

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

CRIMINAL APPEAL NO. 717 OF 2024

XYZ

..Appellant
(Informant/Victim)

VERSUS

1. Saddam Hussain Kayyum Qureshi,
Age : 27 Years, Occ. Pvt. Service,
R/o. Mukkam Post Rasalpur, Tq.
Raver, Dist Jalgaon
2. Jaka Urf Jakir Shaikh Subhan Qureshi
(Pahelwan)
Age : 48 Years, Occ. Business,
R/o. Ghodepir Mohalla, Nandurbar,
3. Sairabee Shaikh Jakir Shaikh,
Age : 40 Years, Occ. Household,
R/o. As above.

..Respondents
(Ori. Accused Nos. 1 to 3)

...

Advocate for Appellant : Mr. Satej S Jadhav

A.P.P. for Respondent/State : Mr. A. S. Shinde

Advocate for Respondent Nos. 1 to 3: Mr. Pratik P. Kothari

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

DATED : 29st JULY 2025

ORDER:-

1. The victim has filed this application under Section 372 of the Code of Criminal Procedure, challenging the impugned judgment and order of acquittal passed by learned Additional Sessions Judge, Nandurbar in Sessions Case No. 16 of 2017.

2. The victim lodged F.I.R, alleging that, prior to five years from the date of lodging of the F.I.R., she was working with accused Nos. 2 and 3 as maid. Accused No.1 is brother of accused No.3, and he used to frequently visit to the house of accused Nos. 2 and 3 at Rasulpur, Taluka Raver, Dist. Jalgaon and used to stay there for two months at a time. At that time, accused No.1 kept physical relations with her, by giving a false promise of marriage. The physical relations were seen by accused No.2, and accused No.2 asked the victim not to disclose the same to anybody. The victim used to visit room of accused No.1 at Jalgaon. They used to have physical relations in the said room, and even at Lodge at Amalner. At the time of physical relations, accused No.1 used to give her a promise of marriage. She became pregnant due to the physical relations by accused No.1. When she told this fact to accused Nos. 2 and 3, they told her that accused No.1 is taking education, and assured that they will perform her marriage with accused No.1. Accused No.1 on affidavit has stated that he will marry the victim. Accused Nos. 2 and 3 gave her pills, on consuming the pills, she suffered abortion.

3. On 25.09.2016, victim asked accused No.1 about the marriage, however, he gave evasive reply. On taking information, the victim came to know that, marriage of accused No.1 was arranged with daughter of Faulad from Jamudgaon. When this fact was told by

victim to accused Nos. 2 and 3, they refused for the same, and drove her out of their house. On these allegations, the F.I.R was registered at crime No. 148 of 2016 under Sections 376, 313, read with Section 34 of the Indian Penal Code with Nandurbar Police Station.

4. On completion of investigation, charge sheet was filed, and the accused were charged under Sections 376 (1), 313 and 147 read with Section 34 of the Indian Penal Code. In support of its case, six witnesses were examined by the prosecution. The trial Court on appreciation of evidence acquitted the accused. Hence, the appeal.

5. Heard learned Advocate for the appellant, learned Advocate for respondent Nos. 1 to 3 and learned A.P.P for the respondent/ State. Perused the record.

6. Learned Advocate for the appellant has assailed the impugned judgment of acquittal, contending that the stamp paper on which, accused No.1 had given an undertaking to perform marriage with the victim is placed on record. It is in the handwriting of accused No.1, which proves that accused No.1 was giving false promise of marriage to the victim, and because of the same, the victim indulged in physical relations with him. He further contended that, accused Nos. 2 and 3 have abated the crime committed by accused No.1, and because of the tablets given by accused Nos. 2 and 3, the victim has

aborted the child. In spite of this evidence on record. Trial Court has erroneously acquitted the accused persons. He, therefore submits that, this is a fit case to set aside the acquittal, hence, appeal needs to be admitted.

7. Learned A.P.P. adopted the arguments of the appellant and submitted that, the appeal needs to be admitted in view of evidence brought on record by the prosecution.

8. Learned Advocate appearing on behalf of respondents/accused, on the other hand supported the impugned judgment of acquittal. He submits that, admittedly the victim has alleged that the offence had taken place between 2013 to 2016 for which F.I.R. was lodged in 2016. In her evidence no specific dates and time of alleged incidents of rape, are given by the victim. Taking into consideration the admissions given by the victim and prosecution witnesses, the trial Court has rightly disbelieved the prosecution case and has acquitted the accused. He, therefore, submits that, there is no merits in the appeal and same deserves to be dismissed at the threshold.

9. Perusal of the evidence of the victim and other prosecution witnesses shows that, the relations between the victim and accused No.1 were consensual. Admittedly, the victim was major

at the relevant time. She has failed to give the exact date, time and place where the physical relations took place between her and accused No.1. Though it is alleged by her that, for four to five times she had physical relations with accused No.1 at the house of accused Nos. 2 and 3 on the ground floor during the night time, there is evidence on record that accused Nos. 2 and 3 have six children in the age group of 4 to 16 years, and they were sleeping in the kitchen at the ground floor. In these circumstances, it is difficult to accept the contention of the victim that, accused had forcible physical relations with her at four to five times in the kitchen.

10. In the affidavit sworn by accused No.1, no date is mentioned. It is only stated that accused No.1 would marry with the victim. In view of the admission given by the victim that till the engagement of accused No.1 he was ready to marry with her, it is clear that, the alleged promise to marry was not a false promise of marriage, and it appears that due to the refusal of parents and relatives of accused No.1, he could not marry the victim. In ***Naim Ahamed Versus State (NCT of Delhi) [2023 Law Live (SC), 66]*** following observations are made by the Apex Court :-

“it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for offense of rape under Section 376 of Indian Penal Code. Difference between giving a false promise and committing

breach of promise by the accused is, in case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise one can not deny the possibility that the accused might have given a promise with all seriousness to marry her and subsequently might have encountered certain circumstances unforeseen by him or the circumstances, beyond his control, which prevented him to fulfill his promise”.

11. The case of accused No.1 is squarely covered by the above observations. In the present case also the prosecution has failed to prove that accused No.1, right from the beginning, was not intending to marry with the prosecutrix, and by giving false promise to marry, only with a view to satisfy the lust, he had given the false promise of marriage to her. This appears to be a case of breach of promise, and due to refusal of the parents, accused No.1 could not marry the victim.

12. The victim gave no details as to when she became pregnant, when she was given the contraceptive pills, and when she suffered abortion. The same also was not revealed during the investigation.

13. This fact is admitted by P.W.6 Investigating Officer Shri

Bhosale. There is no evidence on record to connect accused Nos. 2 and 3 with the present crime. The victim has admitted in her evidence that, she came to know about the engagement of accused No.1 prior to 18 to 20 days of lodging of the First Information Report. Prior to that, accused No.1 was ready to marry with her. Since the marriage of accused No.1 was settled with the niece of accused No.2, he also refused for marriage of the victim with accused No.1. Therefore, accused Nos. 2 and 3 appear to have been involved in the present crime by the victim. From the evidence on record, it is clear that, the prosecution has failed to prove its case against the accused beyond reasonable doubt. The trial Court has rightly appreciated the evidence, and by reasoned judgment and order, acquitted the accused. No case is made out by the appellant to interfere in the impugned judgment and order of acquittal. The appeal being devoid of merits, is dismissed.

(SANDIPKUMAR C. MORE)
JUDGE

(NITIN B. SURYAWANSHI)
JUDGE

Y.S. Kulkarni