

13. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court while enlarging the appellants on bail.

14. The appeal stands disposed of accordingly. Direct service is permitted.

**Result:-** Appeal Allowed.

**ABC 2019 (III) 86 GUJ**  
**ACQUITTAL & BAIL CASES**  
**HIGH COURT OF GUJARAT**

(R.P. Dholaria, J.)  
R/Criminal Appeal No 582 of 2019  
Decided on 30 April 2019

YOGESH VANABHAI @ VINODBHAI SOLANKI - Appellant(s).

Versus

STATE OF GUJARAT - Respondent(s).

**Law Covered:-** (A) Protection of Children from Sexual Offences (POCSO) Act, 2012 – Sections 4 & 6 – Conviction under – Engagement of the prosecutrix with accused – ran away and got married – Statement of the prosecutrix – she was in love with the appellant accused & had already married to him and was carrying pregnancy due to physical relation with him – Held, trial court punished the accused for commission of marital rape which has already been saved in view of Section 375 exception-2, IPC – Conviction set aside – Acquittal. (Para 7 & 10)

(B) Protection of Children from Sexual Offences (POCSO) Act, 2012 – Sections 4 & 17 – Conviction under – Engagement ceremony of the prosecutrix with accused was already performed & thereafter, they ran away and got married – Held, in view of clear bar envisaged u/s 198(6) CrPC, taking a cognizance of the offence is barred – Acquittal. (Para 8 & 9)

**Facts:-** As per the case of the prosecution the prosecutrix and the accused (Appellant No.1) both were working in a Mill and had long standing acquaintance which culminated into love and in consequence thereof, father of the prosecutrix carried out engagement ceremony of the prosecutrix with the appellant accused for about two years prior to the date of incident. Thereafter, they both ran away and the father of the prosecutrix lodged the complaint inter alia alleging that the appellant accused abducted his daughter from his guardianship and also established physical relation with her, due to which, she had become pregnant and delivered a baby girl. A case was registered and the appellant no.1 accused was convicted u/ss 4 & 6 of POCSO Act and appellants Nos. 2 and 3 were convicted u/ss 6 & 17. The honourable Gujarat High Court set aside the conviction in the present appeal.

**Law of relief:-** In view of Section 375 exception-2, IPC, conviction under the POCSO Act is also not sustainable.

**Held:-** On overall evaluation of evidence on record, more particularly taking into consideration the statement made by the prosecutrix before the doctor in which she clearly and categorically stated that she was in love with the appellant accused and had already married to him and was carrying pregnancy due to physical relation with him. Even the record & proceedings clearly indicates that after lodgment of the complaint, the appellant accused was enlarged on bail and thereafter also, the prosecutrix was residing with him. Even while her deposition was being recorded before the learned trial court, the prosecutrix was attending the court from her matrimonial home. (Para-7)

The record & proceedings also clearly depicts from the testimony of the parents of the prosecutrix that the engagement ceremony was carried out for about two years prior to the date of incident and the same was performed willingly by both the prosecutrix and the accused. In that view of the matter, in view of clear bar envisaged under sub-section (6) of Section of Section 198 of the Code of Criminal Procedure, taking a cognizance of the offence is also barred by the said provisions of law. (Para-8)

In view of aforesaid factual scenario, so far as the conviction of appellant Nos. 2 and 3 is concerned, indisputably the complainant himself admitted that the engagement ceremony of the prosecutrix with appellant No.1 accused was already performed and thereafter, they ran away and got married. In that view of the matter, the learned trial court has committed a manifest error in convicting appellant Nos.2 and 3 under Section 6 read with Section 17 and Section 4 read with Section 17 of the POCSO Act which is not sustainable in law and deserves to be quashed and set aside. (Para-9)

So far as the conviction of appellant No.1 accused is concerned, his conviction is also not sustainable on law in view of clear pronouncement of Hon'ble Supreme Court in *Independent Thought (supra)* as the learned trial court punished the appellant accused for commission of marital rape which has already been saved in view of exception-2 to Section 375 of IPC. Consequently therefore, his conviction under Sections 4 and 6 of the POCSO Act is also not sustainable in law and deserves to be quashed and set aside. (Para-10)

**Counsel:-** For Appellant(s): Mr Yogeshkumar A Ratanpara, Adv.  
For Respondent(S): Ms Hansa Punani, Adv.

**Cases Referred:-**

*Independent Thought vs. Union of India*, (2017) 10 SCC 800, (Para-4)

## **JUDGMENT**

**R.P.DHOLARIA,J.:** - 1. The appellants have preferred the present appeal under Section 374 of the Code of Criminal Procedure against judgment and order dated 01.03.2019 passed by learned Special Judge (POCSO) and 3rd Additional Sessions Judge, Junagadh in Special POCSO Case No. 40 of 2017, whereby

appellant No.1 has been convicted for the offence punishable Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act" for short) and appellants Nos. 2 and 3 have been convicted for the offence punishable Section 6 read with Section 17 and Section 4 read with Section 17 of the POCSO Act. The appellants have been granted acquittal for the offence punishable under Sections 363, 366, 376, 323, 504, 114 of the Indian Penal Code and Sections 8 and 12 of the POCSO Act.

2. The case of the prosecution may be stated that the prosecutrix and appellant No. 1 accused both were working in Ratan Mill situated in the outskirts of Junagadh and had long standing acquaintance which culminated into love and in consequence thereof, father of the prosecutrix carried out engagement ceremony of the prosecutrix with the appellant accused for about two years prior to the date of incident. Thereafter, they both ran away and later on i.e. on 05.08.2017, father of the prosecutrix lodged the complaint inter alia alleging that the appellant accused abducted his daughter from his guardianship and also established physical relation with her, due to which, she had become pregnant and delivered a baby girl on 07.12.2017.

3. After registration of the complaint, investigation was carried out and charge-sheet came to be filed against the accused in the Court of learned Magistrate. As the case was triable by learned Sessions Court, the same was committed to the Court of learned Sessions Judge. Thereafter, the charge came to be framed and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

3.1 In order to bring home the charges against the accused, the prosecution examined the witnesses and produced the documentary evidence.

3.2 Thereafter, after filing of closing *purshis* by the prosecution, further statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded. The accused denied the case of the prosecution and submitted that a false case is filed against them.

3.3 At the conclusion of trial and after appreciating evidence on record, the learned trial court delivered the impugned judgment. Being aggrieved by said 01.03.2019 passed by learned Special Judge (POCSO) and 3rd Additional Sessions Judge, Junagadh in Special POCSO Case No. 40 of 2017, the appellants have preferred the present appeal before this Court.

4. Learned advocate Mr. Yogesh Ratanpara for the appellants has argued that as the prosecutrix and appellant No.1 accused both were residing in the same vicinity and from their childhood, there was acquaintance between them which was developed into love and thereafter their engagement, they decided to run away from their house for getting married and in consequence whereof, they ran away from their house for about a year prior to lodgment of the complaint. He has argued that at the relevant point of time, the prosecutrix was aged about 17 years & 6 months

a and the appellant was aged about 19 years. He has also argued that thereafter, they stayed together and later on, came to be apprehended by the police. He has further argued after enlargement of the appellant accused on bail, they resided together and at present also, they are residing together as husband-wife. He has argued that now the prosecutrix has already reached the age about 20 years and the appellant accused has also reached the age of 23 years. In view of aforesaid factual position, he has argued that since as per b the deposition of the prosecutrix herself that after getting married, they established physical relation, in view of decision of Hon'ble the Supreme Court in *Independent Thought vs. Union of India* reported in (2017) 10 SCC 800, there would not be any offence of rape punishable under Section 375 of IPC and the act would fall within the exception-2 and even after amendment c as well as enactment of the POCSO Act, the Supreme Court in the aforesaid decision clearly expressed that the judgment will have prospective effect. Consequently therefore, according to his submission, the conviction of the appellants accused would not be maintainable. Ultimately, learned advocate d for the appellants has urged to quash and set aside the impugned judgment.

5. Learned Additional Public Prosecutor Ms. Hansa Punani has supported the judgment of the learned trial court and has urged that no leniency be shown to the appellants accused. Learned APP has pointed out that from the date of elopement till they got married, in the interregnum period, the offence under Sections 363 and 366 of IPC is clearly established.

e 6. This Court has minutely gone through the entire record & proceedings, impugned judgment and order as well as evidence of material witnesses.

f 7. On overall evaluation of evidence on record, more particularly taking into consideration the statement made by the prosecutrix before the doctor in which she clearly and categorically stated that she was in love with the appellant accused and had already married to him and was carrying pregnancy due to physical relation with him. Even the record & proceedings clearly indicates that after lodgment of the complaint, the appellant accused was enlarged on bail and thereafter also, the prosecutrix was residing with him. Even while her deposition was being recorded before the learned trial g court, the prosecutrix was attending the court from her matrimonial home.

h 8. The record & proceedings also clearly depicts from the testimony of the parents of the prosecutrix that the engagement ceremony was carried out for about two years prior to the date of incident and the same was performed willingly by both the prosecutrix and the accused. In that view of the matter, in view of clear bar envisaged under sub-section (6) of Section of Section 198 of the Code of Criminal Procedure, taking a cognizance of the offence is also barred by the said provisions of law.

9. In view of aforesaid factual scenario, so far as the conviction of appellant Nos. 2 and 3 is concerned, indisputably the complainant himself

admitted that the engagement ceremony of the prosecutrix with appellant No.1 accused was already performed and thereafter, they ran away and got married. In that view of the matter, the learned trial court has committed a manifest error in convicting appellant Nos.2 and 3 under Section 6 read with Section 17 and Section 4 read with Section 17 of the POCSO Act which is not sustainable in law and deserves to be quashed and set aside. a

10. So far as the conviction of appellant No.1 accused is concerned, his conviction is also not sustainable on law in view of clear pronouncement of Hon'ble Supreme Court in *Independent Thought (supra)* as the learned trial court punished the appellant accused for commission of marital rape which has already been saved in view of exception-2 to Section 375 of IPC. Consequently therefore, his conviction under Sections 4 and 6 of the POCSO Act is also not sustainable in law and deserves to be quashed and set aside. b c

11. For the reasons recorded above, the appeal succeeds. Judgment and order dated 01.03.2019 passed by learned Special Judge (POCSO) and 3rd Additional Sessions Judge, Junagadh in Special POCSO Case No. 40 of 2017, convicting appellant No.1 for the offence punishable Sections 4 and 6 of the POCSO Act and appellants Nos. 2 and 3 for the offence punishable Section 6 read with Section 17 and Section 4 read with Section 17 of the POCSO Act, is hereby quashed and set aside. The appellants - accused are acquitted of the charges levelled against them. Bail bonds stand cancelled. Fine, if any, paid by them be refunded to them. d e

12. Record & Proceedings, if any, be sent back to the trial Court concerned forthwith. e

**Result:-** Appeal Allowed. f

**ABC 2019 (III) 90 GUJ**  
**ACQUITTAL & BAIL CASES**  
**HIGH COURT OF GUJARAT**

(A.Y. Kogje, J)

R/Criminal Misc Application No 10283 of 2018 With R/Criminal Misc. Application No. 11937 of 2018 With R/Criminal Misc. Application No. 12591 of 2018 With R/Criminal Misc. Application No. 12235 of 2018 With R/Criminal Misc. Application No. 17304 of 2018  
Decided on 24 June 2019 g

**STATE OF GUJARAT**

**- Applicant(s). h**

*Versus*

**GOVINDBHAI KANABHAI CHANDAPA & ORS.**

**- Respondent(s).**

**Law Covered:-** Code of Criminal Procedure, 1973 – Section 439 (2) – Indian Penal Code, 1860 – Sections 120(B), 406, 409, 465, 467, 471 and

September 2019