IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 2193 of 2026

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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STATE OF GUJARAT
Versus
ARJUNRAM @ ARJANBHAI HEMARAM @ HEMABHAI LUHAR

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Appearance:
PUBLIC PROSECUTOR for the Appellant(s) No. 1

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

Date : 09/10/2026

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

1. Here is the Appeal by the State under Section 419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding section 378 of Cr.P.C.) against the judgment and order of acquittal.

2. Being dissatisfied by the judgment and order dated 11.03.2025 passed by the learned 3rd Additional Sessions Judge and Special Judge

(POCSO), Tharad, District Banaskantha, in Special POCSO Case No.08 of 2023, acquitting the respondent-accused, Arjunram alias Arjanbhai Hemaram alias Hemabhai Luhar, from the offences punishable under Sections 363, 366 and 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), the State has preferred the instant appeal.

3. We have heard learned APP for the appellant-State.

4. Brief facts giving rise to the present Appeal are that the complainant is the father of the victim, a minor girl aged about 15 years. On the night of 26.09.2022, the complainant and his family went to sleep, and in the morning the victim was not found in the house. A search by the complainant and his relatives proved futile. The complainant noticed that a call had been received on the household mobile phone at about midnight from a particular number. When he called back, the person who answered and identified himself as Arjan Hemabhai Luhar and disconnected the call, after which the phone was switched off. On 28.09.2022, the complainant lodged a complaint at Mavsari Police Station alleging that the accused had taken away his daughter from the house at night, and the offences punishable under Sections 363 and 366 of the Indian Penal Code were registered. During the investigation, the accused and the victim were traced. On the basis of the victim's statement, the offences punishable under Section 376(2)(n) of the Indian Penal Code and Sections 4, 6 and 17 of the POCSO Act were added, and the accused came to be charge-sheeted for the offences as referred above.

5. The learned Sessions Judge framed charge at Exh.-6 for the offences punishable under Sections 363, 366 and 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the POCSO Act, to which the

accused pleaded not guilty and claimed trial.

6. Before the Learned Sessions Court, the prosecution examined as many as 14 witnesses, including the victim (PW-2). The prosecution relied upon 21 exhibited documents.

7. On conclusion of oral evidence, the Learned Sessions Court recorded the further statement of the accused as provided under Section 313 of the Code of Criminal Procedure, 1973, wherein he denied the incriminating circumstances put to him 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 of the offences with which he was charged, giving him the benefit of doubt, on the following grounds:

(i) The prosecution did not give any explanation of the basis on which the date of birth 20.05.2007 was recorded in the school register, and the age of the victim could not be determined by relying on the school documents,

(ii) The deposition of the victim (PW-2) is contrary to her earlier statement dated 19.04.2023 given to the Investigating Officer, and it is also not supported by her statement under Section 164 of the Code at Exh.-14,

(iii) The conduct of the victim made the alleged forcible abducting doubtful, and her deposition did not reflect the truth on the surrounding facts denied by her but brought on record through the Investigating

Officer (PW-13),

(iv) The statement of victim under Section 164 was recorded five days after her police statement, during which she was with her parents, so the possibility of tutoring could not be ruled out in absence of any plausible explanation,

(v) The Investigating Officer did not seek any explanation of the contradictions, produced no call detail record, and stated nothing about the inquiry made into the other persons alleged to have taken her away or into her pregnancy,

(vi) The prosecution case received no support from the F.S.L. report or the medical evidence, the deposition of victim was not of sterling quality, and full of doubt therefore arose on the alleged forcible kidnapping and rape.

9. In such circumstances, the State is before us with the present acquittal appeal.

10. Learned APP appearing for the appellant, while assailing the judgment and order of acquittal, has submitted that the judgment of acquittal passed by the learned Sessions Court is perverse, ignores material evidence and deserves to be set aside, that the prosecution proved the minority of the victim through three independent sources, namely, the School Principal (PW-3) and the school certificate at Exh.-17 recording the date of birth as 20.05.2007, the doctor (PW-5) and the medical certificate at Exh.-21, and the father (PW-1) and the mother (PW-4), that the learned Sessions Court hyper-technically discarded Exh.-17 for want of an explanation of the source of the entry and overlooked

Section 34(2) of the POCSO Act read with Section 94 of the Juvenile Justice Act, 2015, that the victim (PW-2) withstood cross-examination and her deposition corroborates her statement under Section 164 of the Code at Exh.-14, and the learned Sessions Court wrongly relied on minor variations and on omissions from her Section 161 statement, which is not substantive evidence, that the evidence of PW-1 and PW-4 on the disappearance of the victim and her recovery is natural and consistent, that, once the foundational facts were stated by the victim, the learned Sessions Court was bound to draw the presumptions under Sections 29 and 30 of the POCSO Act, but did not apply them at all.

11. In such circumstances, it has been submitted that the view taken by the learned Sessions Court is not a possible view on this record and has resulted in a miscarriage of justice. Therefore, it is prayed that the appeal be allowed and the judgment of acquittal be set aside.

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 to address the rival submissions, 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 accepted the case of the prosecution that the victim was a minor on the date of the incident. The points that require to be determined are whether the prosecution has proved the age of the victim, and whether it has established that the victim was taken away and subjected to penetrative sexual assault against her will.

16. Upon close scrutiny of the evidence of the victim (PW-2), it transpires that her deposition is the foundation of the prosecution case. On the age of the victim, the prosecution relied on General Register No. 2 of the school, in which the date of birth is recorded as 20.05.2007, and on the certificate at Exh.-17 issued by the Principal (PW-3). PW-3 admitted that no birth certificate was produced at the time of admission, that he could not say on the basis of which document the date of birth was entered, and that he had no authority to issue a certificate of birth.

17. An entry in a school register has evidentiary value only when its source is shown, and Exh.-17 rests on the same register and cannot rise higher than it.

18. The medical opinion through Dr. Dixit Jaganiya (PW-5, Exh.-20, Exh.-21) is only an estimate of 16 to 17 years by the radiologist and above 13 years by the dentist, and it cannot replace reliable proof of the

date of birth.

19. The age of the victim is therefore not proved by reliable and legally acceptable evidence. In her deposition, the victim stated that the accused telephoned her house at about 01:00 a.m. on 26.09.2022 and threatened to kill her parents, and that four or five persons later tied her mouth and took her away in a Bolero vehicle. Her statement dated 19.04.2023 recorded by the Investigating Officer says that she liked the accused, asked him for his mobile number, spoke to him on her father's phone, and left home carrying Rs. 5,000/-. Her statement under Section 164 of the Code at Exh.-14 does not mention any threatening call. Although she denied her police statement in cross-examination, the Investigating Officer (PW-13) admitted its contents, and a bare denial cannot outweigh the evidence of the officer who recorded it. The contradiction goes to the root of the charge. The conduct of victim is also not in keeping with the alleged threat, since she neither woke her parents nor told anyone before stepping out. She denied that she was sent to Nari Kendra and stayed at the Sakhi One Centre, although this was brought on record through PW-13 and partly admitted by her. Her statement under Section 164 was recorded on 24.04.2023, five days after her police statement and while she was with her parents, so it cannot be accepted without caution.

20. The Investigating Officer sought no explanation of the contradictions, produced no call detail record although her version involved telephone contact, and stated nothing about the inquiry made into the four or five persons said to have taken her away or into her pregnancy recorded in Exh.-21. She deposed that her hands and legs were tied for two to three months and that she was raped, yet she stayed with the accused from 26.09.2022 until April 2023, nagate the case of prosecution. Exh.-21 shows no injury and no mark of binding, PW-5

admitted that the examination did not show that force was used, she herself admitted that she had no injury, and her statement dated 19.04.2023 says that she lived with the accused of her own will and that he used no force.

21. The medical evidence of PW-5 proves at most that she was pregnant and had sexual relations, and it does not prove that the relations were forced.

22. The prosecution has therefore not established that the victim was taken away by force, threat or deceit, or that the sexual relations were against her will or without her consent. The submission that the learned Sessions Court ought to have drawn the presumptions under Sections 29 and 30 of the POCSO Act is misconceived, because once the minority of the victim is not proved, the question of raising the presumption does not arise. Thus, 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.

23. At this juncture, it is apt to refer to the judgment dated 16.07.2025, in case of ***Birka Shiva v. The State of Telangana***, the relevant paragraph reads as under:

> *"8. The evidentiary value of such an entry made in public or official registers may be admissible in evidence under Section 35 of the Indian Evidence Act, 18727. However, admissibility is distinct from probative value. While such documents may be admitted into evidence, their evidentiary weight depends on proof of their authenticity and the source of*

the underlying information. Mere production and marking of a document as exhibited by the Court does not amount to proof of its contents. Its execution has to be proved by leading substantive evidence, that is, by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'...

*...8.5. This Court, in **Alamelu v. State**, while dealing with a similar factual matrix, held that the prosecution had failed to prove that the girl was a minor at the relevant date since the transfer certificate of a Government School showing age was not duly proved by witnesses. It observed as under:*

> *"**40.** Undoubtedly, the transfer certificate, Ext. P-16 indicates that the girl's date of birth was 15-6-1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident i.e. 31-7-1993. The transfer certificate has been issued by a government school and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Evidence Act, 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person who made the entry or who gave the date of birth is examined."*

24. 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***.

25. Recently, in ***Birka Shiva Vs. State of Telangana, (2025 INSC 863)***, 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. 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.

26. 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**).

27. 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, and therefore the learned Sessions Court was justified in acquitting the accused.

28. 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 09/10/2026 17:20:30