patel	Police witness

B. Defence witness, if any: NIL

Sr.No.	Rank	Name of witness	Nature of evidence
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C. Court Witnesses, if any: NIL

Sr.No.	Rank	Name of witness	Nature of evidence
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List of Prosecution /Defence/Court Exhibits.**(A) Prosecution Documentary Evidences;]**

Sr. No.	Exh.No.	Description
1	10	FIR
2	12	Statement of under Section 183 of the victim.
3	14	Regarding conduction the medical examination of the victim and obtaining the certificate and samples.

4	15	Medical Case papers of the victim
5	16	Latter for forwarding samples of the victim.
6	17	Latter for forwarding samples of the victim.
7	19	MLC Report of the accused.
8	20	Forensic Medicine and Toxicology Examination of an accused of Sexual Offence.
9	21	Latter for forwarding samples of the accused
10	22	Identification form for DNA profiling of the Accused.
11	25	Station Diary.
12	27	Panchanama of the place of incident
13	29	Examination report of the victim
14	30	Panchanama of the place of incident
15	31	Panchanama of the place of incident
16	32	Panchnama of the cloth sized from the victim
17	33	Panchnama of the physical condition
18	35	Report for addition of Sections.
19	36	Copy of leaving certificate of the victim
20	37	Report regarding verification of the Victim's.
21	38	Site inspection report.
22	39	Dispatch Latter
23	40	Acknowledgment of receipt of Muddamal by the FSL.
25	41 to 46	Muddamal Receipts.

B. Defence documentary list, if any : NIL

Sr. No.	Name of witness	Nature of evidence
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C. Court witness documentary list, if any, : NIL

Sr.No.	Name of witness	Nature of evidence
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D. Material Objects:

Sr. No.	Article No.	Description
1	A	Maroon colored designer top(Kurti).
2	B	white Jeans.
3	C	A scarf with a design in different colors.
4	D	Khaki Colored full-sleeved shirt.
5	E	Gray night pants.
6	F	Blue colored shorts.

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

Name of the victim/prosecutrix is withheld and not disclosed as per the directions of the Hon'ble Supreme Court in the case of State of Karnataka Vs. Puttu Arsh, 2004 Cri.L.J. 12 and as per section 33(7) of the POCSO Act, hereinafter referred as "Victim/ prosecutrix"

1. The accused herein is prosecuted for the offences U/s.137(2),87,64(2)(M) of the Bharatiya Nyaya Sanhita, 2023 and Sections 4,6,11(4),12, of the Protection Of Children From Sexual Offences Act, 2012, registered vide I. C.R. No.11210021250836/2025 before Katargam Police Station, Surat.
2. The complaint in the instant case was lodged by the mother of the victim girl (name withheld), aged: 16 years 4 months 19 days at the time of incident, and the same is on record vide **Exh.10**.

3. The facts leading to the prosecution of the accused lie within a very narrow compass as under:-

3.1 The complainant-father of the victim has stated in the complaint that;

‘He is working in a furniture showroom, and living with his wife and their children in a rented flat situated at Ramdev Palace, opposite Ambedkar Hall, Amroli, Surat.’ It is contended that on 09/07/2025, his daughter-victim left their home in the morning to go her work at Devi Krupa Society in GIDC, Katargam. Later he went to his work and in the evening, his another daughter Kinjal called and informed him that victim had suddenly left saying she had a headache and went to purchase medicine, however she was not returned since then. He immediately searched her victim daughter in the society, nearby gardens, Surat Railway Station, Bus Stand, and various places in Surat, however she was not found. After conversant with the relatives and the neighbors, he came to know that the victim used to talk with a boy from their community. He strongly suspect that boy who lured his minor daughter by giving promise of marriage and abducted her. Hence, the complainant has lodged the complaint with the above stated allegations.

Investigation & Filing of charge-sheet

4. Accordingly, the P.S.O. of Police Station, Katargam Police Station, recorded the complaint, vide F.I.R. being

Cr. No. I- 11210021250836/2025 for the offences punishable U/s- 137(2), 87 of BNS and Sections 11(4),12, of the Protection Of Children From Sexual Offences Act, 2012. The I.O. has investigated the matter. Statement of the victim girl was recorded. Thereafter during the course of investigation, the IO has filed separate report for addition of Section 137(2),87,64(2)(M) of the Bharatiya Nyaya Sanhita, 2023 and Sections 4,6,11(4),12, of the Protection Of Children From Sexual Offences Act, 2012. The accused was arrested and sent for medical examination. During the course of medical examination of the accused, treating doctors took necessary samples of accused and handed over the same to Investigating Officer who sent the same to F.S.L. whereas the victim has not given her consent for medical examination. During the course of investigation, the I.O. recorded the statement of the witnesses U/s-161 of Cr.P.C. The cloths of the victim and cloths of the accused person were seized in presence of independent panchas by drawing the panchnama. The I.O. also drawn the panchnama of the place of incident and also seized the muddamal articles from there. On receiving the report of the F.S.L. and after completion of the investigation, the I.O. submitted the charge-sheet on 20/08/2025 vide Charge sheet No. 118/2025 and the same was registered as POCSO Case No. 283/2025.

5. After receiving the charge-sheet in the Court, as the accused in judicial custody, he was produced before the

court. Learned advocate appeared on behalf of the accused and accordingly, the copy of charge-sheet along with papers were supplied to the accused person in compliance to the Section-207 of Cr.P.C free of costs.

Charge

6. On 11/12/2025, the **charges** U/s. 137(2), 87, 64(2)(m) of the Bharatiya Nyaya Sanhita, 2023 and Sections 4, 6, 11(4) & 12 of the Protection Of Children From Sexual Offences Act, 2012, were **framed** against the accused vide **Exh.07** under Section 228(1) of Criminal Procedure Code. The accused denied the charges and **pleaded** not guilty vide **Exh.08** and claimed trial therefore, the prosecution was directed to produce oral evidence as well as documentary evidence, if any, against the accused to prove his guilt.

Trial

7. In order to bring home the guilt of accused, prosecution has examined as many as **09 witnesses** and has produced the number of documents i.e. documentary evidence as stated above in **Form C**.

Further statement

8. After leading the oral and documentary evidences, the prosecution filed the closing and dropping pursis vide **Exh.49**. On culmination of prosecution evidence, accused was examined under Section-351 of the BNSS by putting all the questions. He has denied all the questions which

were put to him and has pleaded innocence as regards in the offence.

Rival contentions

9. Heard, learned Additional Public Prosecutor **Shri. U. A. Patil** for the State and learned advocate **Shri. B. H. Sharma** for the accused side in detail. The detailed arguments are hereinafter discussed while giving reasons.
10. In view of the rival contentions of Ld. A.P.P. and Ld. Adv. for the defence, the following points of determination arise for the Court to decide, as regards the guilt of the accused.

POINTS OF DETERMINATION

1. Whether the prosecution proves that the victim girl was minor at the time of commission of offence as alleged ?
2. Whether the prosecution proves beyond reasonable doubt that the accused has abducted/kidnapped minor girl victim from lawful guardianship, by enticed and allured, induced her against her will, or in order that she may be forced/seduced to illicit intercourse, and accused had committed repeated sexual penetrative assault and thereby the accused committed the offence of rape punishable under section 137(2), 87, 64(2)(m) of the Bharatiya Nyaya Sanhita, 2023 ?
3. Whether the prosecution proves beyond reasonable doubt that the accused committed the offence

punishable under section 4,6,11(4),12, of POCSO Act, 2012 ?

4. What order?

11. My findings on the aforesaid points of determination are as under.

- 1) In the affirmative,
- 2) In the negative,
- 3) In the negative,
- 4) As per final order.

DISCUSSION, DECISION & REASONS THEREOF:

POINT NO.1

12. It is alleged by the prosecution that on the day of incident, the victim-girl was minor about 16 years, 04 months and 19 days old. Therefore, it is the prime duty of the prosecution to prove that the victim was minor at the time of incident through cogent and satisfactory evidence.

12.1 Learned APP Mr. U. A. Patil has forcefully submitted that at the time of incident, the prosecutrix was minor aged about 16 years, 04 months and 19 days old and hence, she was minor. He specifically submitted that the date of birth of victim is 21/02/2009 as per her School Leaving Certificate vide Exh.36. Hence, the prosecution proved that the victim was minor at the time of incident.

- 13.** The learned advocate for the accused has submitted that the prosecution has not produced cogent and reliable document to prove the age of the victim at the time of incident. The Police has not recorded statement of independent witness to prove the age of victim. No ossification test or radiological test has been conducted by the medical officer to prove the age of victim. Hence, the prosecution failed to prove the age of victim.
- 14.** Let me scrutinize the ocular as well as documentary evidence adduced by the prosecution. The **PW-1** father of victim has deposed on oath vide **Exh.09** that the birth date of victim is 21/02/2009 and currently her age is 16 years, 11 months and 27 days. The victim **PW-2**, who is examined on oath vide **Exh.11** has deposed that her birth of date is 21/02/2009. The defence side has not asked any question in this regard. The evidence remained unchallenged and controverted and impliedly accepted the same. Thus, the evidence remained intact. It seems that the defence has implied accepted the age and birth date of victim.
- 14.1** It is to note that School Leaving Certificate of victim, **Exh. 36** is admitted by the defence side and under such circumstances, the document Exh. 36 is admissible in evidence. No objections raised by the other side about the contents of the said School Leaving Certificate. The positive and affirmative evidence produced by the prosecution in the nature of documentary evidence, which

is not disputed by the defence side. Further, at this stage, I would like to refer and consider the relevant provisions and judgment of Hon'ble Supreme Court in the case of **Madhya Pradesh Vs. Anop Sinh, Criminal Appeal No.442/2010**. In this regard, when the School Leaving Certificate of victim is admitted by the accused side which is produced at **Exh.36**, on perusal of Exh. 36, the date of birth is mentioned as 21.02.2009. Further, when the defence side has admitted this document, the same is admissible in evidence. Thus, there is no reasonable or proper ground to disbelieve the document School Leaving certificate produced vide Exh.36. No other contrary evidence is brought on record by the defence side. Hence, it is reasonably believed that the birth date of victim is 21/02/2009 and thus, the incident occurred on 09/07/2025 and therefore, on the date of incident, the victim was minor aged **16 years, 04 months and 19 days**. Thus, the prosecution has successfully proved that the victim was minor "child" i.e. below 18 years at the time of incident as per Section 2(d) of the POCSO Act. Thus, I answer the Issue No. 1 in **Affirmative**.

Issues No. 2 and 3

15. Both these issues are interconnected and intermingled, hence to avoid of repetition of discussion, both these issues are discussed together.

PROSECUTION ARGUMENT

16. Heard Ld. A.P.P., appearing for the State who has fairly conceded that though important witnesses have not supported the prosecution case, police witnesses and medical evidence are important and they have supported the prosecution case. By drawing the attention towards the evidence of police officials, it is submitted that the said evidence is sufficient to prove the alleged charges. He further submitted that the panchnamas are also proved and therefore, the prosecution successfully proved its case. It is vehemently submitted that at the time of offence, the victim was minor. The police officers have fully supported the case of prosecution case and on that such, the accused may be convicted. He further submitted that nowadays such type of incidents are increasing day by day and hence, the accused should be punished on the basis of evidence that has come on record.

DEFENCE ARGUMENT

17. While refuting, Ld. Advocate Shri B.H.Sharma appearing for the accused has contended that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt, and the evidence on record is too flimsy to convict the accused. He vehemently submitted that the evidence of victim is totally contradictory to the police statement and hence, her evidence is not supported the prosecution case. He further submitted that no injury internal or outside the body of victim found by the medical evidence and this fact assumes great importance.

He further submitted that no injury found on the victim's body which corroborates the evidence of victim that nothing untoward happened to her. The prosecution has to prove its case beyond reasonable doubt and more-so, when the victim-girl herself has not supported the prosecution version, the prosecution failed to prove the accusation.

- 17.1** By drawing the attention towards the medical evidence, it is submitted that when the victim has turned hostile, the corroborative evidence cannot be made the basis of proving the case of prosecution. In absence of evidence of victim, the history narrated by the medical officer cannot be considered. Lastly, learned counsel has forcefully submitted that the prosecution is miserably failed to prove its case beyond reasonable doubt and thus, he has prayed to acquit the accused accordingly.
- 18.** It is settled position that conviction can be based on the sole testimony of the prosecutrix, if it inspires confidence and that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration. That, there can be a conviction on the sole testimony of the victim/ prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. It is also fundamental principle of Criminal Jurisprudence that an accused is presumed to be innocent and therefore, burden lies on the prosecution to prove the

guilt of accused beyond reasonable doubt. It is to note that primary burden is for the prosecution to prove the foundational fact of the case by adducing cogent, trustworthy and reliable standard of evidence. Section 29 has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. Thus, without proof of foundational evidence in case under the POCSO Act, the onus to prove the reverse burden of proof does not come into operation. The statutory presumption cannot be taken to be absolute. In the case of **Sitaram Das vs. State of W.B., reported in 2020 SCC -522**, the Hon'ble Court has held in para-33 to 35 that;

.....para 33:- It is only on proof of foundational evidence being led, the onus gets shifted to accused to prove the contrary in order to discharge the reverse burden proof, as contemplated in section 29 of the POCSO Act.. It has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. The statutory presumption thus cannot be taken to be absolute.".. mere proof of medical evidence, which is nothing more than a corroborative piece of evidence, would not by itself pave the way for application of presumption available under section 29 of the POCSO Act.

Thus, the prosecution is under obligation to lay down the foundational facts before presumption can be drawn against the accused under section 29 and 30 of the POCSO Act, 2012. Now, let me consider the evidence adduced by the prosecution. Whether, the prosecution is able to prove the necessary ingredients of alleged offence? I have threadbare considered the ocular and

documentary evidence adduced by the prosecution. Having regard to the charges levelled, the fulcrum of the prosecution case logically is the testimony of the prosecutrix victim. Undeniably therefore, the credibility and trustworthiness of the victims' version is the decisive factor to adjudge the culpability of the accused. Indisputably, in the present case, the key prosecution witnesses have resiled from their previous statements given to the police, even the prosecutrix did not support the prosecution also. It is pertinent to note here that the important witness viz. **PW-2 victim herself**, who was examined vide **Exh.11**, **PW-1 Father of the victim** vide **Exh.09** have resiled from their previous versions narrated before the I.O.

19. The **star witness** of prosecution who is victim has been examined on oath. **The victim-PW-2** who was examined on oath at **Exh.11**. But, she has not supported the prosecution case. She is in fact the '**star witness**', however, for reasons best known to her has made a 'U' turn-summersault and has stated that nothing untoward had happened with her and has not supported the contents of police statement. She deposed that she has been residing for the last about two and a half year at Amroli, Surat, with her family consisting of her parents and five siblings, and that she is the youngest daughter born on 21/02/2009. She has stated that the incident occurred on 10/07/2025 when she was going to her job at Katargam

G.I.D.C., and that her family members were forcibly sending her to work, due to which she went to stay at her friend's house for two days and thereafter she returned back home at her own. After returning home, she went to the police station, where the police inquired only about her name and address and did not make any further inquiry, thereafter, she was taken to a doctor, who also asked only her name and address, and subsequently she was brought to Court, where the accompanying police persuaded her to state what before the Court. She has denied that the accused enticed her under the pretext of marriage, and took her away, or established physical relations with her, and further stated that she did not hand over any clothes to the police. She further stated that as the accused belongs to her community, she knows him. She identified the statement shown to her today from a green-colored cover as her statement recorded under Section 183 of the B.N.S.S. before the learned Magistrate as per the instruction of the police, bearing her signatures in both pages, which she is produced at **Exh.12**.

- 19.1** As the victim has not supported the case of prosecution, the victim after having being declared hostile and having been cross-examined by Ld. A.P.P. at length, has not affirmed the facts of her statement before the police. She denied the facts of her statement. In fact, she is the **star witness** and the very important witness of prosecution, eventhough she has not supported the version of

prosecution. She has totally denied the factum of any misconduct committed upon her. She has totally denied the factum of her statement.

19.2 The victim was cross-examined by the defence side, wherein she has admitted that due to quarrel at home, went to stay at her cousin's house. She further admitted that dispute used to arise between her and her father regarding her work. She has stated that the incident has not been occurred that she went anywhere outside with the accused or met him, and she had never kept any kind of relationship with the accused. She has admitted that she knows the accused as he belongs to her community. She further stated that the police had not recorded any kind of her statement.

20. Scrutiny of the evidence of victim, who is the important witnesses like prosecutrix infact floored the prosecution case in one go. She has straightway denied that when the compliant is filed, the accused has not committed any misconduct. She has totally denied the prosecution case. Thus, she has deposed contradictory to her statement under section 183 of BNSS. It is indeed shocking that the victim has totally not supported the version of prosecution. There is no evidence against the accused. The prosecution failed to bring on record the contents of statement recorded under section 183 of BNSS. Further, it is a settled law position that the statement made under section 183 of BNSS cannot be used as a substantive

piece of evidence. But it can be used for the purpose of corroboration. It can be used to cross-examine the persons who made it to show that the evidence of the witness is false but that does not establish that what she stated out of Court under this section is true. A statement made by a witness under section 183 of BNSS can be used for the purpose of cross-examining him and discrediting his evidence. As held in the judgment of ***Bisipati Padhan v/s. State in A.I.R. 1969 Orissa 289 : Ram Kishan –vs- Harmit A.I.R. 1972 SC 468, State v/s. Shriram Lohiya A.I.R. 1960 SC 490***, A statement of a witness section 183 of BNSS is not substantive evidence, but it is a former statement made before an authority legally competent to investigate the fact. Such a statement can be used either for corroboration of the testimony of a witness u/s 157 of the Act or for contradiction thereof u/s 145 of the Act. Hence, the statement recorded under section 183 of BNSS cannot be made the basis for convicting the accused in absence of direct evidence of victim. Pursuant to the say of her father, she has given her statement, under such circumstances, the statement under section 183 of BNSS is not a voluntary statement. Hence, also such statement cannot be relied. Thus, the essentials of the penetrative sexual assault etc. are not proved by the prosecution through cogent and reliable evidence. In the instant case, I find testimony of the victim untruthful and same is not reliable as she totally denied the contents of statement. The prosecutrix has given different version at

different stage. Under such circumstances, her evidence is not found trustworthy. In the deposition, she has stated that she was scolded by her father about household work, and therefore, she went at her friend's house without informing to anyone and returned back after 2 days and went to police station where asked only her name and address. Thereafter, she was brought before the doctor where also the police persuaded her to state what before the doctor. Not only that, she brought before the Magistrate where also, the police persuaded her to state what before the Magistrate. Hence, the evidence of prosecutrix remained under the clouds of doubt. She has not uttered a single word against the accused. Hence, the evidence of prosecutrix totally excluded the involvement of the accused. There is *no iota* of evidence to connect the accused with the alleged crime. Hence, the prosecution is failed to bring on record the necessary essentials of alleged offence through the deposition of victim. The evidence of prosecutrix victim is not helpful to the prosecution to prove the alleged charges of rape.

21. **PW-1 the complainant–father** of the victim was examined at **Exh.09**. He has deposed that he residing for the last about two and a half year at Amroli, Surat, along with his family consisting of his wife, one son, and four daughters, out of which the victim is the youngest, born on 21/02/2009. He has stated that approximately three months prior to the incident on the day of the occurrence,

he was present at his workplace at about 5:00 p.m. his third child informed him by phone that the victim had gone to purchase medicine, but did not return back home, thereafter, he returned home and searched her nearby society area, at Surat Railway Station, bus station, and at relatives', but she did not found, and as he suspected upon Hardik, who is son of the brother of his former landlord, he lodged a complaint at the police station. Later, he came to know that the accused had taken the victim with him to Jamnagar and he contacted the father of the Hardik and affirmed the said facts, then, his father brought the victim before Katargam Police Station, where he went there. He has stated that upon returning the victim at home, she did not disclose anything to him. He identified the accused present present before the Court. He has identified the complaint at Exh.10 and his signature also.

- 21.1 The father of the victim was cross-examined by the Ld. Adv. wherein he has admitted that he was at work at the time of the incident, that the incident did not occur in his presence, and that he had no direct knowledge of it. He further admitted that his daughter did not like to go her work, for that, the quarrel used to occur between them for that reason, but he denied that she left home due to such quarrel. He denied that he had neither read the complaint before signing it, nor further statement was recorded by the police after lodging the complaint. He stated that the

police inquired him whether he wanted to settle the case or pursue a case, except that no further inquiry has been made. He has admitted that the accused belongs to his community and his daughter used to talk to him, and therefore he filed the complaint on suspicion. He has denied that inspite of no incident had occurred, he has lodged false complaint against the accused.

Hence, considering the entire evidence, the contents of **Exh.10** complaint are not proved by the prosecution through the testimony of complainant. However, considering the same, the guilt of the accused cannot be proved.

22. **PW-5** the **mother** of the victim was examined at **Exh.23**. She has deposed that she has been residing for the last about two and a half year at Amroli, Surat, with her family. Her husband is engaged in furniture work and she has a son and four daughters, out of which the victim is the youngest. She did not remember date of birth of the victim. She has stated that the incident occurred about three months prior. On the day of the incident, she was present at home while the victim had gone her work at G.I.D.C. and on the 9th at about 5:00 p.m. she left from there, thereafter, her third child informed her husband over the phone that the victim went to purchase medicine and not returned back home. Her husband immediately returned back at home and searched the victim nearby society area, at Surat Railway Station, bus station, and at

relatives, but she did not find. They telephoned Dhirubhai, who is the father of the accused Hardik and informed them that the victim was not come here. Thereafter, her husband lodged a complaint before the police station. Subsequently, the police brought the victim before the police station and called them there, the police inquired with her husband and the victim, but did not make any inquiry her. She stated that she had no suspicion against anyone regarding who took her daughter away and that, nothing came to know. She further stated that the victim did not inform her that any person enticed her under the pretext of marriage, and taken her away, or established physical relations with her.

22.1 No cross-examination conducted for the mother of the victim.

23. Thus, the important witnesses like victim, her father and mother have not supported the case of prosecution. They have given clean chit to the accused. It is settled position that “In a case of rape, the victim prosecutrix is always a **star witness** of the occurrence. She is the only witness to say what happened with her. If her statement itself is found to be worthy of credence and is not shaken in cross examination, otherwise and her statement is found to be truthful and inspire confidence based on such evidence of the prosecutrix, punishment for rape, is permissible. Now, keeping in mind this position, in the instant case the victim herself denied the allegations of prosecution and

has completely given different version and thus, her evidence is not found worthy of credence and therefore, the evidence of such witness is found lack of trust. Such evidence is not helpful to the prosecution to prove the charges. Thus, the evidence of important witnesses is not helpful to the prosecution to prove the alleged charges of rape and kidnapping etc. Now, let me consider the medical evidence adduced by the prosecution.

Medical Evidence

24. PW-03 Dr. Hiren Dineshchandr Jadawala is examined vide **Exh. 13**. He has deposed on oath that on July 12, 2025, at 2:28 PM, while he was on duty at SMIMER Hospital, the victim brought by WLR Priyankaben B.No. 4274, alongwith police yadi of P.I. Mr.A.R.Patel of Katargam Police Station. The victim's mother was also with her. He has written the history as narrated by the victim. During the course of medical examination, her victim parameters were normal. No external injuries found. Urine pregnancy test is negative. Samples of blood, head hair, saliva, pubic hair, nails sealed were obtained and handed to WLR Priyankaben. Then, the victim referred to the Gynecology for swabs. He is identified her signature in police yadi Exh.14. He has produced carbon copy of MLC which is produced at Exh.15. The collected samples were sent to FSL for analysis with forwarding letter Exh.16 and also produced

DNA sample Form of the victim, where he identified the details, his signature and the seal which is produced at Exh.17.

24.1 In the cross-examination, he has admitted that when the victim brought before him, she was in a fully conscious. He has further admitted that when the victim brought before him, he referred police yadi. He also admitted that he had not seen any documentary proof regarding the age of the victim, but he wrote her age as per police yadi. However, he denied that he recorded the history of the victim merely on the basis of the police yadi.

25. **PW-04 Dr.Nisha Aashif Solanki** is examined vide **Exh.18**. She deposed on oath that she has been serving as a Medical Officer in the Emergency Department at SMIMER Hospital for the last two years. She has deposed that on 13/07/2025, while she was on duty, the accused was brought before her by L.R. Jayeshbhai, B.No. 5071, along with police yadi of P.I. Shri S.R. Patel of Katargam Police Station for medical examination and collection of necessary samples. He has written the history as per the version of the accused. He has opined that the accused was capable of performing sexual intercourse. He further stated that the vital parameters of the accused were normal and no external or internal injuries were found on his body. Samples of blood, EDTA blood, scalp hair, saliva, nail clippings, pubic hair, and DNA sample were collected and sealed, and the same

handed over to L.R. Jayeshbhai. He identified the carbon copy of the Medical case papers of the accused which is produced vide Exh.19 and identified his writing and signature. He has produced Medical Examination Report which is produced vide Exh.20 and identified his signature also. He sent the collected samples to FSL for analysis and handed over to Police person who received the same and obtained his signature, which is produced vide Exh.21. He further stated that prior to collecting the DNA sample of the accused, he prepared the prescribed consent form for DNA profile which is produced at Exh.22 and he identified his signature and seal.

25.1 In her cross-examination, she admitted that when the accused brought before her, she was in a fully conscious. She further admitted that he perused the police yadi before producing the accused before him. He has denied that he has written the history pursuant to police yaadi.

26. **PW-08 Dr. Nidhi Lalitbhai Thummar** is examined vide **Exh.28**. She has deposed on oath that on July 12, 2025, at 4:30 PM, while she was on duty as Gynecologist at SMIMER Hospital, the victim brought by W.L.R. Priyankaben B.No.4274 alongwith police yadi of PI of Katargam Police Station and, after obtaining consent from the victim and her mother, she has noted history as per version of the victim. During her medical examination, her vital parameters were normal and no external injuries found and her pregnancy test was

negative. The samples of swabs collected and handed over to the constable. She has identified her medical examination report which is produced at Exhibit-29, and identified her signature also.

26.1 In her cross-examination, she admitted that the victim was brought before her along with the police yadi, wherein the facts of the incident narrated. She further admitted that no external or internal injuries were found on the victim. She denied that she prepared the victim's medical papers and issued a false certificate pursuant to say by the police based on the police yadi. She stated that there can be many reasons for hymen rupture and that hymen can also rupture due to sports or other physical activities.

27. Evaluating the medical evidence, as a whole, it can be believed that the victim and accused were brought to the hospital for medical examination and necessary samples were taken from their body. It is also believed that the history recorded by the medical officer as narrated by the victim and accused, but when the victim herself has denied such fact before the court on oath, in absence of direct evidence, the medical evidence which is in the nature of corroborative evidence, such evidence is also not helpful to the prosecution to prove the charges. Further there is no injury caused to the victim as per medical case papers. There is no medical evidence to connect the accused with the alleged crime. Therefore, in

absence of main direct evidence, and in absence of supportive medical evidence, the prosecution failed to prove the charges.

Evidence of Police Officers

28. The prosecution has examined **PW-6 Kamalaben Kadubhai Rathod**, who has deposed on oath vide **Exh.24**. She has deposed that she has been serving as an A.S.I. at Katargam Police Station for the last two years. On 10/07/2025, the complainant appeared before her and given the complaint, which written as per his version and registered the offence in Katargam Police Station vide C.R. No. 0836/2025 for the offences punishable under Sections 137(2) and 87 of the B.N.S., and Sections 11(4) and 12 of the POCSO Act, and deputed the further investigation to P.I. Shri S.R. Patel. She identified the complaint shown to him at Exhibit.10 and identified signature of the complainant and his own signature. She has produced the certified copy of the relevant Station Diary entry at Exhibit.25.

28.1 In his cross-examination, he admitted that except registering the offence, he did not carry out any further investigation in the matter.

29. The prosecution has examined the police officer **PW-7-Atulbhai Bhanabhai Chaudhary**, who has deposed on oath vide **Exh.26**. The witness has deposed that he has

been serving as an Assistant Head Constable at Katargam Police Station for the last three years. In the present case, the IO Mr.S.R. Patel orally instructed him to visit the place of occurrence at New Padana, Jamnagar, as shown by the victim, and to prepare a panchnama of the scene of offence. Accordingly, he went to New Padana Tournament area, Village Padana, Taluka Lalpur, District Jamnagar along with the victim, and in the presence of two independent panch witnesses, he has drawn the detailed panchnama of the place of offence as shown by the victim. He identified the panchnama of the scene of offence which is produced vide Exh.27 and also identified the signatures of both panch witnesses and his own signature.

29.1 In his cross-examination, he has admitted that he had not received any written order to go outside. He denied that he had not taken assistance from the local police at Jamnagar. He has denied that the panchnama Exh.27 was written in the police station at his own and obtained the signatures of panch witnesses.

30. The prosecution has examined the police officer **PW-9 Sanjivkumar Ramnandbhai Patel**, who has deposed on oath vide **Exh.34**. The witness has deposed that an A.H.C. at Katargam Police Station for the last three years, stated that on 10/07/2025 he received oral instructions from the P.I. to proceed to the place of occurrence shown by the victim, at New Padana, Jamnagar, and in the

presence of two independent panch witnesses he drawn the detailed panchnama of the scene of offence which is produced at Exh.27 and identified the signatures of the panch witnesses and his own signature. During the investigation, he recorded the complaint, registered the offence under relevant sections, and called FSL officer for visiting the place of offence, and the report for the same kept with the papers. He has stated that he verified the victim's age by obtaining her birth certificate, collected call details of the victim and accused through the nodal officer, recorded statements of related witnesses, and when the accused was arrested, he was sent to SMIMER Hospital for medical examination along with police yadi. He also conducted panchnama of the accused's body condition and seized the clothes worn at the time of the incident in the presence of two panch witnesses and arrested him accordingly. He has sated that when the victim was produced, her statement was recorded and the report of adding the offences under Section 64(2)(m) of B.N.S. and Sections 4 and 6 of the POCSO Act was submitted before the Court. He has proceeded to record the victim's statement under Section 183 of B.N.S.S. and her clothes were seized in the presence of two panch witnesses; the seized items sent for analysis to FSL by preparing Ravangi Yadi with forwarding letter. The sufficient evdinece came against the accused, he filed the charge-sheet against him before the competent Court. He identified the report for addition of sections at Exhibit.35,

the copy of the victim's school leaving certificate at Exhibit.36, the verification report from the school at Exhibit.37, the panchnama of the place of occurrence at Exhibit.30 and Exhibit.31, the panchnama of seized clothes at Exhibit.32, the panchnama of the accused's body condition at Exhibit.33, the FSL report at Exhibit.38, the forwarding letter at Exhibit.39, the receipt of the materials to FSL at Exhibit.40, and the seized clothes at Exhibit.41 to 46 respectively, in which identified the signatures of both panch witnesses and his own signature.

30.1 In his cross-examination, he denied that the signatures of the panch witnesses on the prepared panchnama were obtained in the police station. He further denied that the statements of witnesses were recorded consistent with the complaint. He also denied that, despite lack of sufficient evidence, a false charge-sheet was filed against the accused to support a false case.

31. It is pertinent to note here that whatever the investigating agency has proceeded for completion of procedure is only a matter of procedure and evidence in which cannot be treated on the evidence of fact. The oral evidence of IO and other witnesses, though corroborative, but cannot be supported to the case of the prosecution. The victim in her cross-examination has clearly stated that nothing happened with her and the accused has not committed any offence. Even, the entire testimonies of the police officers are

believed as it is, but their evidence is a corroborative evidence in nature. Hence, the evidence of police officials is not sufficient to connect the accused with the alleged crime. Thus, the evidence of police officers is not enough to prove the alleged charges also.

32. On evaluation of entire prosecution evidence, the prosecution failed to bring on record the trustworthy, credit-worthy and reliable evidence of important witnesses like victim. The star witness of prosecution has for the best reasons known to her resiled from her statement and given contradictory evidence before the court and therefore, such evidence does not support the prosecution to prove the guilt of accused. In view of the evidence which has come on record, the prosecution has failed to prove the case against the accused beyond reasonable doubt by leading cogent, reliable and trustworthy evidence.

33. POCSO Act is a special statute and having certain presumptions against the accused. But the prosecution has to first established the foundational facts to draw the presumptions against the accused. Meaning thereby, it has been established that the primary burden is for the prosecution to prove the foundational fact of the case by adducing cogent, trustworthy and reliable standard of evidence. Section 29 has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. Thus, without proof of

foundational evidence in case under POCSO Act, the onus to prove the reverse burden of proof does not come into operation. In the instant case on hand, when the victim has not supported the case of prosecution. There is no medical evidence against the accused. Under such circumstances, the presumptions under section 29 and 30 of the Act is also not helpful to the prosecution to prove the charges.

34. At this stage, I would like to refer the recent judgment of Hon'ble Gujarat High Court in the case of ***State Of Gujarat vs Kishanbhai Hakabhai Vaghodiya, CRIMINAL APPEAL NO. 29 of 2022, decided on 11.1.2022. In para-8 of the said judgment, it was observed that.....***

....." No doubt, the victim was minor at relevant time of incident i.e. on 23/12/2018; but on close scrutiny of the evidence of victim, she has clearly stated in her examination in chief that no any act of intercourse is committed by the respondent-accused. Whatsoever the evidence of physical relation disclosed by victim was prior to the lodgment of the FIR. The deposition of complainant also does not lead to infer that any of the ingredients of the offences are established / proved. Though the learned APP tried to prove the case on the basis of other corroborative evidence viz., medical history; but when from the deposition of the material evidence and more particularly star witness viz., victim-girl is examined, the act of committing sexual intercourse with the victim by respondent- accused is not proved. We are of the considered view that the prosecution is required to prove the ingredients of the offence through the evidence of victim first and if the evidence of victim does not disclose the occurrence of the offence as alleged against the respondent-accused, in that event, the Court cannot consider the appeal on the basis of other corroborative evidence viz., medical history given before the Doctor/s who were examined as PW 3 and 4. It is also

relevant to note that complainant has specifically disclosed before the Court that victim-girl has not disclosed anything before the complainant with regard to incident in question. Under the circumstances, the learned trial Judge has rightly acquitted the respondent- accused for the elaborate reasons stated in the impugned judgment and we also endorse the view/finding of the learned trial Judge leading to the acquittal....."

35. At the cost of repetition, it is pertinent to note that when the victim herself has not supported the case of prosecution, the entire case fails on that count as no medical supportive evidence is produced by the prosecution. In view of the aforesaid entire evidence, inspite of the fact that the prosecution has examined as many as **9** witnesses and has produced a list of documents, it has miserably and grossly failed to prove the guilt of the accused. The prosecution being required to prove its case beyond reasonable doubt and has to stand on its own feet, is the basic canon of criminal jurisprudence. The prosecution cannot take refuge in any of the infirmities or lacuna on part of the accused. The victim is the important source of evidence in rape cases. The evidence of victim must be credit-worthy and trustworthy and reliable to convict the accused. Gravity of offence cannot overweight legal proof. As discussed above, the star witness has not supported the case of prosecution and has gave total different version, her evidence is not found credit-worthy, trustworthy and reliable and therefore, her evidence is not helpful to the prosecution to prove the **Exh.07** charges.

36. As the victim has not supported the prosecution case, it seems that nothing happened with her and thus, there was no mental trauma or physical or mental injury caused to the victim and therefore, this is not a fit case to award compensation to the victim and accordingly, no compensation is awarded to the victim. In the event, the prosecution being unable to succeed in proving the guilt of the accused, accordingly, I answer the point Nos.2 and 3 in the 'negative'.

POINT NO.4

37. Having regard to the appreciation of material and evidence and totality of the facts and circumstances, I hold that the prosecution has not been able to prove the guilt of the accused beyond reasonable doubt. In view of the above discussion, when the prosecution has totally failed to prove the allegations leveled against the accused, the accused is entitled to get the benefit of doubt and thus, this Court would like to extend benefit of doubt in favour of the accused and pass the following final order in the interest of justice.

FINAL ORDER

1. Under Section 258(1) of BNSS, the accused **HARDIK DHIRUBHAI PARMAR** is ordered to be acquitted from all the charges leveled against him viz. Under Sections 137(2), 87, 64(2)(m) of the B.N.S, 2023 and Sections

4,6,11(4),12, of the Protection Of Children From Sexual Offences Act, 2012 [Katargam Police Station Part-‘I’ C.R. No.11210021250836/2025] by extending the benefit of doubt.

2. As per the provision of Section 481 of the BNSS, the accused is hereby ordered to execute bail bond of Rs.10,000/- (Rupees Ten Thousand only) with a surety of like amount, for a period of six months, for their appearance in case of appeal or revision being filed against this judgment before the higher Court.
3. Muddamal articles be disposed of after the appeal period is over as per the Criminal Manual and if appeal is filed then as per the direction of the Appellate Court.
4. As per para-349 of the Criminal Manual, all unexhibited documents are ordered to be returned to the Investigating Officer.

Seal, signed and pronounced in open Court today i.e. on 17th February, 2026.

Date : 17/02/2026
Place: Surat

//vivek//

[Rakesh Rajnikant Bhatt]
Special Judge
Fast Track Special Court &
2nd Additional Sessions Judge
Surat Code No. GJ00608