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	Duration	06 Y 04 M 04 D
	<b><u>Exhibit No. 58.</u></b>	

**Sessions Case No. 151/2019**

Form No. XXXII

Part 'A'

(Title Page of Judgment)

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

		<b>IN THE COURT OF AD-HOC DISTRICT JUDGE-1 &amp; ADDITIONAL SESSIONS JUDGE, GADCHIROLI</b> <i>Presided by : Vishwas S. Khot</i> <b>Additional Sessions Judge</b>
		Crime No. 368/2019, U/s. 363, 366, 368, 370 and 506 read with Section 34 and Section 354, 354A, 376, 376(2)(n) read with Section 114 of the I.P.C. Police Station : Chamorshi, Tah. Chamorshi, Dist. Gadchiroli
<b>COMPLAINANT</b>		<b>STATE OF MAHARASHTRA</b> Through P. S.O. of Police Station Chamorshi, Tah. Chamorshi, Dist. Gadchiroli.
<b>REPRESENTED BY</b>		Learned P.P. Shri A.S. Pradhan
<b>ACCUSED</b>	<b>01</b>	<b>Kanai Ashutosh Biswas</b> Age - 25 Yrs., Occu. Labour, R/o. Gauripur, Tah. Chamorshi, Dist. Gadchiroli



1	<b>Kanai Ashutosh Biswas</b>	07-10-2019	10-08-2020	363, 366, 368, 370 and 506 read with Section 34 and Section 354, 354A, 376, 376(2) (n) read with Section 114 of the I.P.C.	acquitted	N.A.	N.A.
2	<b>Adhir Arun Biswas</b>	07-10-2019	10-08-2020	363, 366, 368, 370 and 506 read with Section 34 and Section 354, 354A, 376, 376(2) (n) read with Section	acquitted	N.A.	N.A.

				114 of the I.P.C.			
3	Sushant Badal Biswas	08-10- 2019	10-08- 2020	363, 366, 368, 370 and 506 read with Section 34 and Section 354, 354A, 376, 376(2) (n) read with Section 114 of the I.P.C.	acquitt ed	N.A.	N.A.

**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	Madhuri Dipak Masid	victim
PW2	Dulal Suren Masid	Father-in-law of victim
PW3	Nisha Jivandas Khobragade	Investigating Officer

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

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	---Nil---	

**C. Court Witnesses, if any :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	---Nil---	

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

Sr. No.	Exhibit Number	Description
1	Exhibit P-42/PW1	Report
2	Exhibit P-43/PW1	Printed FIR
3	Exhibit P-44/PW1	Spot panchanama
4	Exhibit P-45/PW1	Statement u/s 164 of Cr.P.C.
5	Exhibit P-51 to 53/PW3	Arrest panchanama
6	Exhibit P-54/PW3	Letter to Medical Officer for medical examination of accused
7	Exhibit P-55/PW3	Letter to JMFC, Chamorshi for addition of Section
8	Exhibit P-56/PW3	Seizure Panchanama of mobile
9	Exhibit P-57/PW3	Mobile sent to FSL, Nagpur
10	Exhibit P-58/PW3	Letter for sending the informant and witness to record the evidence u/s 164 of Cr.P.C.

**B. Defence :**

Sr. No.	Exhibit Number	Description
...	...Nil...	...

**C. Court Exhibits :**

Sr. No.	Exhibit Number	Description
...	...Nil...	...

**D. Material Objects :**

Sr. No.	Material Object Number	Description
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**JUDGMENT**(Delivered on this 23<sup>rd</sup> day of April, 2026)

1] The accused stands charge-sheeted by the Police Station, Chamorshi for the offences punishable under Sections 363, 366, 368, 370 and 506 read with Section 34 and Section 354, 354A, 376, 376(2)(n) read with Section 114 of the I.P.C.

2] The prosecution case can be stated as under :-

The report of the incident was/is given by one Madhuri Dipak Masid, R/o. Gauripur, Tah. Chamorshi, Dist. Gadchiroli. She reported to the Chamorshi Police Station that she reside with her mother from last 15 days. Her husband's name is Dipak Masid. Her marriage was solemnized in the year 2010. She is having two kids out of the wedlock. Her husband died prior to three years, therefore, she was residing at the house of her mother-in-law, father-in-law alongwith her kids. On 17.04.2018 she came out of house for urination. The residents of locality three in numbers by name, Kanai, Adhir

and Sushant were there. They came near her and nabbed her. She tried to shout, but the said Adhir closed her mouth. She became unconscious and became conscious in one auto. The resident of area by name Kanai took her to Ballarshah Railway Station. He dragged her to bathroom and slapped her. She was taken to Mumbai thereafter. The said Kanai forcibly did sexual intercourse with her. He many a times developed physical relationship with the victim. He also did the video shooting of the incident/encounters. She stayed with the said Kanai till Diwali. After Diwali said Kanai took her to one house. There were three ladies and two girls present. Initially the informant was unconscious and after getting/resuming consciousness she asked to the ladies present about the place. The said Kanai sold her and went away and it was communicated by the ladies present there. She was sold in red light area. She constrained to do the physical relationship. There was regular physical relationship and she was deteriorated and referred to doctor. She rescued herself and came to Railway Station and thereafter to Chandrapur. She reported the incident to Chamorshi Police Station against the accused persons. The Chamorshi police on receiving the report started investigation and registered the crime against the accused Kanai, Adhir and Sushant and arrayed them as an accused. Police drew spot panchanama in presence of panchas. Police recorded statement of witnesses. Police sent the victim for medical examination and obtained medical certificate. The accused came to be arrested. Police also sent the accused for medical examination. After due investigation

police presented the charge-sheet against the accused persons.

3] After presentation of the charge-sheet, the cognizance came to be taken and accused came to be summoned. The accused appeared before the Court. Charge was framed against the accused for the offences punishable under Sections 363, 366, 368, 370 and 506 read with Section 34 and Section 354, 354A, 376, 376(2)(n) read with Section 114 of the I.P.C. The accused pleaded not guilty and claimed to be tried. The prosecution examined three witnesses to substantiate the guilt of the accused persons. The accused examined nobody in support of their defence. The proceeding culminated with the arguments of both the parties. After arguments the case came to be posted for judgment.

4] Following points arise for my determination and I have recorded my findings subject to the reasons as mentioned hereinafter.

No.	<u>Points</u>	<u>Findings</u>
1.	Whether the prosecution proves that on 17.04.2019 at about 2.00 to 2.30 a.m. at mouza Gauripur, Tah. Chamorshi, Dist. Gadchiroli in furtherance of common intention the accused kidnapped the victim from lawful guardianship and thereby committed an offence punishable under Section 363 read with 34 of the Indian Penal Code ?	..No..
2.	Whether the prosecution proves that on aforesaid date, time and place the	

	accused no.1 assaulted used criminal force to the victim intending to outrage or knowing it to be likely that he will thereby outrage her modesty and accused no.2 and 3 abetted the offence and thereby accused no.1 committed an offence punishable under Section 354 of the IPC and accused no.2 and 3 abetted an offence and thereby committed an offence punishable under Section 354 read with Section 114 of the Indian Penal Code ?	..No..
3.	Whether the prosecution proves that, on aforesaid date, time and place the accused no.1 committed sexual harassment to the victim by making physical contact with her intending to outrage or knowing it to be likely that he will thereby outraged her modesty and thereby committed an offence punishable under Section 354(A) of the Indian Penal Code and accused no.2 and 3 abetted the offence and thereby accused no.2 and 3 committed an offence punishable under Section 354(A) read with Section 114 of the Indian Penal Code ?	..No..
4.	Whether the prosecution proves that, on aforesaid date, time and place the accused in furtherance of common intention kidnapped the victim with intent that she may be compelled forced or seduced to illicit intercourse and thereby committed an offence punishable under Section 366 read with Section 34 of the Indian Penal Code ?	..No..

5.	Whether the prosecution proves that, on aforesaid date, time and place the accused in furtherance of common intention knowing that the victim has been kidnapped or has been abducted, wrongfully concealed or confined her and thereby committed an offence punishable under Section 368 read with Section 34 of the Indian Penal Code ?	..No..
6.	Whether the prosecution proves that, on aforesaid date, time and place the accused in furtherance of common intention for the purpose of exploitation transport the victim using force or any other form of coercion or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of the victim having control over the person transported and thereby committed an offence punishable under Section 370 read with Section 34 of the Indian Penal Code ?	..No..
7.	Whether the prosecution proves that, on the aforesaid date, time and place accused no.1 committed rape upon the victim and thereby committed an offence punishable under Section 376 of the Indian Penal Code and accused no.2 and 3 abetted the said offence and thereby committed an offence punishable under Section 376 read with Section 114 of the Indian Penal Code ?	..No..
8.	Whether the prosecution proves that, on the aforesaid date, time and place accused no.1 committed rape repeatedly upon the victim and	

	thereby committed an offence punishable under Section 376 of the IPC and accused no.2 and 3 abetted the said offence and thereby committed an offence punishable under Section 376(2)(n) read with Section 114 of the Indian Penal Code ?	...No
9.	Whether the prosecution proves that, on the aforesaid date, time and place the accused in furtherance of common intention committed the offence of criminal intimidation and threatened the victim to kill her children and thereby committed an offence punishable under Section 506 read with Section 34 of the Indian Penal Code ?	...No
10.	What order ?	... Accused are acquitted

### **REASONS**

#### **As to Point Nos. 1 to 10 :-**

5] The case is instituted by the police/prosecution, so, naturally burden of proof under Section 101 of the Indian Evidence Act lies upon the prosecution and in order to discharge the said burden, the prosecution examined three witnesses to prove the charge. The prosecution came with the case that the victim was brutally treated and accused took her to Mumbai and sold there in red light area where she was constrained to do the prostitution. She escaped from the brothel house and came to the parental home and lodged the report. The accused took her to Mumbai and sold her. The accused Kanai committed rape on her several times. The

victim reported the incident to police. The police started the investigation and finally, submitted the charge-sheet. The accused denied the prosecution theme, but failed to examine any witness in support of their defence. The proceedings culminated with the arguments of accused persons.

6] As stated earlier the prosecution has examined three witnesses. P.W.1 deposed vide Exh.39. She stated that she know all the accused. She was residing at mouza Gauripur. She went to washroom on 17.04.2018 at about 12.00 a.m. Accused nabbed her. They pressed her mouth. She was in love relationship with accused no.1. She went to Mumbai with him and resided there for two years. Her health deteriorated, therefore, she again returned back to village and filed the report. Police enquired with her. She was medically examined by the doctor. Her statement was recorded by the Magistrate under Section 164 of the Cr.P.C. P.W.2 deposed that informant is his daughter-in-law. Incident happened prior to 8 to 10 years. His son Dipak died before 8 to 10 years. The deceased Dipak has two sons. Incident occurred at about 2.00 a.m. At the time of incident his grand-son started shouting. His grand-son stated to him that his mother went outside. The residents of village stated to him that his daughter-in-law went to Mumbai with accused. P.W.3 is an Investigating Officer. She stated that she wrote down the report and prepared spot panchanama. She sent the accused to medical examination. She seized the mobile of accused and prepared seizure memo. She sent the mobile phone for checking. She got the statement of informant and witnesses recorded under

Section 164 of the Cr.P.C. She recorded the statement of witnesses and submitted the charge-sheet.

7] The witnesses came to be cross-examined by the defence side. P.W.1 admitted that she filed the report at the police station and police wrote it down. She gave the statement under Section 164 of the Cr.P.C. as per the say of police. P.W.3 admitted that incident took place prior to one year from the date of reporting. She has not recorded reasons for delay.

8] The prosecution has leveled so many offences against the accused persons. P.W.1 is the star witness, but she did not support the prosecution case. The non-support by P.W.1 makes the prosecution case dubious. The P.W.1 has not deposed the ingredients of Sections 363, 366, 368, 370 and 506 read with Section 34 and Section 354, 354A, 376, 376(2) (n) read with Section 114 of the I.P.C. P.W.2 is father-in-law of P.W.1. His testimony is also not useful for the prosecution. The prosecution could not derive any benefit for his testimony. P.W.3 is an Investigating Officer and her testimony has been routinely given. The Investigating Officer cannot be a material witness and evidence of P.W.3 is of technically/administrative nature. The prosecution could not prove the ingredients of the offence on the basis of testimony of P.W.1 and P.W.2. Moreover, there is delay of one year in reporting the incident to police station. The delay makes the case weak. All these factors weakens prosecution case.

9] It is alleged by the prosecution that accused did

the offence, but there is no concrete evidence against them. The ingredients of Sections are missing. The charge cannot be allowed to stand against the accused persons. The accused are entitled to be acquitted. Having regard to abovesaid discussion, I negatively answered point nos.1 to 9 and I am inclined to pass following order resulting in acquittal of the accused persons.

**ORDER**

1. The accused by name **Kanai Ashutosh Biswas, Adhir Arun Biswas** and **Sushant Badal Biswas** are hereby acquitted, vide Section 235(1) of the Code of Criminal Procedure for the offences punishable under Sections 363, 366, 368, 370 and 506 read with Section 34 and Section 354, 354A, 376, 376(2)(n) read with Section 114 of the I.P.C.
2. The bail bonds of the accused stands cancelled.
3. The accused to furnish the bail of Rs. 50,000/- each with one surety in like amount under Section 437-A of Cr.P.C. within 7 days which shall remain in force for 6 months.
4. The seized mobile be given to its registered owner after appeal period is over.
5. The proceedings stand closed.

Sd/-

( Vishwas S. Khot )

Ad-Hoc District Judge-1 and  
Additional Sessions Judge,  
Gadchiroli.

Gadchiroli  
23<sup>rd</sup> April, 2026