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Special Case (Atro) No. 1/2018  
State Vs. Shaikh Mahemud.  
J- Exh.No.45

	Received on	:	15-01-2018
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Special Case (Atro) No. 1/2018.

Exh.45.

**Form No. XXXII Part 'A'**

(Title Page of Judgment)

(Para 44(i) of Chapter VI of Criminal Manual)

<b>IN THE SESSIONS COURT AT HINGOLI, DISTRICT HINGOLI</b> Present : Smt.S. N. Mane (Gadekar) Additional Sessions Judge-2 (Special Case (Atro.) No.1/2018)	
	(FIR 53/2017 punishable under Sections 354 of the Indian Penal Code and under section 3(1)(r)(s)(w)(i)(ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, <b>Akhada Balapur</b> Police Station Taluka Kalamnuri District Hingoli
Complainant	<b>THE STATE OF MAHARASHTRA</b> Through Police Inspector, <b>Akhada Balapur</b> Police Station, Taluka Kalamnuri District Hingoli.
REPRESENTED BY	Shri N. S. Mutkule, Learned Public Prosecutor for the State
ACCUSED	Shaikh Mahemud Shaikh Farid age : 45 years, occupation: Agril. R/o Jamgavhan Taluka Kalamnuri District Hingoli.

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REPRESENTED BY	Mr. M. S. Sakale Advocate for accused.
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### Act Part – 'B'

(Para 44 (ii) of C of the Scheduled Castes & Scheduled Tribes  
(Prevention of Atrocities) Act chapter VI of Criminal Manual)

Date of Offence	15-03-2017.
Date of FIR	16-03-2017.
Date of Charge sheet	15-01-2018.
Date of Framing of Charge	20-03-2018.
Date of commencement of evidence	20.03.2018.
Date on which judgment is reserved	28-08-2024.
Date of the Judgment	09-09-2024.
Date of the Sentencing Order, if any	09-09-2024.

### Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on bail	Offences charges with	Whether acquitted or convicted	Sentence imposed	Period of detention under gone during Trial for purpose of Section 428, Cr.P.C
	Shaikh Mahemud Shaikh Fareed	18-03-2017	18-03-2017	354 of Indian Penal Code and U.S 3(1) (r)(s)(w) (j)(ii) of SC and ST Act	Convicted	5 years R.I. and Rs.25000 /- fine each for offences p.u.s 354 IPC and 3(1)(w) (ii) of S.C. & S.T. Act.	No.

**Part 'C'**

(Para 44 (iii) of Chapter VI of Criminal Manual)

**LIST OF PROSECUTION/DEFENCE/COURT  
WITNESSES****A. Prosecution :**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
PW1	Prosecutrix	Informant/Victim
PW2	Husband of prosecutrix.	Husband of victim
PW3	Balaji Suryabhan Jadhav	Spot panch

**B. Defence Witnesses, if any :**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
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**C. Court Witnesses, if any :**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
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**LIST OF PROSECUTION/DEFENCE/COURT  
EXHIBITS****A. PROSECUTION :**

Sr. No.	Exhibit Number	Description
1	PW1 Exh.No. 28	Complaint
2	PW1 Exh.No. 29	Printed FIR
3	PW3 Exh.No. 39	Spot panchnama

**B. Defence :**

Sr. No.	Exhibit Number	Description
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**C. Court Exhibits :**

Sr. No.	Exhibit Number	Description
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**D. Material Objects :**

Sr. No.	Material Object Number	Description
-	--	--

**JUDGMENT**( Delivered on, 9<sup>th</sup> September, 2024 )

- 1] The accused is facing the trial for the offence punishable under Section 354 of the Indian Penal Code and under sections 3(1)(r)

(s)(w)(i)(ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2] Informant is a woman, who has been sexually assaulted. So to protect her identity, as per Section 228-A of the Indian Penal Code, her name and name of her husband is concealed in this judgment, and the informant is hereinafter called as 'the prosecutrix'.

**The brief facts of the prosecution case are as under :**

3] The prosecutrix is a married woman. She belongs to Andh Adivasi community. Her marriage was performed on 26/02/2012. She is not having any issue. She lives with her husband and father-in-law. On 15/03/2017 she went to her field for farming work as usually around 1:00 p.m. When she was plucking beans of Chawali, accused Sk. Mahemud Sk. Fareed came close to prosecutrix and told her that about 3:30 p.m. 'when had came to her farm that time his Mobile phone fell somewhere in the field'. So he took her mobile phone and dial his number 9049412019 from her mobile number 8806505601 while dialing his number he was walking in the field. Victim stopped by side of the field on the pathway. After a while accused came near the prosecutrix and handed her mobile by saying that he had found his mobile. The prosecutrix got her mobile, she was going back to work in her field. Accused came behind the prosecutrix and suddenly he put both his hands inside the hands of prosecutrix and held her boobs and did '*Zomba Zombi*' with her body. The prosecutrix bent the fingers of the accused hands. So accused released her. The prosecutrix screamed then he ran away and on the way he threatened to kill her, if



she told anyone.

4] On the report of the prosecutrix, police station Akhada Balapur registered crime no. 53/2017 under section 354, 506 of Indian Penal Code and Sec.3(1)(r)(s)(w)(i)(ii) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 2015. Investigation was handed over to Sub-Divisional Police Officer, Basmat Shri. S. D. Kashid. Investigating Officer prepared spot and seizure panchanama. Medical examination of the prosecutrix was done. Caste certificates of prosecutrix and accused were collected. 7/12 extract of prosecutrix's field gat No.23, Namuna No.8-A, T.C. Certificate all were collected. Statements of witnesses came to be recorded. After completing investigation, charge-sheet came to be filed by Dy. Sub-police officer Basmat police station Akhada Balapur to Sessions Court, Hingoli.

5] On 20/03/2018, My learned predecessor has framed the charge at Exh.15 for the offences punishable under Section 354 of the Indian Penal Code and Sec.3(1)(r)(s)(w)(i)(ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015. The contents of the charge were read over and explained to the accused in vernacular, to which, he pleaded not guilty and claimed to be tried.

6] After completion of evidence, the statement of accused under Section 313 of the Criminal Procedure Code was recorded at Exh.42. His defence is that **the father-in-law of the prosecutrix was constructing his Gharkool, illegally upon the land of Anganwadi, so he filed an application against the said illegal construction on 04/01/2017.**

**Consutruction was stopped due his application so, he has beely involved in this false case.**

7] The following point arises for my determination and their findings with reasons thereon are as under :

Sr.No.	POINTS	FINDINGS
1)	Does the prosecution prove that on 15/03/2017 about 3:30 p.m., accused used criminal force against complainant, intending to outrage her modesty ?	<b>Yes.</b>
2)	Does the prosecution prove that, on said date and time accused, who is not being a member of SC. or S.T. Community used a criminal force against a complainant, a woman belonging to Scheduled Tribe with intent to dishonour or outrage her modesty and thereby committed an offence punishable under Section 3(1)(r)(s)(w)(i)(ii) of the S.C. S.T. (Prevention of Atrocities ) Act ?	<b>Yes, only u/s. 3(1)(w)(ii) of the Act.</b>
3)	What Order ?	<b>As per final order</b>

**: REASONS :**

**AS TO POINT NOS.1 AND 2:**

8] As per evidence of prosecution, she belongs to Andh Adivasi. Her marriage was performed in the year 2012, but she was not having any issue at the time of incident. On 15/03/2017 she was at her farm to pluck the beans of Chawali. Near about 3:30 p.m., accused came at her field. He demanded her mobile, under the pretext that he had come before sometime to her field and his mobile phone fell somewhere. On the

request of the accused, the prosecutrix gave her mobile phone to accused to find out his mobile with the help of her mobile. When accused was searching his mobile, the prosecutrix was standing by the side of the field on the footpath (path). Accused came near her and returned her mobile by saying that he found his mobile.

9] Further she stated that she got her mobile. So she started her farming/ agricultural work. Accused came from her back side and he put his hand inside her hand and held her boobs. To save from accused she bent accused's fingers. So he released her. Due to her screaming, he fled away but threatened that he will kill her, if she tells about the incident to any one. On next day, she went to the police station to lodge the report. She proved her report and F.I.R. at Exh.28 and 29 respectively. Even she had handover the xerox copy of Caste certificate.

10] During the cross-examination she could not state the distance in between the Jamgavan to Akhada Balapur and Jamgavan to Dongarkada. The field whether the alleged incident took place is the field of Landgi. She admitted that the field of Shamrao Shelke, Kisan Chambhare are the adjacent to her field. They cultivated their farm with the help of their family members. She admitted that in the year 2017 accused was residing in front of her house. The accused has four daughters and one son. He used to reside with his children and aged mother.

11] Defence tried to bring on record that due to previous enmity in between the accused and the prosecutrix's husband, accused



has been involved falsely. The prosecutrix admitted that prior to the alleged incident her father in law started a construction on the land which was allotted to her family by Grampanchyat. But, she denied the suggestion that 04/01/2017 accused filed one application before Grampanchyat about the construction of prosecutrix's family. She admitted that at the relevant time she was the member of Grampanchyat and in the year 2016 accused opposed her in the election. She denied that due to above facts there was a grudge in her mind against accused. The cross-examination was very lengthy, but not relevant to the alleged incident. The defence could not shake credit worthiness of the witness.

12] The defence also tried to bring on record that, the prosecutrix deliberately lodged report on the next day of the incident. There is a delay in lodging the report which is not explained properly. While answering this point, she explained in her cross-examination at Para No.17 Page No.9 that on 15/03/2017 she had gone to lodge a report at Dongarkada police Chauki. Police made inquiry towards her but they were unable to receive her report as they were not having any facility of tying machine. So they suggested her to approach to the Akhada Balaur police station. As per her evidence on that day they returned from Dongarkada police Chauki on 11:00 p.m. at night. On the next day of the alleged incident they went to Akhada Balapur police station in between 2:00 to 2:30 p.m. and they were present there till 10:00 to 10:30 p.m. at night.

13] The alleged incident took place on 15/03/2017 and she returned at her home near about 4:30 p.m. at after noon after the alleged incident. Considering her explanation, I do not find any inordinate delay.

Hence, accepted her testimony as a witness.

14] P.W.-2 the husband of prosecutrix stated in his evidence that, gut No.23 is his agricultural field which is recorded in the name of his grandfather. On the alleged incident he went to Hingoli attend the marriage ceremony. Near about the 3:45 p.m. the prosecutrix informed him about the alleged incident as she stated in her report Exh.28 and evidence.

15] The prosecutrix returned at home and this witness also came back from Hingoli. Then again P.W.-1 narrated the whole incident to P.W.-2. PW1 and P.W.-2 both informed about the alleged incident to the father of P.W.1.

16] The defence asked many questions to the PW1 and PW2 to shake their credit-worthiness. The defence cited many questions about the political background of PW1 and her husband, but the defence failed to bring any matter on record that the prosecutrix and her family members had conspired and implicated the accused in this false case. The evidence of PW2 corroborates PW1 After the incident, at first, PW1 immediately made call to her husband. She narrated the whole incident to him. After coming back to home, PW1 again informed him about the alleged incident. Thereafter, they both made consultation with the father of PW1. After the family discussion, they decided to lodge a complaint against the accused. There is nothing on record to disbelieve the evidence of PW2.

17] On the same day, P.W.-1 and P.W.-2 approached to Police

Chowki. As the computer was not available at police Chauki so on 16/03/2017 first information report came to be lodged. This witness was not present on the spot. However, the prosecutrix, after the incident immediately informed P.W.-2 being her husband. This witness was present with the prosecutrix when she had gone to lodge report at Dongarkada Police Chauki and Akhada Balpur police station. There is noting on record to disbelieve his version.

18] P.W.-3 Panch is related to spot panchnama Exh.39. On 17/03/2017 he had gone for the panchnama at Jamgavan field gat No.23 and the another panch witness namely Rameshawar Giri was with him. During the cross the witness did not state where a cotton crop was standing or not on the spot. He denied suggestion of defence that on the say of police he signed on the spot panchnama.

19] In spite of sufficient opportunities the prosecution could not examine the I.O. and other witnesses in this case. Caste Certificate and T.C. of the prosecutrix could not be proved by the prosecution.

20] The defence argued that due to non-examination of Investigating Officer, is fatal to the prosecution. It is settled law that non-examination of the I.O. must result in prejudice to the accused, if no prejudice is caused, mere non-examination would not render the prosecution case fatal. There is no defence evidence on record. The evidence of victim inspires confidence. So no substance in the argument of defence.

21] After considering the available evidence of prosecution on record it appears that, on the alleged day of incident, the accused fully planned and went to the farm, where the prosecutrix was plucking cowbeans. He told her that he came to her farm sometime ago and his mobile phone fell there. He demanded mobile phone to prosecutrix so that he can find his mobile. Accused pretended that he was looking for his mobile phone from the mobile phone of prosecutrix. While doing this account of fabrication, prosecutrix stood aside. After sometime, she got her mobile phone back. The accused returned her mobile as if he had found his mobile. prosecutrix started her work and at that time, accused suddenly attacked upon her, hold her boobs with both hands. As soon as she realized this, prosecutrix caught hold accused's hand and bent all his fingers. The accused started *Zomba Zombi* with her body, prosecutrix screamed and accused ran away. As no one was working in the surrounding field at the time of the incident, so there is no eye witness for the alleged incident. PW1 was a Grampanchayat Member, rendering services for the society, accused had a knowledge about her political post and caste also as he was her neighbour. Not only this, he opposed her in election.

22] The accused was the neighbour of prosecutrix. He belongs to Muslim community and this fact is not disputed. PW1 and accused were residing in same village. At the time of alleged incident, accused and prosecutrix, both were well acquainted with each other. Therefore, Section 8 of S.C. and S.T. Act, came into play. Hence, it is presumed that the accused was aware that the prosecutrix and her family belongs to the Scheduled Tribe community. The non-examination of the concerned

authority or I.O. to prove the Caste Certificate do not fatal to the prosecution's case on a ground that prosecution failed to prove the caste of the prosecutrix.

23] Hence, I come to this conclusion that the prosecution has proved that, on the alleged day of incident, the accused used a criminal force with the prosecutrix with intent to outrage her modesty, and by holding her boob (breast), he outraged the modesty of prosecutrix. Section 3(1)(w) penalizes a person not being a member of a Scheduled Caste or Scheduled Tribe, intentionally touches a woman belonging to Scheduled Caste or Scheduled Tribe, or knowing that she belongs to a Scheduled Caste or Scheduled Tribe. To prosecute a person for an offence committed under Section 3(1)(w) of the SC and ST Act, the prosecution must show that the offence was committed in reference to the caste of the victim/prosecutrix. However, there is no satisfactory evidence on record that accused outraged the modesty of prosecutrix because she belongs to Scheduled Tribe community, but succeeded to prove that accused had a knowledge that the prosecutrix belongs to Scheduled Tribe community, inspite of it, he outraged her modesty.

24] The prosecution has proved the offence punishable under Section 354 of the Indian Penal Code and Section 3(1)(w)(ii) of S.C. and S.T. (Prevention of Atrocities) Act against the accused, beyond reasonable doubts, but failed to prove the offence punishable under Section 3(1)(r) (s)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 2015.



25] The prosecution has proved an offence punishable under Section 354 of the Indian Penal Code and offence punishable under Section 3(1)(w)(ii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the accused, beyond reasonable doubt. Hence, I record my findings as to Point Nos.1 and 2 as above. Now, to hear the accused on the point of sentence, I stop this judgment here.

26] The accused and his Learned Advocate Shri. S. S. Thorat holding on behalf of Learned Advocate Shri. Sakale prayed for leniency as he is a Karta of his family. His parents and two daughters are fully dependent upon him. On the other hand, the Ld. Special Prosecutor prayed for strict punishment.

27] Heard both the sides. The incidents of violence against women, children in the States and country, are increasing day-by-day. The view of some people towards a woman is very narrow. An attitude of some people in the society that we will do anything against woman, children but they should tolerate it and Court, law should sympathize with them. The enforcement of the laws strictly, is also needed to ensure the common people that they are living under the rule of law. In this case, on the alleged day of incident, the accused, after seeing the prosecutrix alone in the field, committed the alleged offences. Apart from the fact that she belongs to the tribal community, a neighbour and a member of a Grampanchayat. Only the accused has children and his is a Karta of his family, is not a satisfactory and sufficient reason to show him sympathy. So considering the nature of the offences, I think, the following order will

meet the ends of justice:

**ORDER**

1. The accused is acquitted vide Section **235(1)** of the Criminal Procedure Code for the offence punishable under Section 3(1)(r)(s)(w)(i) of the the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.
  2. The accused is hereby **convicted** vide Section **235(2)** of the Criminal Procedure Code for the offence punishable under Section **354** of the Indian Penal Code and sentenced to **suffer rigorous imprisonment for five years** and to **pay fine amount of Rs. 25,000/- (Rs. Twenty Five thousand)** and in default, to undergo **rigorous** imprisonment for **one year**.
  3. The accused is hereby also **convicted** vide Section **235(2)** of the Criminal Procedure Code for the offence punishable under Section **3(1)(w)(ii)** of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and sentenced to **suffer rigorous imprisonment for five years** and to **pay fine amount of Rs. 25,000/- (Rs. Twenty Five thousand)** and in default, to undergo **rigorous** imprisonment for **one year** year.
  4. Both the substantive sentences shall run concurrently.
  5. Out of fine amount of Rs.50,000/- (Rupees fifty Thousand), **Rs.30,000/- (Rupees Thirty Thousand only)** be given to the prosecutrix as a **compensation** after appeal period is over.
  6. The accused shall surrender his bail bonds.
  7. The copy of judgment be delivered to the accused, free of costs.
- Judgment is pronounced in the open Court.

Dated: 09/09/2024.

SAROJ  
NARENDRA  
MANE  
GADEKAR

Digitally signed  
by SAROJ  
NARENDRA  
MANE GADEKAR  
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**[Smt. S.N.Mane-Gadekar]**  
Additional Sessions Judge-2,  
Hingoli.

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Special Case (Atro) No. 1/2018  
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**CERTIFICATE**

I affirm that the contents of this P.D.F. file Judgment/Order is same word for word as per original Judgment/Order.

Name of Steno	:- R.M. Kulkarni, Stenographer (Grade-I),
Court Name	:- Smt. S.N. Mane-Gadekar Addl. Sessions Judge-2, Hingoli.
Date of Order	:- 09.09.2024.
Order signed by the Presiding Officer	:- 09.09.2024.
Order Uploaded on	:- 09.09.2024.