


MHGO010000232024		Presented on : 03.01.2024 Registered on : 03.01.2024 Decided on : 11.05.2026 Duration : 02Y. 04M. 09D.
<b><u>IN THE COURT OF SESSIONS JUDGE AND SPECIAL JUDGE, GONDIA</u></b> (Presided over by K. N. Gautam)		
<b><u>Date of Judgment : 11.05.2026</u></b>		
<b>SPECIAL (POCSO) CASE NO.04/2024</b>		<b>Exh.No.</b>
(Crime No.371/2023 of Police Station, Amgaon)		
<b><u>Under Sections 363 and 376(2)(n) of the Indian Penal Code, Section 6 of Protection of Children from Sexual Offences Act and Sections 9 and 11 of Prohibition of Child Marriage Act.</u></b>		
<b>Prosecution</b>		The State of Maharashtra, Through Officer In-charge of Police Station, Amgaon, Tah. and Dist. Gondia.
<b>Represented by</b>		Mr. K. D. Pardhi, APP for the State.
<b>Accused</b>	1.	Nitesh s/o Chaitram Funde, Aged about 24 years, Occu.: Labour, R/o Bangaon, Tah. Amgaon, Distt. Gondia.
	2.	Chaitram s/o Dauna Funde, Aged about 52 years, Occu.: Labour, R/o Bangaon, Tah. Amgaon, Distt. Gondia.
	3.	Geeta w/o Chaitram Funde, Aged about 45 years, Occu.: Labour, R/o Bangaon, Tah. Amgaon, Distt. Gondia.
<b>Represented by</b>		Mr. R. N. Bhajipale, Advocate for accused.

Date of offence	:	November, 2022 to 31/10/2023
Date of FIR	:	01/11/2023
Date of Charge-sheet	:	03/01/2024

Date of framing Charge	:	26/09/2023
Date of commencement of evidence	:	13/01/2025
Date on which judgment is reserved	:	--
Date of Judgment	:	11/05/2026
Date of sentencing order if any	:	--

**Accused Details :**

Rank of the accused	Name of Accused	Date of Arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Sec. 428 of Cr. P. C.
1	Nitesh s/o Chaitram Funde	09.11.2023	19.12.2023	Sec. 363, 376(2)(n) of IPC, Sec. 6 of POCSO Act and Sec. 9, 11 of Prohibition of Child Marriage Act.	Acquitted	--	1 Month 11 days.
2.	Chaitram s/o Dauna Funde,	On anticipatory bail.	--	Sec. 363, 376(2)(n) of IPC, Sec. 6 of POCSO Act and Sec. 9, 11 of Prohibition of Child Marriage Act	Acquitted	--	--
3.	Geeta w/o Chaitram Funde,	On anticipatory bail.	--	Sec. 363, 376(2)(n) of IPC, Sec. 6 of POCSO Act and Sec. 9, 11 of Prohibition of Child Marriage Act	Acquitted	--	--

**LIST OF PROSECUTION/DEFENCE/COURT WITNESS**

**A- Prosecution :-**

Rank	Name	Nature of Evidence	Exh.
------	------	--------------------	------

PW-1	Victim (name as per charge-sheet)	Victim/ Informant	16
PW-2	Mother of victim (name as per charge-sheet)	mother	20
PW-3	Father of victim (name as per charge-sheet)	father	22
PW-4	Ramchandra Chandulal Chawala	Headmaster	27

**B - Defence Witness, if any :** -- Nil.

**C - Court Witness if any** -- Nil.

**LIST OF PROSECUTION/DEFENCE/COURT EXIHIBITS**

**A- Prosecution :-**

Sr. No.	Exhibit Number	Description
1.	09	Charge of accused.
2.	17	Report.
3.	18	Printed FIR.
4.	19	Statement of victim u/s 164 of Cr.PC.
5.	28	Copy of admission and discharge register.
6.	29	School leaving certificate of victim

**B- Defence :-** -- Nil.

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

(Delivered on 11.05.2026)

The accused stand trial for the offences punishable under Sections 363 and 376(2)(n) of the Indian Penal Code (hereinafter referred to as 'IPC' for the sake of brevity), for the offence punishable under Section 6 of the Protection of Children

from Sexual Offences Act (hereinafter referred to as 'POCSO Act' for the sake of brevity) and for the offence punishable under Sections 9 and 11 of Prohibition of Child Marriage Act (hereinafter referred to as 'Child Marriage Act' for the sake of brevity).

2. **Brief story of the prosecution case is as under :**

In the year 2021 the victim was doing job in private company at Balaghat. Accused No.1 used to come to Balaghat with his friend for playing cricket match. Accused No.1 used to play cricket match at Lalbarra, Balaghat and the victim used to see him while playing cricket. She gets acquainted with accused No.1 through her friend and they used to talk with each other on phone. The victim actually met the accused at Balaghat in October, 2022 and romantic relationship established between them. When the parents of the victim came to know about her love affair, they used to beat her and asking her not to talk with the accused No.1. In November, 2022 the accused kidnapped her from the custody of her parents and at that time she was minor. On 02.01.2023 accused No.1 performed marriage with the victim at Amgaon. The parents of the victim i.e. accused No. 2 and 3 were knowing well that the victim is minor even then they have performed her marriage with accused No.1. After marriage accused No.1 established sexual relations with the victim and she became pregnant from accused No.1 in February, 2023. She gave birth to child on 31.10.2023 at BGW Hospital, Gondia. On basis

of statement of victim recorded in BGW Hospital, Gondia on 31.10.2023 Crime No.371/2023 was registered against the accused persons by lady PSI Deepali Salunke. The investigation was also done by her.

3. PSI Deepali Salunke arrested the accused and conducted spot panchnama of the spot i.e. house of accused No.1. She seized memory card containing video recording of conducting spot panchnama. She seized memory card containing videography of recording of statement of victim. She sent the victim to BGW Hospital, Gondia for ascertaining her age. She sent the DNA samples collected by the Medical Officer of the accused, victim and new born child of the victim to Forensic Science Laboratory, Nagpur for analysis. She recorded statements of witnesses as per their say. She collected treatment papers of the victim from BGW Hospital, Gondia. At the end of investigation, she submitted charge-sheet against the accused persons in Special Court, Gondia.

4. The charge was framed by my learned predecessor vide Exh.09 on 26.09.2023 against the accused persons in respect of offences punishable under Section Sections 363 and 376(2)(n) of the Indian Penal Code, Section 6 of the Protection of Children from Sexual Offences Act and Sections 9 and 11 of Prohibition of Child Marriage Act, 2006. He explained the contents thereof to the accused in vernacular. The accused pleaded not guilty and

claimed to be tried. The defence of the accused is of total denial and false implication.

5. Heard learned APP Shri. K. D. Pardhi for the State and learned advocate Shri. R. N. Bhajipale for the accused. On hearing both the sides, following points arise for my determination with my findings thereon for reasons to follow:-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether prosecution prove that in November, 2022, accused No. 1 kidnapped the victim girl child, aged 17 years out of keeping of her lawful guardian?	... <b>Not Proved.</b>
2. Whether prosecution further prove that from November, 2022 to 31.10.2023 at Bangaon, Tah. Amgaon, Distt. Gondia, accused No. 1 repeatedly committed rape on victim girl child, aged 17 years?	... <b>Not proved.</b>
3. Whether prosecution further prove that on the same date, time and place, accused No. 1 committed penetrative sexual assault on victim girl child, aged 17 years repeatedly and more than once, due to which she became pregnant?	... <b>Not proved.</b>
4. Whether prosecution further prove that on 02.01.2023 at about 8:15 p.m. at village Bangaon, Tah. Amgaon, Distt. Gondia, accused No. 1 performed marriage with the victim girl child, aged 17 years knowing that she is minor?	... <b>Not proved.</b>

5. Whether prosecution further prove that on the same date, time and place, accused Nos. 2 and 3 in capacity of accused No.1 does an act to promote marriage of the victim girl child, aged 17 years and the accused No.1 by inviting people, participating and attending said marriage?

... **Not proved.**

6. What order?

**As per final order.**

## **REASONS**

### **AS TO ALL POINTS :**

6. In order to prove its case, the prosecution has examined total 4 witnesses and closed its evidence by filing pursis at Exh. 34. The statements of accused persons as per section 351 of BNSS were recorded at Exh. 35 to 37.

7. Before proceeding to scrutinize the evidence in detail it is essential to ascertain whether the victim was minor/child at the time of incident. Only when it is proved that the victim was child as defined in section 2(d) of the POCSO Act at the time of incident, then only the offence punishable under POCSO Act are made out against the accused. The burden is on the prosecution to prove that the age of victim on the date of occurrence was less than 18 years.

8. The victim (PW-1) deposed that her date of birth is 19.06.2004. The mother (PW-2) of the victim deposed that the

victim born in the year 2004. It means that she was 18 years old when she ran away with the accused No.1 in November 2022. In order to prove that the age of victim was less than 18 years, the prosecution mainly relied upon her school leaving certificate of the victim at Exh.29 and extract of Admission and Discharge Register at Exh.28 containing entry of the date of birth of the victim at Admission No.407 in said register. The prosecution has examined Headmaster Ramchandra Chawla (PW-4), serving in Government School, Awalazari, who proved said documents at Exh.28 and 29. However, Ramchandra (PW-4) has admitted in his evidence that the leaving certificate at Exh.29 shows that the victim taken admission in 9<sup>th</sup> standard. He has specifically admitted that he has not filed document on basis of which entry of date of birth of the victim is taken in Admission and Discharge. It is therefore quite clear from his evidence that entry in Admission and Leave Register at Exh.28 was taken on the basis of the school leaving certificate issued by the school, where the victim was studying prior to taking admission in Government School, Awalazari in 9<sup>th</sup> standard. It means that entry of date of birth of the victim was not taken in Exh.28 for the first time, but the information about date of birth of the victim was taken in Exh.28 from school leaving certificate issued by the previous school of the victim. However, the school leaving certificate issued by previous school has not been produced before this court. It is the duty of the prosecution to prove date of birth of

the victim from the record wherein initially the date of birth got recorded. Hence, the school leaving certificate of the victim at Exh.29 and the entry of her date of birth in extract of Admission and Discharge Register at Exh.28 are not reliable to prove date of birth of the victim. Thus, there is lack of reliable evidence to establish that the victim was minor. In support of my view, I relied upon the case of **State of Maharashtra Vs. Ramesh Babulal Rewatkar, 2017 ALL MR (Cri) 3980**, cited by the learned counsel for the accused, wherein the facts were that the prosecution claiming age of prosecutrix to be 15 years on the date of offence. To prove said claim, leaving certificate of secondary school as well as admission register of that school were brought on record. Those documents were based on leaving certificate of primary school. However, no data from primary school brought on record. The Hon'ble Bombay High Court held that "*Data of secondary school is therefore not reliable. Evidence from first attended school is necessary in such matters. Prosecution failed to establish status of victim as minor.*"

9. The provisions of the POCSO Act are stringent in nature. The prosecution is under bounden duty to prove the age of the victim to show that at the time of incident the victim was child within the meaning of Section 2(d) of the POCSO Act. However, the prosecution utterly failed to prove that the victim was child to bring the case within POCSO Act. Hence, the

offence punishable under Section 6 of POCSO Act is not made out against the accused No.1.

10. The prosecution has examined the victim (PW-1), her mother (PW-2) and her father (PW-3). However, none of them supported the prosecution case and turned hostile to the prosecution. Victim (PW-1) deposed that there was love affair between her and accused No.1 and she became pregnant from him. Thereafter, her marriage took place with accused No. 1 and at that time she was 19 years old. She deposed that it did not happen that in November, 2022 accused No.1 by inducing her took her with him and since then she was residing with accused No.1. She also deposed that it did not happen that on 02.01.2023 her marriage took place with accused No.1 and at that time she was minor. According to her, she was 19 years old when she begotten the child. Similarly, her mother (PW-2) deposed that she went with her friend without informing anybody. According to her, the victim was born in the year 2004 and her marriage took place with accused No.1 in the year 2024. She specifically deposed that the victim was more than 18 years of age, when she left the home. At the same time, the father of victim (PW-3) deposed that victim left the home in November, 2022 and at that time she was 19 years old. He deposed that the marriage of the victim and accused No.1 had taken place in the year 2024. Thus, there is absolutely nothing incriminating in the

evidence of the victim and her parents to prove the offences charged against the accused, hence liable to be discarded.

11. Therefore, after discussing and considering the evidence led by the prosecution, I arrived at the conclusion that there is absolutely nothing on record to prove that accused committed the offences charged against him. The prosecution utterly failed to bring home the guilt of the accused. Accordingly, I answered point Nos. 1 to 5 in the negative. In the result, I pass the following order:-

**ORDER**

1. Accused No.(1) Nitesh s/o Chaitram Funde, No.(2) Chaitram s/o Dauna Funde and No.(3) Geeta w/o Chaitram Funde are hereby acquitted under Section 258 of Bhartiya Nagarik Suraksha Sanhita of the offences punishable under Sections 363, 376(2)(n) of the Indian Penal Code, of the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act and of the offence punishable under Sections 9 and 11 of Prohibition of Child Marriage Act.
2. The bail bonds of the accused stand cancelled.
3. The case property which includes 2 memory cards being worthless be destroyed after expiry of period of appeal.
4. Accused to comply with the provisions of section 481 of BNSS and to furnish P. R. Bond of Rs.15,000/- each with one solvent surety in the like amount.

Gondia.  
Date : 11.05.2026.

(K. N. Gautam)  
Special Judge [Under POCSO Act] &  
Additional Sessions Judge, Gondia.

**CERTIFICATE**

I affirm that the contents of this P. D. F. file Order are same word for word as per original Order.

Name of the Court :- Shri. K. N. Gautam  
District Judge-3 and Additional  
Sessions Judge, Gondia.

Name of the Steno :- Shri. N. A. Borkar  
Stenographer (Grade-I)

Date of Order :- 11.05.2026

Order signed by  
presiding officer :- 11.05.2026

Order uploaded on :- 11.05.2026