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Sessions Trial No.10/2021**Exh.No. 140****Form No. XXXII****Part 'A'****(Title Page of Judgment)****(Para 44(i) of Chapter VI of Criminal Manual)**

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, AT HINGOLI, TQ. DIST. HINGOLI. <u>(Presided by : P. G. Deshmukh)</u> (Date – 03/02/2026) (Sessions Trial No. 10/2021)	
(FIR No. 387/2020, offences punishable under sections 376(2)(n), 498(A), 109, 504, 506 read with 34 of Indian Penal Code. Police Station, Hingoli (Rural)	
COMPLAINANT	THE STATE OF MAHARASHTRA Through Police Sub-Inspector, Police Station, Hingoli (Rural).
REPRESENTED BY	Mr. S. D. Kute Learned A.G.P. for the State.
ACCUSED	1. Sambhaji S/o Dinkar Ghuge Age -48 year, Occupation – Agri. R/o :- Kinhiraja, Tq. Malegaon, Dist.Washim.
	2. Abhishek S/o Prabhakar Ghuge Age - 27 year, Occupation – Agri. R/o :-Mairaldoh,Tq. Malegaon,Dist.Washim.
	3. Sau. Gangubai W/o Sambhaji Ghuge Age - 45 year, Occupation – Household R/o :- Kinhiraja, Tq. Malegaon,Dist. Washim.
REPRESENTED BY	Mr. K.N. Salunke, Learned counsel for accused.

Part – 'B'**(Para 44 (ii) of Chapter VI of Criminal Manual)**

Date of Offence	In between year 2018 till 03/10/2020.
Date of FIR	12/11/2020
Date of Charge sheet	04/01/2021
Date of Framing of Charge	12/02/2024
Date of commencement of evidence	29/10/2025
Date on which judgment is reserved	30/01/2026
Date of the Judgment	03/02/2026
Date of the Sentencing Order, if any	----

Accused Details

R a n k of Ac cu se d	Name of Accused	Date of Arrest	Date of Release on bail	Offence charges with	Whether acquitted or convicted	S e n t e n c e i m p o s e d	Period of Detention Undergone during Trial for purpose of Sec.428 Cr.PC
1.	Sambhaji Dinkar Ghuge	13/11/2020	16/01/2021	Offe.puni.u.s.376 (2)(n),498(A), 109,504,506 r.w. 34 of I.P.C.	Acquitted	--	--
2.	Abhishek Prabhakar Ghuge	13/11/2020	16/01/2021	Offe.puni.u.s.376 (2)(n),498(A), 109,504,506 r.w. 34 of I.P.C.	Acquitted	--	--
3.	Sau. Gangubai Sambhaji Ghuge	30/11/2020	30/11/2020	Offe.puni.u.s.376 (2)(n),498(A), 109,504,506 r.w. 34 of I.P.C.	Acquitted	--	--

:: J U D G M E N T ::

(Delivered on 03rd of February, 2026)

Accused no.1 is facing trial for offence punishable under section 376(2)(n) of the Indian Penal Code and other accused are facing the trial for offences punishable under sections 498(A), 109, 504, 506 read with 34 of Indian Penal Code.

The prosecution's case is in nutshell as under :-

02. It is an allegation that after performance of marriage with accused no.2 Abhishek, victim was residing at Pune. Due to ill health of her mother in law, she returned to matrimonial house situated at Mairaldoh, Tq. Malegaon, Dist. Washim. It is alleged that victim was residing at her matrimonial house but accused Sambhaji repeatedly visited her matrimonial house. Accused Sambhaji was asking the reason for non conceiving the child and told her to take medicine from him but she refused to take any medicine. It is further stated that accused Sambhaji came to her matrimonial house on several occasions and on account of giving the medicine forcibly entered private part (Penis) into mouth of victim. The incident was narrated by victim to her husband who is accused no.2 then also same incident had taken place on several occasions.

03. It is also an allegation that when victim had begotten the child, accused Sambhaji was claiming paternity of child. On several occasions victim was raped by accused Sambhaji hence in September 2020 she went to her parental home. After lapse of some period, she lodged the complaint against all accused and accordingly Crime No. 387/2020 was registered for offences punishable under sections 376(2)(n), 498(A), 109, 504, 506 r/w 34 of Indian Penal Code.

04. Investigation in the said crime was handed over to ASI B.R. Bandkhadke who recorded the statement of witnesses, prepared the spot panchanama, collected the required documents, arrested the accused and after completion of investigation filed charge-sheet in Court on 04/01/2021.

05. Learned Judicial Magistrate First Class, Hingoli noticed that offences are triable by the Court of Sessions. Hence by an order dated 28/01/2021 he committed case to this Court after making necessary compliance of section 207 of Code of Criminal Procedure.

06. My learned Predecessor (Mr. D.G. Kamble) has framed the charge against accused for an offences punishable under sections 376(2)(n), 498(A), 109, 504, 506 r/w 34 of Indian Penal Code at Exh.44. The charge under section 376 (2)(n) was framed against accused Sambhaji and charges punishable under section 498(A), 504, 506 of the Indian Penal Code are framed against other accused and charge under section 109 was framed against only accused no.3 Gangubai Ghuge. Contents of charge were read over to accused in their vernacular. Accused pleaded not guilty and claimed to be tried. Plea of accused are recorded at Exh. 45 to 47. It emerges that defence of accused is of false implication.

07. The following points arise for my determination along with findings there on with reasons are as under:

Sr. No.	Points	Findings
1.	Whether the prosecution proves that, since the year 2018 to 03/10/2020 in the house of informant (victim), in the house of accused situated in the field and in the field of Kalgaon	<u>In the negative</u>

	shivar and then further from time to time at different places, you accused no. 1 committed rape repeatedly on the same woman i.e. the informant (victim) and thereby committed an offence punishable under section 376(2)(n) of the Indian Penal Code ?	
2.	Whether the prosecution proves that on the above said date, time and place, in furtherance of their common intention, accused no. 2 being husband of informant (victim) and you accused no. 1 and 3 being relatives of accused no.2 subjected to cruelty in order to help accused no.2 to molest the informant (victim) which is of such a nature as is likely to drive the said informant (victim) to commit rape and thereby committed an offence punishable under Section 498 (A) r/w 34 of Indian Penal Code ?	<u>In the negative</u>
3.	Whether the prosecution proves that on the above said date, time and place, accused no. 3 aided to applicant no. 1 in committing the offence of rape on informant (victim) and abetted applicant no. 1 in the commission of the said offence of rape which was committed in consequence of your abetment and thereby committed an offence punishable under Section 109 of the Indian Penal Code ?	<u>In the negative</u>
4.	Whether the prosecution proves that on the above said date, time and place, accused in furtherance of their common intention, insulted the informant (victim) and thereby gave provocation knowing it to be likely that such provocation will cause her to break public peace or commit any offence and thereby committed an offence punishable under Section 504 r/w 34 of the Indian Penal Code ?	<u>In the negative</u>

5.	Whether the prosecution proves that on the above said date, time and place, accused in furtherance of their common intention, committed the criminal intimidation by threatening to kill an informant (victim) to cause her death with intent to cause alarm to her and thereby committed an offence punishable under section 506 r/w 34 of the Indian Penal Code ?	<u>In the negative</u>
6.	What order ?	As per final order.

: Undisputed facts of the present case are as under :-

08. Accused and victim are the residents of the same village. Victim is legally wedded wife of accused no.2 and relationship of victim with accused no. 2 is in existence are undisputed facts of the present case.

:: REASONS ::

09. To prove its case on behalf of prosecution PW 1 Victim is examined at Exh. 53, PW 2 Sayyad is examined at Exh. 73, PW 3 Manoj is examined at Exh. 77, PW 4 Dr. Suvarna is examined at Exh. 80, PW 5 Dr. Anup is examined at Exh. 85, PW 6 Sanjay is examined at Exh. 88, PW 7 Baliram is examined at Exh. 91 and PW 8 Santosh is examined at Exh. 116. Thereafter prosecution has closed its evidence by filing pursis Exh.120.

10. On behalf of accused one witness is examined. DW 1 Kailas is examined at Exh. 126 and evidence of accused is closed by filing pursis at Exh. 130.

:: AS TO POINT NO. 01 :

11. I have already discussed that charge for offence punishable under section 376(2)(n) is framed only against accused Sambhaji hence evidence given by the prosecution can be summarized is as follows :- PW 1 Victim deposes that on 09/12/2015 she married with accused no. 2 Abhishek at Aundha Nagnath temple. At the relevant time Rs. 5,00,000/- dowry was given by her father. After the marriage, she went to Pune and resided there. But in the year 2017, due to ill health of her mother in law she returned to village Mairaldoh Tq. Malegaon, Dist. Washim. She further deposes that when she returned to village Mairaldoh, accused Sambhaji was regularly visiting her matrimonial home. Accused asked the reason for non conceiving the pregnancy but she did not reply. Thereafter accused Sambhaji insisted her to take medicines but she refused to take medicine.

12. She deposes that in January 2018 accused Sambhaji came to home and told her husband to went outside. Thereafter closed the door, told her to close eyes and removed his clothes. By threatening the victim with the knife insisted her to take his private part (Penis) in the mouth. Accused Sambhaji had taken the shooting in his mobile and told the victim that it was necessary for her to take medicines for about 08 to 10 times. She tried to convince her husband but husband did not listen her. On account of defamation she did not narrate the incident to any other person. Thereafter she conceived pregnancy from her husband. Rs. 4,00,000/- to 5,00,000/- was taken by accused Sambhaji from her husband.

13. She deposes that at the time of carrying 07 months pregnancy, she went to village Hiwarabel and after lapse of time begotten male child on 18/11/2018. After some days when she returned to matrimonial home, her husband felt that she conceived the pregnancy due to medicine given by accused Sambhaji, hence thereafter accused Sambhaji came to home on several occasions.

14. In March 2019 accused Sambhaji and accused Gangubai came to home and who told that child is begotten from accused Sambhaji. When the said incident was told to her husband, she was beaten by her husband. After lapse of three days when nobody was present at home, accused entered in the home and by closing the door and threatening with the knife raped her. The incident was narrated by her to her husband but her husband Abhishek insisted her to act as per wish of accused Sambhaji. She could not tell the incident to any other person but she was raped on several occasions by accused Sambhaji. Accused Gangubai instigated her husband.

15. Victim says that accused Sambhaji insisted her to travel till her parental home. But when once she was travelling by the motorcycle along with accused Sambhaji nearby village Kalgaon in one field, accused raped her. Even in September 2020 by giving promise of transferring the land, her husband insisted her to reside with accused Sambhaji. On 25/09/2020 accused Gangubai told her to reside with her husband as a keep by doing the household work. On 02/10/2020 when her period of menstruation was going on, accused Sambhaji came to home and raped her. When the incident was narrated by herself to her mother in law then mother in law replied to visit parental home. Hence on the next day she went to

reside at parental home but accused Sambhaji present nearby boundary of village sat on the motorcycle along with her husband. In the above said journey, accused Sambhaji again raped her.

16. From the above said evidence it appears that the victim has alleged commission of rape only by accused Sambhaji. When victim visited the parental home, she narrated the incident to her brother and mother. After lapse of some days she lodged the complaint Exh. 54 and FIR Exh. 55 against the accused. She admits contents of statement Exh. 56, letter Exh. 57, extract Exh. 58, Birth Certificate Exh. 59 and gift deed Exh. 60. It is stated that as per say of accused Sambhaji, gift deed was executed in her favour by accused Abhishek and for carrying out DNA examination, her blood sample was taken by the doctor.

17. In the cross-examination she admits that prior to marriage with accused Abhishek, she married with another person Nitin Bangar on 14/04/2014. After her marriage with Nitin she was residing for about one month. No divorce decree was granted by the Court in her favour and her statement was typed by the police. Since January 2018 accused Sambhaji was visiting her matrimonial home and resided there on number of times. She could not exactly tell the time when accused resided at her matrimonial house. She stated that in absence of her husband at home, accused visited the matrimonial home on number of occasions. Her matrimonial home was of single room and till 02/10/2020 accused Sambhaji was visiting her matrimonial home. She admits that after her marriage with accused Abhishek she did not conceive the pregnancy and she visited the hospital of Dr. Damkondwar where her examination and examination

of her husband was completed. She admits contents of DNA analysis report Exh. 61, filing of complaint bearing its no. 53/2022 by accused Abhishek pending at Malegaon Court, contents of photograph Exh.62 in which it appears that accused no. 3 Gangubai was present.

18. In her cross-examination she has stated that land was transferred in her name prior to two months of lodging the complaint by accused Abhishek. At the relevant time other accused Gangubai and Sambhaji had signed the document as witnesses. She had taken gold ornaments while taking the divorce from earlier husband Nitin Bangar. She had also taken some amount but could not exactly tell the amount taken from her earlier husband. She has admitted that birthday of her son Naitik was performed on 11/12/2019. At the relevant time all accused were present (transpired from photographs Exh. 65). She did not have proof of payment of Rs. 5,00,000/- made to accused as a dowry and she could not tell dates when she was raped by accused Sambhaji. She could not tell the mobile number by which accused Sambhaji had allegedly taken the shooting, gat number of the land of the field situated on Kalgaon, name of the owner of land and four lanes of the spot where she was allegedly raped. She returned to her parental home on 03/10/2020 and filed the complaint after lapse of one month.

19. She admits that even after her delivery she was travelling with accused Sambhaji by the motorcycle. Accused Sambhaji dropped her at Hiwarabel Phata on two occasions. She could not tell dates and details of the spot where alleged rape was committed by accused Sambhaji but admitted contents of documents Exh. 66, Exh.67, Exh. 68 and Exh. 69. Once she visited Shegaon

along with all accused and on the next occasion she visited Shegaon along with other relatives and accused. Clothes wore by her at the time of alleged incident were given to the police and knife like seized knife was easily available at each house.

20. PW 2 Sayyad Riyaz has stated that on 13/11/2020 police prepared the panchanama Exh. 74 and taken photographs of the spot in his presence. In his presence police had seized clothes given by the victim by preparing the seizure panchnama Exh. 75 but in the cross-examination he admits that all clothes given by the victim were old used clothes. He could not tell the survey number, gat number of the spot and the name of owner of the spot of incident.

21. Testimony of PW 3 Manoj is the hearsay evidence who has stated that his sister who is also victim narrated the incident of rape to himself. The witness in his deposition before the court has told incidents communicated to him by his sister. In the cross-examination he says that at the time of incident he was using mobile. Prior to lodging of the complaint his sister did not disclose the visit of his sister at Mahajan Diagnostic Center. He could not tell month in which Diwali festival was celebrated in the year 2020 but admitted that FIR was lodged after delay of one month.

22. PW 4 Dr. Suvarna has stated that on 12/11/2020 she received the letter Exh. 81 and thereafter examined one victim. As per details of examination included in report Exh. 82 victim was habitual of sexual intercourse. There was sexual assault upon the victim but no injury mark was found by her. The final opinion was kept pending till receipt of Forensic Laboratory Report.

23. In the cross-examination she admits that no internal or external injury was found on the private part of victim. On the basis of examination she could not opine the exact date and time when there was sexual assault on the victim and she could not tell against which accused allegation made by the victim.

24. PW 5 Dr. Anup says that on 13/11/2020 he received the letter Exh. 86 and examined accused Sambhaji. As per report Exh. 87, accused Sambhaji was competent to have sexual pleasure with any other person. In the cross-examination he says that blood samples of accused were taken and in report Exh. 87 competency of accused Sambhaji in respect of sexual relation was not disclosed.

25. PW 6 Sanjay who happened to be another panch witness turned hostile. He did not admit preparation of spot panchanama by the police in his presence on 15/11/2020. Therefore his testimony is of no use for prosecution.

26. PW 7 Bandkhadake says that investigation in Crime No. 387/2020 was handed over to him on 12/11/2020. After perusal of documents he given the letter Exh. 92. Thereafter he prepared spot panchanama Exh.74, seized clothes of victim by preparing the seizure panchanama Exh.78, arrested the accused by arrest panchanama Exh. 93 & 94, given the letter Exh.95 to record the statement of victim. He says that letter Exh. 96 was given by him, police station diary extract Exh. 97 and 98 were collected by him and prepared spot panchnama Exh. 99. He further prepared seizure panchanama Exh. 100 and 101, collected documents Exh. 102, 103, 104 and issued letter Exh.105. He received acknowledgment Exh. 108, arrested accused Gangubai

by preparing arrest panchanama Exh.109 and after collection of other documents and completion of investigation filed charge sheet against accused in the court.

27. In the cross-examination Investigating Officer Bandhadake has stated that when investigation was handed over to him spot panchanama was prepared on the next day. He prepared the single spot panchanama at village Kalgaon. At the relevant spot no damaged grass was found. He has not recorded the statement of any person residing nearby village Kalgaon. He admits that prior to preparation of the spot panchanama he arrested the accused, when he did not possess any proof to arrest the accused. He admits that he did not record the statement of any person residing at village Raja Kinhi and witness Kamalabai whose statement was recorded by him was the mother of accused Abhishek from whose possession motorcycle was seized. The knife was seized from the possession of Devanand Ghuge and no article was seized from the possession of any accused.

28. He has admitted that when DNA kit was brought to Hingoli police station, it was sent to Civil Hospital, Hingoli and after collecting samples, DNA kit was again brought to police station, Hingoli. He could not tell name of persons whose samples were taken by the Medical Officer. He did not investigate about infertility of accused no. 2 but obtained birth certificate of child Naitik. No statement of any person resident of Shegaon and Akola was recorded by him and CDR along with tower location was not collected by him.

29. PW8 Santosh says that on 16/11/2020 as per order of

API Bandkhadake, he went to Aurangabad to obtain DNA kit. After receipt of DNA kit, he went to chemical analysis laboratory and DNA Kit was handed over to laboratory along with letter Exh. 108. He has further stated that along with letter Exh. 110, he handed over other samples for chemical analysis at Chemical Laboratory, Nanded.

30. On behalf of accused DW 1 Kailash has stated that in his presence accused Sambhaji married with victim on 10/01/2018. At the relevant time accused Sambhaji and victim were residing as husband wife and on 12/11/2018 victim had begotten the male child whose first birthday was also performed at village Kinhi Raja.

31. In the cross examination he says that population of the village was approximately 10,000. He could not tell birthdays of all children of his friends. He admits that marriage in between Sambhaji and Gangubai is till in existence. He could not tell about validity of second marriage of Sambhaji. He says that even prior to the marriage, victim was residing at Kinhi Raja and accused Abhishek was not known to him. He could not tell about validity of marriage in between accused Sambhaji and victim.

32. Heard both the Advocates. Perused the record. Learned A.G.P Shri. S.D. Kute has submitted that when offence punishable under section 376 of the Indian penal Code is involved sole testimony of victim is sufficient to convict the accused. Learned A.G.P. has placed reliance on the judgment State of Punjab Vs. Gurmit Singh, AIR 1996 SC 1393.

33. On the contrary advocate for the accused has submitted that in view of performance of marriage in between victim and

accused Sambhaji, it appears that there was consent of victim. It is further stated that no where victim deposes about penetration of his private part into private part of victim. Alleged threatening by accused Sambhaji and co-habitation with the victim when not proved by the prosecution then DNA report is not useful. Thus advocate for the accused has submitted that evidence is not sufficient to prove the guilt of accused.

34. I have already discussed the evidence in detail given on behalf of prosecution. To prove an alleged incident of sexual assault on the victim, testimony prosecutrix is important. Prosecutrix has stated that when she returned from Pune to her matrimonial house then on several occasions accused no. 1 visited her matrimonial house. Not only accused insisted to take his private part into mouth but also taken shooting of said incident. It is also contention of victim that by threatening her, accused Sambhaji raped her on several occasions. But witness could not give the details of incidents. She has failed to disclose date, time and place of several incidents narrated by her. In such circumstances even though DNA report is placed on record whether there was consent of victim or not is an important aspect which has to be considered by the court.

35. In the cross-examination it is brought on record that neither details of spot were disclosed by the victim nor exact date and time of any incident was narrated by the victim. Beside the testimony of victim, testimony of PW 3 Manoj was also recorded who has stated that the incident of rape was narrated by his sister.

36. I have already discussed in detail the evidence which

indicates that in October 2020 victim returned to her parental home. The complaint Exh. 54 is given on 12/11/2020. In the complaint there is whisper that accused Sambhaji committed rape in between January 2018 till 03/10/2020 at different places. In the cross-examination of Investigating Officer, it is brought on record that the witness Kamalabai with whom victim was allegedly residing is not examined by the prosecution.

37. Marriage extract record Exh. 58 indicates that victim married with accused Abhishek on 09/12/2015. Similarly birth certificate Exh. 59 indicates child Naitik born on 12/11/2018 and the Gift deed Exh. 60 indicates the transfer of land in the name of victim by accused Abhishek on 24/09/2020. Photographs of the marriage Exh.62 collectively confronted during the cross-examination of witnesses are also indicating the relationship in between victim and accused Abhishek.

38. Document Exh. 67 is the document filed by accused Sambhaji. The said document indicates that on the basis of alleged contention of marriage with the victim, the accused Sambhaji claimed the custody of victim and child Naitik. After hearing both parties application under section 97 of Code of Criminal Procedure filed by accused Sambhaji is rejected by learned Judicial Magistrate First Class on 20/12/2021. It is no where brought on record by the accused Sambhaji that he had challenged the said order at any time therefore order passed by JMFC, Malegaon dated 20/12/2021 attains the finality. It is held by learned Judicial Magistrate First Class that application of applicant Sambhaji was not bona-fide and legal and therefore the said application was rejected.

39. Considering oral and documentary evidence given in the present case, it appears that victim is making an allegation of committing rape by accused Sambhaji and on the contrary accused Sambhaji had claimed the custody of child and victim. According to accused Sambhaji in January 2018 he carried with victim.

40. Section 106 of Indian Evidence Act deals with facts specifically within the knowledge of person. It is defence of all accused that victim married with accused Sambhaji then in such circumstances it is the responsibility of accused to prove the said fact. When accused have asserted certain facts then to prove the said fact burden lies upon them.

41. The offence punishable under section 376 of Indian Penal Code is involved and accused Sambhaji had claimed custody of child on the basis of performance of marriage with victim. DNA report Exh.61 placed on record clearly indicates accused Sambhaji was the biological father of child Naitik then in absence of any consent an offence is likely to be proved but if any consent is their then it creates doubt about an allegation against the accused.

42. The charge is framed against the accused in the year 2024 in respect of an offence allegedly committed in between year 2018 till 03/10/2020. Section 376 of Indian Penal Code deals with punishment for rape. Consent is no where define in Indian Penal Code but the definition of consent is given in Bhartiya Nyaya Sanhita, 2023. As per explanation to section 63 of B.N.S., 2023 the consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication,

communicates willingness to participate in the specific sexual act.

43. In the case of State of H.P. vs. Dharam dass, 1922 Cr.L.J. 1758 (HP) Hon'ble Supreme Court has discussed that where the prosecutrix accompanied the accused to the house of someone and stayed there for about a week, the prosecutrix did not disclose the incident to anybody even though being under any threat, inference could be drawn that she was a consenting party and she being not a minor, the accused was held to be entitled to acquittal. Similarly in the case of Biram Soren Vs. State of West Bengal, 1992 Criminal Law Journal, 1666, it is discussed prosecutrix did not disclose the name of the accused to her parents early though she knew him. She disclosed the name only when doctor found that the profuse bleeding from her private part was due to sexual intercourse then in such circumstances it can be held that prosecutrix was consenting party and not being the minor it was not the case of rape.

44. In the present case an alleged application for claiming the custody of child was filed by accused Sambhaji on 03/11/2020. It is the case of prosecutrix that last incident was dated 02/10/2020 and on the next day she returned to her parental home but from the documents filed on record it appears that probably non-applicants in the petition filed by accused Sambhaji under section 97 Code of Criminal Procedure could have received the notice of application filed against them and after lapse of approximately 10 days, the complaint was given against accused.

45. The medical examination of accused Sambhaji and victim was concluded after lapse of sufficient time. PW 4 Dr. Suvarna

has stated that she found pubic hairs of victim were healthy and normal. There was no evidence of perineal tear, urethra was healthy and after carrying out vaginal examination, she found that victim was habituate to vaginal examination. Chemical analyzing report Exh. 65 clearly indicates the relation in between child Naitik and accused Sambhaji. Evidence clearly disclosed that child Naitik born on 12/11/2018 and present complaint is filed after lapse of two years. The report given by laboratory which was ran by Dr. Damkondwar clearly disclosed that not a single live or dead sperm was noticed when the semen of accused Abhishek was examined on 23/12/2017.

46. The ground of infertility and the ground of impotency are different grounds. If at all for a certain period due to any reason any person could not generate sperm then it cannot be said to be impotency of that person. When victim herself could not disclose the exact date, time and place when alleged rape was committed upon her by accused Sambhaji then considering the definition of consent and guidelines given in above cited judgments it can be said that victim was having consent for her sexual intercourse with accused Sambhaji.

47. According to victim rape was committed on number of occasions. She had traveled with accused Sambhaji on number of occasions to her parental home and on some occasions she was dropped by accused Sambhaji nearby village Hiwarabel. Victim was not minor. Her first marriage performed with one Nitin was also not legally dissolved and in absence of any valid divorce deed, victim married with accused Abhishek.

48. It is also brought on record by the accused that victim did not carry pregnancy till year 2018 hence considering all above facts and when victim was silent about alleged rape for two years then it can be presumed that she was having consent for her sexual relationship with accused Sambhaji. Similarly no one can transfer any land by executing Gift deed Exh. 60 in favour of third person, if at all it was the contention of victim that under the influence of accused no.1 land was transferred in her name then accused Sambhaji could have got transferred the land in his own name. The alleged Gift deed was executed prior to two months of lodging of FIR against all accused.

49. It is also pointed out by accused that to the said witness both accused no. 1 and 3 were witnesses. If at all accused Abhishek was doll in the hands of accused Sambhaji then instead of transferring land in favour of victim, accused Sambhaji could have transferred the land in his own name. Hence considering all above facts burden of proving facts as prescribed under section 106 of Indian Evidence Act is released by accused Sambhaji.

50. C.A. report Exh. 139 disclosed that obscene image and video files related to referred photographs of female person was not recovered by Science Laboratory, Nanded. Therefore it appears that basic story of threatening and taking out shooting of victim is also not proved by the prosecution then in such circumstances the principle of falsus in uno, falsus in omnibus is well applicable.

51. Prosecution has relied on the judgment given in the case of State of Punjab Vs. Gurmit Singh (cited supra) in which it is

discussed that testimony of prosecutrix cannot be doubted and no benefit can be given to accused when there are lapses in the investigation. In the present case I have already discussed the definition of consent defined in B.N.S. 2023 and guidelines given by Supreme Court in some cases. It is necessary for the prosecution to give cogent, reliable and trustworthy evidence of the victim. In the present case I have already discussed that not only victim was unable to disclose exact dates of incident but also in spite of having ample opportunities no complaint was made to any authority by the victim prior to present complaint Exh. 54. Hence considering all above facts guidelines given in the case of state of Punjab Vs. Gurmit Singh (cited supra) are not useful for the prosecution.

52. I have already discussed that it appears from record that victim was consenting party to her sexual relations with accused Sambhaji. Furthermore the delay in lodging the complaint, filing of application under section 97 of Code of Criminal Procedure by accused Sambhaji at Malegaon court, filing of petition by the victim under Domestic Violence Act and filing of petition by accused Abhishek are circumstance which can create doubt about the guilt of accused Sambhaji. Hence considering all above facts, oral and documentary evidence given by both sides, in my opinion prosecution has failed to prove the guilt of accused Sambhaji beyond reasonable doubt, hence I answer point no. 1 in the negative.

AS TO POINT NOS. 02 to 05 :-

53. It is the case of prosecution that at the time of marriage, accused Abhishek demanded the dowry. I have discussed in detail the evidence given by the prosecution. PW 1 Victim has stated that at the

time of performance of marriage with accused Abhishek there was demand of Rs. 5,00,000/- but PW3 Manoj who happened to be brother of victim did not utter a single word about the demand of dowry made by the accused.

54. In cross-examination PW1 victim has clearly admitted that she had taken gold ornaments from her earlier husband Nitin along with some amount. Alleged demand made by accused no. 1 and 3 in order to molest an informant and instigation by other accused is also not proved. Non seizure of alleged medicine used by accused Sambhaji for penetrating his private part into mouth of victim is also creating doubt about an allegations. Oral evidence does not disclose abusing and threatening in specific words by any of the accused to the victim. Hence considering all above facts oral evidence is not sufficient to prove the guilt of accused for offences punishable under sections 498(A), 109, 504 and 506 read with 34 of the Indian Penal Code, hence I answer point no. 02 to 05 in the negative.

AS TO POINT NO. 06 :

55. Statement of accused under section 313 of Cr.P.C. are recorded at Exh. 122 to 124, in which they have stated they are falsely implicated in the present case. I have already discussed that evidence given by the prosecution is not sufficient to prove guilt of accused. Hence accused is entitled for acquittal, therefore in answer to point no.06, I pass the following order:

:: ORDER ::

1.	Accused namely Sambhaji S/o Dinkar Ghuge is hereby acquitted for the offence punishable under section 376(2)(n) of
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	Indian Penal Code as per Section 235 (1) of the Code of Criminal Procedure (New section 258 of B.N.S.S., 2023).
2.	Accused namely Sambhaji S/o Dinkar Ghuge, Abhishek S/o Prabhakar Ghuge and Sau. Gangubai W/o Sambhaji Ghuge are hereby acquitted for the offence punishable under sections 498(A), 504 and 506 r/w 34 of the Indian Penal Code as per Section 235 (1) of the Code of Criminal Procedure (New section 258 of B.N.S.S., 2023).
3.	Accused namely Sau. Gangubai W/o Sambhaji Ghuge is hereby acquitted for the offence punishable under section 109 of Indian Penal Code as per Section 235 (1) of the Code of Criminal Procedure (New section 258 of B.N.S.S., 2023).
4.	Their bail bonds are cancelled.
5.	Accused are directed to give security to secure their presence before an Appellate Court as provided under section 437-A of Code of Criminal Procedure amounting to Rs. 15,000/- each along with execution of personal bond in like amount.
6.	Seized muddemal being worthless be destroyed after appeal period is over.
7.	Seized mobile be given to accused Sambhaji who is registered owner and claimed the seized mobile after appeal period is over.
8.	Accordingly case is disposed off.

Judgment is pronounced & dictated in Open Court.

Date :- 03/02/2026

(P. G. Deshmukh)
Additional Sessions Judge,
Hingoli.

Part 'C'

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

**LIST OF PROSECUTION/DEFENCE/COURT
WITNESSES**

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Victim	Informant
PW2	Sayyad Riyaj Ali Mir	Panch Witness
PW3	Manoj Bajirao Nagre	Witness
PW4	Dr. Suvarna Sharad Mahale	Medical Officer
PW5	Dr. Anup Ramdrao Naik	Medical Officer
PW6	Sanjay Gardhan Rathod	Panch Witness
PW7	Baliram Ramdas Bandkhadake	Investigating Officer.
PW8	Santosh Pandurang Bande	Witness

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	Kailash Babanappa Dondal	Witness

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
--	—	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr. No.	Exhibit Number	Description
1.	Exh.No. 54/ PW1	Complaint
2.	Exh.No. 55/ PW1	First Information Report
3.	Exh.No. 56/ PW1	Statement of victim under section 164 of Cr.PC.
4.	Exh. No. 57/ PW1	Letter given to the victim.

5.	Exh. No. 58/ PW1	Marriage registration extract.
6.	Exh.No. 59/ PW1	Birth certificate of son of victim.
7.	Exh.No. 60/ PW1	Gift deed
8.	Exh.No. 61/ PW1	DNA report.
9.	Exh.No. 62/ PW1	Photographs of marriage
10.	Exh.No.65/ PW1	Photographs of birthday celebration of child.
11.	Exh.No. 66 & 67 /PW1	Certified copies of documents
12.	Exh.No. 68/ PW1	NC report
13.	Exh.No. 69/ PW1	Photographs taken at Shegaon.
14.	Exh.No. 74/ PW2	Spot panchanama
15.	Exh.No.75/ PW2	Seizure panchanama of clothes.
16.	Exh.No.81/ PW4	Referral letter given by Hingoli PSO.
17.	Exh.No.82/ PW4	Medical report of victim.
18.	Exh.No.86/ PW5	Letter given for medical examination of accused.
19.	Exh.No.87/ PW5	Medical report of accused Sambhaji.
20.	Exh.No.92/ PW7	Letter given to panch witnesses.
21.	Exh.No.93 & 94/ PW7	Arrest panchanamas of two accused.
22.	Exh.No.95/ PW7	Letter for statement of victim u/s 164 Cr.PC.
23.	Exh.No.96/ PW7	Letter given to PSO Javulka, Tq. Malegaon.
24.	Exh.No.97/ PW7	Station Diary Extract.
25.	Exh.No.98/ PW7	Station Diary Extract of P. S. Javulka.
26.	Exh.No.99/ PW7	Spot panchanama.
27.	Exh.No.100/ PW7	Seizure panchnama of knife, mobile and clothes.
28.	Exh.No.101/ PW7	Seizure panchanama of vehicle MH 37 P 0224.
29.	Exh.No.102/ PW7	Spot panchanama of house of accused.
30.	Exh.No.103/ PW7	Form 8-A of accused Sambhaji.
31.	Exh.No.104/ PW7	7/12 Extract of accused Sambhaji.
32.	Exh.No. 105/ PW7	Letter given to obtain D.N.A. Kit.
33.	Exh.No. 106/ PW7	Letter given to Civil Hospital, Hingoli for obtaining blood samples.

34.	Exh.No. 107/ PW7	Letter given for obtaining samples in sealed condition.
35.	Exh.No.108/ PW7	Letter and acknowledgment dated 18/11/2020.
36.	Exh.No.109/ PW7	Arrest panchanama of accused Gangubai.
37.	Exh.No.110/ PW7	Letter given to Nanded laboratory for examination of seized clothes.
38.	Exh.No.111/ PW7	Letter dated 15/12/2020 with rectification.
39.	Exh.No.112/ PW7	Report dated 27/08/2021.
40.	Exh.No.113 to 115/ PW7	Medical Reports.

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
01.	MR No. 119/2020	One knife
		One Samsung company's mobile.
		One black strapped underwear.
		One white coloured pijama.
		One white coloured inner wear (बंडी).
		One Honda Jio 110 company's motorcycle
02.	MR No. 118/2020	One yellow-black coloured blouse.
		One nikker.
		One peticoat.
		One green coloured saree.

Date :- 03/02/2026

(P. G. Deshmukh)
Additional Sessions Judge,
Hingoli.

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	:-	Shubhangi S. Yengade (Stenographer Grade-III)
Court Name	:-	P. G. Deshmukh, Additional Sessions Judge, Hingoli.
Date of Judgment/order	:-	03/02/2026
Judgment/order signed by the Presiding Officer	:-	03/02/2026
Judgment/order Uploaded on	:-	06/02/2026