



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**17 CRIMINAL APPEAL NO. 128 OF 2024**

ABDUL RAHEEM @ HAZI ABDUL SAJID BAGWAN  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Ajinkya S. Deshpande h/f Mr. Deshpande Amit Shrikant,  
Advocate for Appellant  
Mr. S. R. Wakale, APP for Respondent-State  
Mr. Amol G. Vasmatkar h/f Mr. Fayaz Khurshid Patel, Advocate for  
Respondent No.2

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**CORAM : NITIN B. SURYAWANSHI AND  
SANDIPKUMAR C. MORE, JJ.**

**DATED : 04/08/2025.**

**P. C. :**

1. By this appeal filed under Section 14(A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellant challenges the order passed by learned Special Judge, Basmat, District : Hingoli below Exhibit-181 in Special Case No.25 of 2021.

2. On 10/07/2021 victim / respondent No.2 lodged the FIR alleging as under :

2.1 Victim married with one Sandeep on 25/04/2021.  
after one month of the marriage, victim had complaint  
to stomach ache and she was taken to hospital of Dr.

Kiran Sonawe on 01/06/2021. Doctor diagnosed that she was pregnant of 19 weeks 3 days.

- 2.2. Members of family in her matrimonial home called her parents. A bond paper titled as “Farkatnama” was made on 01/06/2021 in Parbhani.
- 2.3. Victim was brought to parental home. Victim was questioned by parents. Victim stated them that she struck acquaintance with accused No.1 as he used to come in his tempo from Runj to her village to meet his friends Chandrakant Kamble and (accused No.12) Balaji.
- 2.4. Her acquaintance with accused No.1 turned in friendly relations. They used to talk with each other. They fell in love. Accused No.1 was promising her that he will marry her.
- 2.5. In May 2020, in field of Mariba Waghmare, accused No.1 called her. Accused No.1 promised her that he will marry her. Sugarcane crop was standing in the field. Accused No.1 forcibly committed sexual intercourse with her in the field. Thereafter, frequently, he used to call her in that field and committed sexual intercourse.

- 2.6. On 17/02/2021, victim realized that she has conceived of the physical relations with accused No.1.
- 2.7 She made phone call to accused No.1 from mobile of Chandrakant Kamble and accused No.12. She told accused No.1 that she has conceived and they should marry. However, accused No.1 shown reluctance.
- 2.8. Her lover accused No.1 was called in village. Her parents, brother, uncle told him that marriage of victim was dissolved because of him. They asked accused No.1 to perform marriage with victim but accused No.1 stated that he belonged to Sutar caste and victim belonged to Boudha scheduled caste. Accused No.1 replied arrogantly and left the place. Even thereafter, attempts were made to talk with him from the mobiles of Chandrakant Kamble and accused No.12, but he avoided to talk.
- 2.9. In the last paragraph of the report it is stated that accused No.1 has forcibly committed sexual intercourse in field of Mariba Waghmare during the period from May 2010 to 17/02/2021. It is also stated that accused No.1 was knowing that victim belonged to

scheduled caste even then he joined affair and molested her.

3. On the basis of FIR, Crime No.155 of 2021, was registered with Basmat Gramin Police Station against accused No.1 for the offences punishable under Sections 376(2)(n) of the Indian Penal Code and Section 3 & 4 of the Protection of Children from Sexual Offences act and and Sections 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

4. During the investigation, on 19/07/2021 supplementary statement of the victim was recorded, wherein she has stated that in the statement recorded on 10/07/2021 she has stated only about accused No.1 but other accused persons had also forcibly committed sexual intercourse with her. She further sated that after Diwali when she was in village Kanhergaon, she had gone to do labour work in agricultural land of accused No.14 (appellant) and he committed forcible sexual intercourse with her in his field.

5. The appellant filed an application Exhibit-181 in the trial court, seeking discharge contending that the victim has filed an affidavit before this court stating that she had never named the appellant in her supplementary statement. Even her mother has stated on affidavit that the appellant has not been named by the

victim and he has not played any role in the alleged crime. He, therefore, contended that he is falsely involved in the present crime.

6. Heard learned advocate for the appellant, learned APP for the State and learned Advocate for the victim / respondent No.2. With their assistance, we have perused the record.

7. Admittedly, the FIR was lodged against by the victim only against accused No.1, who happened to be her lover. In supplementary statement, she has named 11 more persons, who had allegedly done sexual assault on her at different places. As far as the appellant is concerned, she has stated that the incident took place after July 2020, when she returned from her maternal uncle's house. In her statement recorded under Section 164 of Cr.P.C., she has given slightly different version stating that in the last year when she had gone to the field of Haji for taking sweet lime alongwith some ladies, she went to take water near Akhada, at that time Haji caught hold her and had forcible sexual intercourse with her. So this version is different from what has been stated in her supplementary statement. Thus, there are three different versions of the victim.

8. Victim has filed affidavit stating that name of the appellant was not taken before the Investigating Officer as well as before the learned Magistrate. She has further stated that she and her mother had filed their affidavits before the learned Additional District & Sessions Judge in Cri. M. A. No.296 of 2021 reiterating the fact that the victim has not named present appellant in any of her statement given to the police. She has stated that similar affidavit was filed by her before this Court in ABA No.1423 of 2021. She, therefore, has prayed that appropriate order may be passed in the interest of justice.

9. It is a matter of record that in Special Case No.25 of 2021, charge was framed against accused Nos.1, 2, 4 to 13 under Sections 376 of IPC, Section 4, 6 of the Protection of Children from Sexual Offences Act and Section 3(2)(v), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Since the victim has not supported the prosecution case, all these accused are acquitted by the Special Court vide order dated 07/12/2024.

10. In view of the aforesaid facts, it is clear that the victim is not likely to support the prosecution case even if the trial against the appellant is allowed to continue. The trial will result in acquittal,

as has happened in case of original accused Nos.1, 2 and 4 to 13. The same would be nothing but waste of judicial time and energy. In these circumstances, continuation of prosecution against the appellant, would be an abuse of process of law and court. In the result, the appeal is allowed.

11. The impugned order passed by the learned Special Judge & Additional Sessions Judge, Basmat below Exhibit-181 in Special Case No.25 of 2021, is hereby quashed and set aside.

12. The application Exhibit-181 in Special Case No.25 of 2021, stands allowed.

**(SANDIPKUMAR C. MORE, J.)**

**(NITIN B. SURYAWANSHI, J.)**