IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 356 of 2026

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE ILESH J. VORA
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

==========

Approved for Reporting	Yes	No

==========

DASHRATHSINH AMARSINH PARMAR
Versus
STATE OF GUJARAT & ORS.

==========

Appearance:
MR MEHESH POOJARA on behalf of CHETANKUMAR V DARJI(9309) for the Appellant(s) No. 1
MR ROHAN H RAVAL, APP for the Opponent(s)/Respondent(s) No. 1

==========

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

Date : 12/10/2026

ORAL JUDGMENT

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

1. Being dissatisfied by the judgment and order passed by the learned Special (POCSO) Court and Fourth Additional Sessions Court, Godhra, District Panchmahal, in Special (POCSO) Case No.19 of 2025, dated 30.09.2025, acquitting the respondents-accused persons from the offences punishable under Sections 363, 366, 376(2)(n) and 114 of the Indian Penal Code and Sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), the complainant has preferred the instant appeal under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 378 of the Code of Criminal Procedure).

2. We have heard the learned Advocate for the appellant and the learned APP for the State at the stage of admission.

3. Brief facts giving rise to the present Appeal are that the minor victim, aged about 16 years and 6 months, was allegedly enticed and induced by the respondent-accused No.1 on the promise of marriage, with the intention of sexually exploiting her and without the consent of her guardian. It is alleged that accused No.1 took the victim to the house of the respondent-accused No.2 at Halol, left her there and returned to his own house. After two to three days, he again went to Halol, where accused No.2 allegedly arranged a rented room for him. It is alleged that accused No.1 stayed with the victim in that room for about one month, repeatedly establishing physical relations with her, and that the two thereafter shifted to another rented room at Halol, where he again repeatedly committed sexual intercourse with her. In such circumstances, the father of the victim lodged a complaint with Kankanpur Police Station against both the accused. Upon registration of the offence, the I.O. investigated the case and, at the end, the accused came to be chargesheeted for the offences as referred above.

4. The learned Sessions Court framed the charge at Exh.-10, to which the accused pleaded not guilty and claimed trial.

5. Before the Learned Sessions Court, the prosecution has examined as many as 16 witnesses, including the victim (PW-4), and has relied upon 76 exhibited documents.

6. On conclusion of oral evidence, the Learned Sessions Court recorded further statements of the accused as provided under Section 313 of the Code of Criminal Procedure, 1973.

7. The learned Sessions Court, after appreciating and examining the

oral as well as documentary evidence, held the victim to be a child within the meaning of Section 2(d) of the POCSO Act. It, however, acquitted the respondents-accused persons under Section 235(1) of the Code, by giving them the benefit of doubt, on the grounds that the victim (PW-4) has not supported the case of the prosecution and did not state that accused No.1 took her to the house of accused No.2 or that accused No.2 helped him, that the parents of the victim are not eye-witnesses and their depositions cannot prove that the accused took her away, that the deposition of PW-7 does not prove the tenancy at Halol beyond doubt and that of PW-8 does not support it at all, that the histories recorded by the medical officer (PW-9) and the gynaecologist (PW-11), though corroborative in nature, do not help the prosecution since the victim did not state such facts in her deposition, and that rupture of the hymen has many causes and no medical evidence has come out against the accused.

8. In such circumstances, the complainant is before us with the present acquittal appeal.

9. The learned Advocate for the appellant, while assailing the judgment and order of acquittal, has submitted that the learned Sessions Court has gravely erred in appreciating the evidence, that the complainant, examined as PW-5, has fully narrated the incident and nothing has emerged in her cross-examination that assists the defence, that the medical evidence of PW-11 (Exh.-50) and PW-9 (Exh.-43), who are independent doctors, together with the victim’s statement under Section 164 CrPC, corroborates the prosecution case and has been ignored, that PW-7 (Exh.-41) and PW-8 (Exh.-42) prove that the victim and the accused stayed together in rented premises, that the panch witnesses PW-1 (Exh.-14), PW-2 (Exh.-23) and PW-3 (Exh.-28) have supported the prosecution on the scene, the recovery of clothes, the

muddamal and the arrest panchnama, and even if any one panch did not support it, hostility alone cannot wipe out the remaining consistent evidence, that the FSL report, medical papers and Section 164 statement have not been considered, and that the learned Sessions Court discarded a complete and consistent prosecution case merely because one panch witness did not support it. In support of his arguments, learned advocate for the appellant has placed reliance on the judgment dated 28.09.2018 passed by the Hon'ble Supreme Court in ***Hemudan Nanbha Gadhvi v. State of Gujarat, Criminal Appeal No. 913 of 2016***, and on the order dated 03.08.2026 of the Coordinate Bench of this Court in ***Anjanaben W/o Maheshkumar Manubhai Raval v. State of Gujarat, Criminal Appeal No. 307 of 2023***.

10. Learned APP for the State has supported the contentions raised by the learned Advocate for the appellant and has submitted that the learned Sessions Court discarded a complete and consistent prosecution case merely because one panch witness did not support it, that the testimony of the complainant (PW-5) stands corroborated by the independent doctors, the Section 164 CrPC statement and the witnesses PW-7 and PW-8, that the FSL report and medical papers lend scientific support to the ocular account.

11. In such circumstances, as referred above, it has been submitted that the view taken by the learned Sessions Court ignores material particulars, results in a miscarriage of justice and is not a possible view on this record, and that the prosecution has established the chain of circumstances beyond a reasonable doubt. Thus, it is prayed that the judgment of acquittal be quashed and set aside, and that it is a fit case to admit the appeal, issue notice to the accused and call for the Record and Proceedings.

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 is 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. The learned Sessions Court has held the victim to be a child under the POCSO Act. That finding is not required to be reopened. The material question is whether, even accepting the minority as found, the prosecution has established the enticement, the taking out of lawful guardianship, the stay at Halol and the repeated sexual intercourse alleged against the accused.

16. Upon close scrutiny of the evidence of the victim (PW-4, Exh.-31), it transpires that she has deposed that her parents were compelling her into a marriage against her wishes, and that she therefore went on her own to her friend's house at Nara, from where she returned home after about one year. She has stated that she did not get any statement recorded before the police. She does not state that accused No.1 enticed or induced her, or that he took her out of her parents' lawful guardianship by any deceit or force. She does not state that accused No.1 took her to the house of accused No.2, that she stayed at rented premises with him at Halol, or that he had sexual intercourse with her. The victim has not supported the case of the prosecution. Since no act is attributed by her to accused No.1, the allegation of helping against accused No.2 has no basis in her deposition either. Her statement under Section 164 of the Code of Criminal Procedure (Exh.-32) is not substantive evidence, was not tested by cross-examination, and cannot prove the charge. Thus, the Learned Sessions Court has rightly held and observed that the prosecution has failed to establish the charge against the accused.

17. In context to the reliance placed upon by the learned advocate for the appellant on the judgment dated 28.09.2018 passed by the Hon'ble Supreme Court in ***Hemudan Nanbha Gadhvi v. State of Gujarat, Criminal Appeal No. 913 of 2016***, and on the order dated 03.08.2026 of the Coordinate Bench of this Court in ***Anjanaben W/o Maheshkumar Manubhai Raval v. State of Gujarat, Criminal Appeal No. 307 of 2023***, the same does not advance the case of the appellant. In Hemudan Nanbha Gadhvi, the sexual assault and the identity of the perpetrator stood independently established by medical evidence, the FSL report and the test identification parade, and the subsequent hostility was held not to efface that evidence. In the case on hand, the victim has candidly denied

having entered into any such relationship, or having been kidnapped and abducted by the accused-respondent, and there is no such independent proof which can survive her denial. So far as Criminal Appeal No. 307 of 2023 is concerned, the Coordinate Bench held that mere non-support by the victim is no ground to set the accused free when the age had been proved and the other evidence established the offence. That is not the position on this record. The victim's denial remains uncontroverted by any independent evidence capable of sustaining the charge.

18. In the facts of the present case, the issue required to be determined is whether the prosecution has established that accused No.1 enticed the victim and took her out of the lawful guardianship of her parents, that accused No.2 helped him in doing so, and that accused No.1 committed sexual intercourse with her during the alleged stay at Halol. The parents of the victim are not eye-witnesses. The depositions of PW-7 and PW-8 do not prove the alleged tenancy at Halol beyond reasonable doubt. The medical histories recorded by PW-9 and PW-11 remain uncorroborated by the victim's own testimony. Rupture of the hymen, standing alone, is not conclusive of the charge against the accused. The panch witnesses, even if partly supportive, cannot fill the void created by the victim's consistent denial of the material allegations.

19. The submission that the learned Sessions Court ought to have drawn the presumptions under Sections 29 and 30 of the POCSO Act is misconceived. Even accepting the finding of the learned Sessions Court that the victim was a child under the Act, the statutory presumptions arise only after the prosecution establishes the foundational facts of the offence. In the present case, the victim (PW-4) has not supported the prosecution and has denied the enticement, the taking, the stay at Halol

and the sexual intercourse attributed to the accused. No independent evidence establishes those foundational facts. In the absence of such proof, the question of raising the presumptions under Sections 29 and 30 does not arise. The deposition of the victim is not of sterling quality and is not supported by the medical evidence, and nothing else on record proves the essential ingredients of the charge beyond reasonable doubt. The findings of acquittal arrived at by the learned Sessions Court are based on the evidence on record and the view taken is a reasonable and possible view.

20. In the result, we do not find any perversity in the impugned judgment, and in absence of substantial and compelling reasons, no ground exists to interfere with the findings of acquittal recorded by the Learned Sessions Court. The view taken by the Learned Sessions Court is a reasonable and possible view, and therefore, the Learned Sessions Court was justified in acquitting the accused.

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 12/10/2026 17:45:00