IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 3123 of 2025
FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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BHIMABHAI VIRABHAI DHANGRI
Versus
STATE OF GUJARAT & ANR.

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Appearance:
JIGNESHKUMAR M NAYAK(8558) for the Appellant(s) No. 1
MR LB DABHI, APP for the Opponent(s)/Respondent(s) No. 1

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

Date : 22/10/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Here is the Appeal by the appellant - original complainant, under Section 413 of B.N.S.S. against the judgment and order of acquittal.

2. Being dissatisfied by the judgment and order passed by the learned Second Additional Sessions Judge and Special (POCSO) Judge, Banaskantha at Palanpur passed in Special (POCSO) Case No.29 of 2024, dated 06.09.2025, acquitting the respondent - accused from the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act), the appellant has preferred instant appeal.

3. We have heard Learned Advocate for the appellant, and learned APP for the respondent - State.

4. Brief facts giving rise to file the present Appeal are that, the minor victim aged about 16 years 8 months and 27 days, was allegedly subjected to sexual abuse by the respondent-accused. It is alleged that, the accused gave his mobile number to the victim at a marriage function, talked with her on phone and developed a love relationship with her. On 07.06.2024, at about 2 O'clock in the night, the accused went to the house of the victim and asked her to elope and marry him. The victim told him that she was of a young age, was studying and did not want to go anywhere. The accused told her that he would die if she did not come with him, held her hand and took her down from the terrace. He took her to a house in the outskirts of village Vashi Dabheli, belonging to one Hajiben Vajabhai Mansa and, against her wish, committed sexual intercourse with her once. The father of the victim lodged an FIR on 07.06.2024 with Amirgadh Police Station. Upon registration of the offence, the I.O. proceeded to investigate the case. At the end, the accused came to be chargesheeted for the offences as referred above.

5. The learned Sessions Court framed charge to which the accused pleaded not guilty and claimed trial.

6. Before the learned Sessions Court, the prosecution has examined as many as 12 witnesses, including the prosecutrix (PW-4). The prosecution has relied upon 28 exhibited documents.

7. On conclusion of oral evidence, the learned Sessions Court recorded further statements of the accused as provided under Section 313 of Cr.P.C., wherein, he claimed his innocence and stated that he has been falsely implicated in the offence.

8. The learned Sessions Judge, after appreciating and examining the

oral as well as documentary evidence, acquitted the accused herein for the offences with which he was charged, on the following grounds:

(i) The prosecution failed to prove that the victim was below 18 years of age at the time of incident i.e. on 07.06.2024. The learned Sessions Court on the issue of age, held and observed that, the Talati-cum-Mantri of Dholiya Gram Panchayat, (PW-10) Gami Nareshbhai Ramabhai, who produced the birth register (Exh.46) and the copy of birth certificate (Exh.47), stated in cross-examination that no birth was registered in his presence. No document sent by any hospital at the time of registration, and no written application of the person who got the birth registered, was produced, and the register does not show who gave the date of birth.

(ii) The father of the victim signs, while the extracts of the birth register bear a thumb impression of the informant, and the defence has probablised through the cross-examination of the father that the entry is not proved. The learned Sessions Court held that the prosecution failed to establish the very place of birth of the victim and the contents of such entries cannot be treated as proved under Sections 74 and 35 of the Evidence Act, and that the presumption under the POCSO Act is not available to the prosecution unless the age below 18 years is proved beyond doubt.

(iii) On the issue of charge of kidnapping and rape, the learned Sessions Court after appreciation of evidence of the victim, came to a conclusion that, the victim sleeping on the terrace with her sisters and brother did not raise any hue and cry, silently came down with the accused, did not try to escape, did not call the

neighbours, travelled in a rickshaw with the accused without telling the driver anything, walked about one and a half kilometre, and stayed in a house where other persons were also residing without telling them anything, and that she went with the accused on her own volition and wish; the version of forcible taking and forcible sexual intercourse does not merit acceptance.

9. In such circumstances, the appellant-original complainant is before us, with the present acquittal appeal.

10. Learned Advocate for the appellant, while assailing the judgment and order of acquittal, has 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; that the learned Sessions Court failed to appreciate that, the victim was minor at the time of the incident and yet the learned Sessions Court held her to be major; that, the Talati-cum-Mantri (PW-10) had produced the birth certificate and as per the birth certificate the age of the victim at the time of incident was 16 years, which has not been considered in its true and proper perspective; that, the victim in her chief examination has stated that the accused forcefully detained her and committed the offence without her consent; that, there is a prima facie case of rape; that, the learned Sessions Court has made certain presumption without any base in favour of the accused without any legal evidence on record.

11. In such circumstances, as referred above, it has been submitted that while acquitting the respondent accused, the learned Sessions Court has discarded and ignored the truthful, reliable and acceptable evidence and as such, no cogent reasons being assigned while discarding such evidence. Therefore, it is submitted that the conclusion of acquittal

recorded by the learned Sessions Court is contrary to the evidence on record and upon erroneous understanding of law. Thus, it is prayed that it is a fit case to admit the appeal.

12. In the present case the issue falls for our consideration as to whether the learned Sessions Court was justified in acquitting the accused?

13. We have carefully examined the oral as well as documentary evidence and perused the findings of acquittal rendered by the learned Sessions Court.

14. Before proceeding further, 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 bear in mind the presence of innocence of the accused and further that, the learned Sessions 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***.

15. 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 was 10.09.2007. The witness (PW-10) Gami Nareshbhai Ramabhai being a Talati-cum-Mantri of Dholiya Gram Panchayat, has produced the birth register (Exh.46) and

the copy of birth certificate (Exh.47). The witness in his deposition, has admitted that he has no personal knowledge about the registration of the date of birth and at whose instance, it has been recorded in the birth register. In the aforesaid context and evidence on record, the learned Sessions Court on the aspect of age, has observed that the prosecution has tried to prove that victim was minor, but what was the source of it and how the date came to be recorded with the Gram Panchayat, has not been proved and therefore, it is held by the learned Sessions Court that the prosecution failed to prove that the victim was minor at the time of incident.

16. Appraise the aforesaid issue, the decision rendered in ***Birka Shiva Vs. State of Telangana, (2025 INSC 863)*** is germane, as the 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 learned Sessions 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.

17. 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 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***).

18. Applying the aforesaid principles of law to the facts of the present case, we have no hesitation to held that, the prosecution failed to prove that, on the day of incident, the victim was minor as the prosecution failed to prove the source of date of birth recorded in the birth register.

19. Now, reverting on the issue of charge of kidnapping and rape allegedly committed by the respondent-accused upon the victim. Upon close scrutiny of the evidence of victim, on the night of 07.06.2024, she was sleeping on the terrace of her house along with her sisters and brother, while her parents had gone to the field. The accused came there at about two to three O'clock in the night and she was taken down from the terrace and went on foot a little distance. She did not have make any hue and cry for any help. She did not try to escape from the accused and did not call the persons residing nearby. She travelled with the accused in a rickshaw and did not disclose to the driver that she was being taken forcibly, got down from the rickshaw and walked about one and a half kilometre with the accused. She stayed in a kachcha house near Neliyu, where other persons were also residing, and did not tell those persons that she was brought forcibly or that rape was being committed on her. When her parents came, she was alone. She has admitted that in her statement before the police she did not state that the accused threatened to kill her

brother if she raised hue and cry and that she was forced into the rickshaw. In such circumstances, when the age of the victim has not been proved, then, she presumed to be an adult person and having regard to the conduct of the victim, as discussed, it seems that she is the consenting party and relationship during the stay at Neliyu was consensual in nature. Thus, the version of the victim that, she was under confinement of the accused and under the threat and against her wish and will, the accused committed rape upon her and also an act of penetrative assault is not believable and does not inspire confidence.

20. In the result, 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.

21. With the observations as aforesaid, the present appeal, at the admission stage, is dismissed.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: MITESH VIJAYBHAI PANCHAL(HCD0065), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 22/10/2026 15:29:22