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EXH. _____

**IN THE COURT OF SPECIAL JUDGE (POCSO) &
5th ADDITIONAL SESSIONS JUDGE,
SURAT AT BARDOLI**

[Date of the Judgment: **24/04/2025**]

SPECIAL POCSO CASE NO.87 OF 2022	
FIR No.	A-11214046220686/2022
Police Station	Palsana Police Station
Offences	Under Sections 363, 366 and 354(A) of IPC and under Section 8 of POCSO Act.
Complainant	The State of Gujarat
Represented by	Ld. APP Mr. N.H. Patel for the State
Accused	Bhavesh Ravindrabhai Patil Resi. Room No. 131, Harekrishna Residency, Bagumara, Taluka : Palsana, Surat.
Represented by	Ld. Advocate Mr. V.K. Shirshah
Date of offence	16.08.2022
Date of FIR	17.08.2022
Date of Charge-sheet	04.10.2022
Date of Framing of charges	20.10.2022
Date of commencement of evidence	21.11.2024
Date on which judgment is reserved	28.03.2025
Date of the Judgment	24.04.2025
Date of the Sentencing Order, if any	Not applicable

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Accused Details:-

Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or Convicted	Sentence imposed	Period of detention Undergone during Trial for purpose of Section 428 Cr.PC
Bhavesh Ravindrabhai Patil	19.08.2022	14.10.2022	U/s.363, 366,354(a) of IPC & u/S 8 of POCSO Act	Acquitted	--	1 month & 25 days

(A) Prosecution oral evidence:-

Rank	Name of the Witness	Exh.
PW-1	Complainant (father of victim)	11
PW-2	Victim	15
PW-3	Divyang Khansinh Chaudhary (P.I.)	23

(B) List of Documentary Evidence of Prosecution:-

Sr. No.	Exh. No.	Description
1.	12	Complaint
2.	13	School Leaving Certificate of the victim
3.	14	Birth certificate of the victim
4.	16	Panchnama of place of incident
5.	17	Panchnama of clothes worn by the victim
6.	18	Panchnama of body of the accused
7.	19	Treatment certificate of the victim

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8.	20	Treatment certificate of the accused
9.	21	Medical certificate of victim
10.	22	Medical certificate of victim
11.	24	Dispatch note
12.	25	Receipt of muddamal by the FSL
13.	26	Forwarding letter of muddamal by the FSL
14.	27	Report of biological examination

(C) Defence Witness:-

Rank	Name of the Witness	Exh.
--	NIL	--

J U D G M E N T

1. The accused is facing the charge of sections 363, 366, 354(A) of Indian Penal Code and under section 8 of Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short) and the charges were framed against the accused vide Exh.7.
2. The case of prosecution in nut shell is that on 16.08.2022 at about 6.45 hours accused had allured the minor victim aged about 17 years 4 months and touched her chest and kissed her and thereafter abducted her under the guise of solemnizing marriage from lawful guardianship of complainant. In above circumstances,

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the FIR was registered against the accused under Sections 363 and 366 of IPC.

3. After registration of FIR, investigation was commenced.

The Investigating officer firstly visited the place of offence and collected the samples as suggested by the FSL officer. During the course of investigation, sections 354(A) of IPC and section 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) were added. Thereafter, accused was arrested. The investigating officer had drawn various panchnamas, whereby, the cloths worn by victim and accused were seized. Thereafter, the I.O. obtained medical certificates and medical papers from the concerned Doctors. Upon receipt of FSL report, the charge-sheet was filed before the Special court, Bardoli, District Surat which was registered as POCSO Case No.87/2022.

4. The copies of final report was supplied to accused and upon finding *prima facie* case against the accused, the

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charge vide Exh.7 was framed against the accused for the offences punishable under section 363, 366, 354(A) of Indian Penal Code and under section 8 of Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for short). The charges were read over and explained to accused, to which, he pleaded not guilty and claimed to be tried vide his statement Exh.8 as envisaged under section 228 of Criminal Procedure Code.

5. In order to prove the case against the accused, the prosecution examined as many as 3 witnesses and produced various documentary evidences and thereafter closed its evidence vide closing pursis Exh.35. Thereafter, with a view to grant all opportunities, the statement of accused was recorded under section 313 of Criminal Procedure Code, wherein, the entire incriminating evidence was put before him, but he denied the same and stated that false complaint has been filed against him and he has not committed any offence and he is innocent and if kept behind bar, then, his future would be ruined.

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6. Ld. APP for the State has submitted that prosecution has proved its case beyond all reasonable doubts. It is submitted that the prosecution has successfully proved that the victim was minor at the time of incident. It is submitted that though victim and complainant have turned hostile the Investigating Officer has categorically deposed about the contentions of complaint and statement given by victim. It is lastly submitted that the presumption is required to be made against the accused for commission of offence. Based on above arguments, he prayed to convict the accused.

7. The learned advocate Mr. V.K. Shirshah on behalf of accused submitted that the prosecution has failed to prove its case beyond all reasonable doubts. It is submitted that there is no cogent evidence for ascertaining the age of victim. It is submitted that victim and complainant have turned hostile and have not supported the case of prosecution. Based on above submissions, it is prayed to acquit the accused.

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- 8.** Upon hearing arguments and considering the facts and circumstances of the case, following issues arise before me.

ISSUES

- (1) Whether the prosecution proves that on the date of incident, victim was minor?
- (2) Whether the prosecution proves that the accused knowing well that the victim is a minor, abducted the victim on 16.08.2022 at 6.45 hours and by touching on her chest and kissing on the lips, he molested the victim and thereby committed offence under Section 363, 366, 354(A) of IPC and under section 8 of POCSO Act?
- (3) What order?

- 9.** My answer to the aforesaid issues are as under:

- (1) In negative.
- (2) In negative.
- (3) As per final order.

REASONS

Issue No.1 :-

10. As per section (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-

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(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.

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

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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.”

11. In this case, the prosecution has produced school leaving certificate of victim vide Exh.13 and Xerox copy of birth certificate issued by Surat Municipal Corporation vide Exh.14. In these documents, the birth date of victim is mentioned as 29.03.2005, however, prosecution has not examined any authority who has issued these certificates. Mere exhibiting documents would not prove the contention of such documents. Moreover, the complainant i.e. father of victim, who has been examined as PW-1 vide Exh.11 stated that her daughter was 19 years old at the time of incident. The victim who is examined as PW-2 Exh.15 has also stated that she was 19 years old at the time of incident. Considering the above facts, it appears that the prosecution has failed to prove that the victim was minor at the time of incident. Hence, I answer issue No. 1 in negative.

ISSUE No. 2

12. 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.

13. The prosecution has examined **complainant who is father of victim as PW-1 at Exh.11**, who has deposed that on the day of incident, he went to his job and victim was at home and as there was quarrel between his daughter and wife with regard to house-hold work, she ran away to her maternal uncle's house. He denied that someone had kidnapped his daughter and molested her. The complainant has produced complaint with the Exh.12, however, he denied the contentions of such

complaint. The complainant has not supported the case of prosecution and hence, he was declared hostile.

In his cross-examination, he admitted that he does not know Gujarati language. He further admitted that police had only asked his name and address and he was not interrogated by police and he merely signed on the say of police.

- 14.** Thereafter, prosecution has examined **victim** as **PW-2 at Exh. 15**. She has deposed that her father had gone to his job and she was at home and as there was quarrel with her mother with regard to house-hold work, she ran away to her maternal uncle's house. She denied that someone had kidnapped her and molested her. As she has not supported the case of prosecution, she was declared hostile.

In her cross-examination she admitted that police had only asked her and address.

- 15.** Thereafter, the prosecution has examined **Divyang Khansinh Chaudhary as PW-3 vide Exh:23** who is

Investigating Officer. He deposed that he had investigated the case, wherein he had recorded statements of witnesses and statement of victim. He had arrested the accused and forwarding report for adding section 354(A) of IPC and Section 8 of POCSO Act and thereafter handed over further investigation to P.I. Mr. N.M. Prajapati. This witness has produced FSL papers vide Exh.24 to 27.

In his cross-examination he admitted that he had not verified the birth date of victim mentioned in birth certificate and he also admitted that he did not record the statement of any officer from Surat Municipal Corporation. He further admitted that he did not verified the school leaving certificate of victim and did not record the statement of any employee or teachers of the school. Considering the above evidence of I.O. it appears that he has carried out the investigation with regard to offences committed against the victim, however, in absence of any direct evidence against the accused, he

cannot be held liable merely on the basis of evidence of investigating officer.

16.Based on above discussion, it clearly transpires that the prosecution has utterly failed to prove that the accused had kidnapped the victim knowing well that she was minor and thereafter molested her. Moreover, when the prosecution is unable to prove its basic case against the accused, there would not be any question to raise presumption under Section 29 of POCSO Act. Accordingly, I answer Issue No.2 in negative and for Issue No.3, I pass following final order.

ORDER

- 1.** The accused **Bhavesh Ravindrabhai Patil** is hereby acquitted from the charges under Section 363, 366, 354(A) of Indian Penal Code and under section 8 of POCSO Act framed against him.
- 2.** Non-valuable Muddamal articles be destroyed after expiry of appeal period. If appeal is preferred, then

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muddamal be dealt with subject to order of Hon'ble Appellate Court.

3. The accused is hereby directed to submit fresh bail bond under Section 437(A) of the Criminal Procedure Code for a period of six months in a sum of Rs.10,000/- (Rupees Ten Thousand Only) with one surety of like amount.
4. Previous surety bonds of the accused stands discharged.

Pronounced and signed in the open Court today
on **24th day of April, 2025.**

Date: 24/04/2025
Place: Bardoli.

(ROBIN P. MOGERA)
Special Judge (POCSO) &
5th Additional Sessions Judge, Surat
at Bardoli.
UIC No.GJ01539