**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 2402 of 2026**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE ILESH J. VORA sd/-**

**and**
**HONOURABLE MR. JUSTICE R. T. VACHHANI sd/-**

==========

| Approved for Reporting | Yes | No |
|---|---|---|
| | | no |

==========

RAJESH VELJIBHAI CHAVDA
Versus
BHARAT RANCHHODBHAI VAGHELA & ANR.

==========

Appearance:
MS NAMRATA H DAVE(10172) for the Appellant(s) No. 1
MS VRUNDA SHAH ADDITIONAL PUBLIC PROSECUTOR for the Opponent(s)/Respondent(s) No. 2

==========

CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
**HONOURABLE MR. JUSTICE R. T. VACHHANI**

**Date : 23/10/2026**

**ORAL JUDGMENT**
**(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. Being aggrieved and dissatisfied by the judgment and order dated 25.03.2026 passed by the learned Special Judge (POCSO) & Additional Sessions Judge, Jamnagar in Special POCSO Case No.44 of 2024, whereby the learned Sessions Judge acquitted the accused from the charges under Sections 363, 366, 376(2)(n)

and Section 306 of the Indian Penal Code (for short, 'I.P.C.'), 1860, and Sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act (for short, 'POCSO Act'), 2012, the present appeal under Section 419 of the Bharatiya Nagarika Suraksha Sanhita (for short, 'BNSS'), 2023 has been preferred by the appellant herein.

2. For brevity and convenience, the parties are referred to as per their original status before the learned Sessions Court.

2.1 Brief facts of the case are as under:

3. The minor victim aged about 16 years and 5 months, was kidnapped from the lawful custody of her parents by the accused Bharat Ranchhodbhai Vaghela on 08.05.2024 at around 20:00 hours and rape was committed upon her. It is alleged that the accused was well aware that the victim was minor and still abducted her from the lawful custody of her guardian and committed rape upon her, and that he physically and mentally tortured the victim, due to which she committed suicide and an FIR came to be registered against the accused.

3.1 Upon registration of the offence, the I.O. proceeded to investigate the case. During the investigation, the I.O. visited the place of offence and collected the samples as suggested by the FSL Officer, arrested the accused, recorded the statements of the witnesses, drew various Panchnamas whereby the clothes worn by the victim and the accused were seized, and obtained the medical certificates and medical papers from the concerned doctors. After receiving the FSL report, the charge-sheet was filed before the Special Court, Jamnagar. At the end, the accused

came to be charge-sheeted for the offences as referred above.

3.2 The learned Sessions Judge framed charge to which the accused pleaded not guilty and claimed trial vide his statement Exh.08. Thereafter, the prosecution had tendered an application vide Exh.15 for addition of charge of Section 306 of I.P.C., which was allowed and added in the charge vide Exh.21, which was denied by the accused vide reply at Exh.22.

3.3 Before the learned Sessions Court, the prosecution had examined as many as 03 witnesses and produced various documentary evidences and thereafter, closed its evidence vide closing pursis Exh.60.

3.3 The learned Sessions Court recorded further statements of the accused as provided under Section 313 of Code of Criminal Procedure (for short, 'Cr.P.C.'), 1973, wherein, he claimed his innocence and stated that he has been falsely implicated in the offence. At the conclusion of the trial, the learned Sessions Court, vide judgment and order dated 25.03.2026, acquitted the respondent – accused for the offences as referred above.

3.4 Being aggrieved, the appellant has preferred the present appeal.

4. Submissions made on behalf of the appellant are as under:

4.1 It is submitted that the findings of acquittal are contrary to law and evidence on record and the findings recorded are palpably erroneous and based on the irrelevant material. It is submitted that the learned Sessions Court failed to appreciate

that, the victim was proved to be a minor, as PW-1 (Exh.12), the brother of the victim, had deposed that her date of birth was 30/11/2007 and that she was 16 years and 5 months old on the date of the incident, which is consistent with the birth proofs, municipal certificates and school records of Nirmala High School, Rajkot, brought on record through the verification reports (Exh.26 and Exh.27) submitted by the Investigating Officer (PW-3, Exh.46).

4.2 It is submitted that the learned Sessions Court has adopted a hyper-technical approach in holding that the minority is not proved only because the birth certificate was not separately exhibited; and that the learned Sessions Court ignored the presumption under Sections 29 and 30 of the POCSO Act, which place a strict mandatory presumption to assume the culpable mental state and the commission of sexual assault once the foundational facts are proved, and has wrongly cast the burden upon the prosecution to prove its case independent of those provisions.

4.3 It is further submitted that, the prosecution has proved an unbroken chain of circumstances, namely the victim going missing from Jamnagar on 08/05/2024, the telephone link from Adesar showing that she was in the custody of the accused, the discovery of her body in an uncultivated field area at Morbi (Makansar wadi) and the medical evidence showing death due to poisoning. It is submitted that the accused offered no explanation in his statement under Section 313 of Cr.P.C. as to how the victim came to be dead in his company, which is an additional link in the chain; and that the learned Sessions Court

ignored the 59 documents relied upon by the prosecution, including the Inquest Panchnama (Exh.29), the Arrest Panchnama (Exh.30), the Spot Panchnamas (Exh.28 and Exh.31), the medical papers and sample recovery documents (Exh.47, 49 and 50) and the FSL Biology and Serology Report (Exh.59), which corroborates the case of the prosecution.

4.4 It is also submitted that the learned Sessions Court wrongly treated the delay in lodging the FIR on 17/05/2024 as fatal, ignoring the explanation of PW-1 that the family was searching for the victim in several districts, arranging the post-mortem at Rajkot and performing her final rites; and that the learned Sessions Court placed undue weight on the fact that PW-1 was working in Surat when the victim left the house, though his absence does not affect the reliability of his evidence on the search, the phone tracking and the recovery of the body.

4.5 Upon foregoing submissions, it is urged to allow the present appeal and to quash and set aside the impugned judgment and order by convicting the accused of the charges as referred above.

5. We have heard learned Counsel for the appellant, at the stage of admission, and carefully perused the oral as well as the documentary evidences adduced before the learned Sessions Judge.

6. In the facts of the present case, the learned Sessions Court has not believed the case of prosecution that, on the day of incident, the victim was minor. The birth date of the victim, as

mentioned in the birth certificate shown to the complainant, was 30.11.2007. The complainant (PW.1) Exh.12, who is the brother of the victim, has stated in his deposition that he does not remember the birth date of the victim. The birth certificate has not been exhibited and not brought on record. The I.O. (PW.3) Exh.46 has only deposed that he did the yadi to verify the birth certificate of the victim. The prosecution has not examined any witness to prove the age of the victim. In the aforesaid context and evidence on record, the learned Sessions Court on the aspect of age, has observed that the prosecution has failed to prove that the victim was minor at the time of incident and thereby held that the prosecution miserably failed to prove that the victim was minor at the time of incident. We concur with the findings of the learned Sessions Court and do not find a reason to take a different view.

7. Now, let us deal with the issue of charge of kidnapping, rape and abetment of suicide allegedly committed by the respondent-accused upon the victim. Upon close scrutiny of the evidence of the complainant (PW.1), at the time of incident, he was at Surat and his grand-mother informed him about the incident. He has admitted in his cross-examination that he cannot say how and with whom the victim had gone, that he cannot say whether the victim went alone or not and that he had not seen his sister in custody of the accused. The persons namely Rupa Deva, Mansukh Gokal and Lakha Mulu, through whom the complainant came to know that the victim was in custody of the accused and that her dead body was lying at Makansar, as well as the grand-mother of the complainant, have

not been examined by the prosecution. The I.O. (PW.3) has admitted in his cross-examination that the complainant was at Surat at the time of incident and that the dead body of the victim was found from the field. As per the P.M. Note (Exh.34), the cause of death is cardio-respiratory failure on account of poisoning and the death of the victim was caused on 10.05.2024, the A.D. was registered on 12.05.2024 at Adesar Police Station, whereas the present complaint was lodged on 17.05.2024. There is nothing on record to prove that the accused had committed rape upon the victim or that he had caused constant harassment to the victim due to which she committed suicide. Thus, the version of the prosecution that, the accused had abducted the victim and committed rape upon her and that she committed suicide due to the act of the accused is not believable and does not inspire confidence.

8. It is submitted that, the learned Sessions Court ought to have raised the presumption under Section 29 of The POCSO Act and it is presumed that the accused has committed the offence. In our opinion, the submission is misconceived and cannot be accepted because once the factum of minority of the victim is not proved, then, question does not arise to raise the presumption under the provisions of the POCSO Act. Even, no evidence on record to draw the presumption under Section 114(A) of The Evidence Act because the foundation of the prosecution case on the charge of rape and penetrative sexual assault having not been proved by evidence on record.

9. Recently, in the case of ***Birka Shiva Vs. State of Telangana, (2025 INSC 863)***, the Hon'ble Supreme Court, has set aside a

conviction for rape, kidnapping and wrongful confinement. In the cited case, the accused was having sexual intercourse with the victim against her will and wish. The victim was minor at the time of incident. Prosecution relied on school records. The trial Court relying on the date of birth mentioned in the school leaving certificate held that the victim was minor and relying on her testimony, the accused came to be convicted. On Appeal, the High Court of Telangana, upheld the conviction of the accused. The Supreme Court, while over-tuning the conviction, ruled that, a school certificate or birth record, alone does not prove a victim's age. The evidentiary value of such an entry made in public or official register may be admissible in evidence under Section 35 of the Indian Evidence Act, however, admissibility is distinct from probative value. While such documents may be admitted in evidence, their evidentiary weight depends on proof of their authenticity and the source of the underlying information. Mere a production and marking of documents as exhibited by the Court, does not amount to proof of its contents. It's execution has to be proved by leading substantive evidence, that is, by the evidence of those persons, who can vouchsafe for Hereinafter referred to as the Evidence Act, truth of the facts in issue. The Hon'ble Supreme Court, while laying down the aforesaid principle, has relied on its earlier judgments (***Narbada Devi Gupta Vs. Narendrakumar Jaiswal, Biradmal Singhvi Vs. Anandmal Purohit (1988 SC 1796), State of Chhatisgarh Vs. Lekh Ram***).

10. Applying the aforesaid principles of law to the facts of the present case, we have no hesitation to held that, the prosecution

miserably failed to prove that, on the day of incident, the victim was minor as the prosecution failed to prove the date of birth of the victim by examining any witness.

11. We would like to place on record the scope of interference in an appeal against the acquittal and when the same is justified. In exceptional cases, where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the judgment of acquittal. The Appellate Court should consider the presence of innocence of the accused and further that, the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner, where the other view of possible should be avoided, unless there are reasons for interference, as the same has been laid down by the Hon'ble Supreme Court, in the case of ***Tulasareddi @ Mudakappa & Anr. v. The State of Karnataka & Ors., 2026 INSC 67***.

12. In a nutshell, on considering the evidence on record, the learned Sessions Court was justified in arriving at the correct conclusion that prosecution has failed to prove the charge against the accused beyond reasonable doubt. The findings of the acquittal are based on proper appreciation of the evidence on record and do not suffer from any perversity warranting interference by us.

13. In view of the foregoing, the present appeal *sans merit* and deserves to be dismissed and accordingly, it is ***dismissed***.

14. The impugned judgment and order dated 25.03.2026 passed by the learned Special Judge (POCSO) & Additional Sessions Judge, Jamnagar in Special POCSO Case No.44 of 2024 stands confirmed.

15. Record and proceeding, if any, be remitted to the concerned Court.

sd/-
**(ILESH J. VORA,J)**

sd/-
**(R. T. VACHHANI, J)**

PARMAR KRISH

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PARMAR KRISH(HC02348), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 23/10/2026 11:40:38