CNR No.MHJN010026172025	Presented on : 14.10.2025 Registered on : 15.10.2025 Decided on : 18.03.2026 Duration : Y M D 00 05 04

Part "A"

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-03, JALNA.

(Presided over by Krupesh V. More B.S.L., LL.M.)

[Date of Judgment : 18-03-2026]

Special Case No. 262 of 2025

(Crime No.207/2025, Hasanabad Police station)

SPECIAL CASE No. 262 of 2025 **Exh.No.59**

Prosecution : The State of Maharashtra

Represented by : Smt. V. L. Mukim, APP for the State.

VERSUS

ACCUSED :

1) Abuzar Sandu Kha Pathan,
age 19 Years,

2) Pathan Sahil Ismail Kha,
age 18 years,

3) Pathan Sahil Amjat Kha,
age 18 years,
All R/o Talegaon Wadi,
Tq. Phulambri, Dist. Ch. Sambhajinagar.

Represented by : Shri. S.M. Chate, Ld. Advocate for accused.

Part-B

Date of Offence	05.09.2025
Date of FIR	08.09.2025
Date of Charge-sheet	10.10.2025
Date of Framing of Charges	12.01.2026
Date of commencement of evidence	16.02.2026
Date on which judgment is reserved	Nil.
Date of the Judgment	18.03.2026
Date of the Sentencing Order, if any	Nil.

Accused Details

Name & Rank of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Benefit of Section 428, Cr.P.C.
1) Abuzar Sandu Kha Pathan	08.09.25	23.01.26	U/Sec. 64(2)(h), 70(1) r/w sec 3(5) of the BNS as well as section 5(g)(q) of theProtection of Children from Sexual Offences Act, 2012.	Acquitted.	Nil.	Nil.
2) Pathan Sahil Ismail Kha	09.09.25	23.01.26		Acquitted.	Nil.	Nil.
3) Pathan Sahil Amjat Kha	09.09.25	23.01.26		Acquitted.	Nil.	Nil.

Part 'C'
(List of Prosecution/Defence/Court Witnesses)

A. Prosecution :

Rank	Name	Nature of Evidence
PW-1	Minor victim	Victim girl
PW-2	Complainant	Father of victim

B. Defence Witnesses, if any :

Rank	Name	Nature of Evidence
Nil	Nil	Nil

C. Court witnesses, if any :

Rank	Name	Nature of Evidence
Nil	Nil	Nil

List of Prosecution/Defence/Court Exhibits

A. Prosecution :

Sr.No.	Exhibit Number	Description
1.	Exh.46	Statement U/s 183 of the BNSS.

B. Defence :

Sr.No.	Exhibit Number	Description
1.	Exh. 47	Medico-legal Examination report of sexual violence
2.	Exh. 48	Case papers
3.	Exh. 49	Spot panchanama
4.	Exh. 50 & 51	Seizure Panchanama
5.	Exh. 52	Report of examination of accused in sexual offence including potency
6.	Exh. 53 & 54	Seizure Panchanama
7.	Exh. 56	Birth certificate
8.	Exh. 58	Admission register

C. Court Exhibits :

Sr.No.	Exhibit Number	Description
1.	Exh. 17	Charge
2.	Exh. 18 to 20	Plea of accused

D. Material Objects :

Sr. No.	Exhibit Number	Description
1.	M.O.-01	Cloths of victim
2.	M.O.- 02	Cloths of accused

Offence U/Sec. 64(2)(h), 70(1) r/w sec 3(5) of the Bhartiya Nyaya Sanhita, 2023 as well as section 5(g)(q) of the Protection of Children from Sexual Offences Act, 2012.

J U D G M E N T

(Delivered on 18th day of March, 2026)

01. Accused No. 1. Abuzar Sandu Kha Pathan, age-19 years, 2. Pathan Sahil Ismail Kha, age-18 years and 3. Pathan Sahil Amjat Kha, age-18 years all resident of Talegaon wadi, Tq. Phulambri Dist. Chatrapati Sambhajinagar are charge-sheeted by Hasanabad Police Station, Jalna for the commission of the offences punishable U/Sec. 64(2)(h), 70(1) r/w sec 3(5) of the Bhartiya Nyaya Sanhita, 2023 as well as section 5(g)(q) punishable under Section 06 of the Protection of Children from Sexual Offences Act, 2012.

Brief facts of the prosecution's case are as follows ;

02. Victim was proceeding from her maternal home Talegaonwadi towards her in-laws house at about 02.00 a.m. When she came near the Zilha Parishad School all the accused persons came near her. Accused no. 03 took the victim on his shoulder. Accused no. 01 pressed the mouth of the victim and took the victim in the corn field of Gafar Khan Jabbar Khan

Pathan. At that time accused no. 02 was also with them. Accused no.01 caught hold the hands of the victim. Accused no. 02 pressed the mouth of the victim and accused no. 03 opened the pant of the victim and committed forceful sexual intercourse with the victim. Thereafter, accused no. 02 caught hold the hands of the victim and accused no. 01 raped her. All the accused left the victim on the spot and ran away.

03. The victim went to her father's house. She did not inform about the sexual assault to anybody. On 07.09.2025 at about 10.00 p.m. victim informed about incident to her husband and lodged FIR on 08.09.2025.

04. On the basis of the FIR, Cr. No. 207/2025 was registered against accused persons under the above mentioned sections.

05. Further, investigation of the offence was carried out by Investigating Officer PSI Shri. S. D. Tayade attached to Hasanabad Police Station. Investigating Officer prepared spot panchnama, seized cloths of accused persons and victim and prepared seizure panchanama thereafer, recorded statement of witnesses, gave letter to the school in respect of age determination of the victim, recorded statement of the victim U/Sec. 183 of the BNSS, arrested accused in connection with the offence. During the investigation sufficient evidence was found against accused persons. Therefore, charge-sheet was filed against all the accused persons in this Court.

06. Cognizance of the offences was taken by this Court. After hearing Ld. APP as well as Ld. Advocate for accused, my Ld. Predecessor

framed charge on the accused for the commission of the offences punishable U/Sec. 64(2)(h), 70(1) r/w sec 3(5) of the BNS as well as section 5(g)(q) punishable under Section 06 of the Protection of Children from Sexual Offences Act, 2012. vide Exh. 17. The contents of the charge were read-over and explained to the accused in vernacular to which the accused pleaded not guilty and claimed to be tried.

07. To prove the guilt of the accused, prosecution in all examined 02 witnesses including the victim. Both the witnesses did not support the prosecution case. Therefore, they were declared hostile and cross-examined by Ld. APP. Other documents like arrest panchnama, medical examination report, spot panchnama were admitted by the defence, therefore, they are marked as exhibits. Prosecution closed their evidence by filing evidence closed pursis at Exh.58. Since no incriminating evidence was adduced by the prosecution against the accused persons their statement under section 351 of the BNSS was dispensed with by order dated 16.03.2026

08. I heard final arguments of Ld. APP Smt. V.L. Mukim as well as Ld. Advocate for accused Shri. S. M. Chate.

09. Considering the facts and circumstances of the case, following points arise for my determination and I give my findings against those points for the reasons stated thereunder;

Sr. No.	Points	Findings
1.	Whether prosecution proves that, accused Nos. 1 to 3, on 05/09/2025 at about 02:00 hours, at the farm of Gafarkhan Jabbarkhan Pathan, Talegaon Wadi, Tq.	

	Phulambri, Dist. Ch. Sambhajinagar, in furtherance of their common intention commited rape on a pregnant victim, and thereby committed an offence punishable U/sec. 64(2)(h) r/w sec. 3(5) of BNS ?	**In the Negative.**
2.	Whether the prosecution proves that, accused Nos. 1 to 3, on the aforesaid date, time and place, in furtherance of their common intention, committed rape on pregnant victim and thereby committed an offence punishable U/sec. 70(1) r/w sec. 3(5) of BNS ?	**In the Negative.**
3.	Whether the prosecution proves that, accused Nos. 1 to 3, on the aforesaid date, time and place, committed aggravated gang penetrative sexual assault on victim and thereby committed an offence defined in Section 5(g)(q) and punishable U/sec. 6 of The Protection of Children from Sexual Offences Act, 2012 ?	**In the Negative.**
4.	What order ?	**Accused are acquitted.**

REASONS

AS TO POINT NO.1 to 3 :-

10. As point Nos. 1 to 3 are interconnected and arising out of one incident, they are discussed together.

11. Since, the present case is tried as per the provision of the Protection of Children from Sexual Offences Act, 2012, it is necessary to take into consideration section 29 and 30 which provides for presumption

of guilt as well as presumption of culpable mental state of the accused which reads as follows ;

29. Presumption as to certain offences —

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

30. Presumption of culpable mental state.—

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the 13 existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

12. The above sectiond provides for statutory presumption regarding the existence of culpable mental state on the part of the accused. However, such presumption can be raised only after the prosecution establish the fundamental facts constituting the alleged offence beyond reasonable doubt. The presumption U/Sec. 30 does not dispense with the initial burden of the prosecution to prove the basic ingredients of the offence vide judgment of the Supreme Court in the case of ***Just Rights For Children Alliance Vs. S. Harish Cri. Appeal Nos. 2161-2162 of 2024 decided on 23rd September, 2024 [Hon'ble Shri. Justice Dhananjay Y. Chandrachud].***

13. PW-01 is the victim. She has stated in her evidence that Nisar Ansar Khan is her husband. She do not remember whether she lodged complaint in the police station. She do not remember on which date

complaint was lodged. She was carrying four months pregnancy when she lodged complaint. On the date of incident her father was ill. Therefore, she had gone to see him at her parents house at Talegaonwadi.

14. She further stated that at about 02.00 a.m. She was proceeding from her parents house to her in-laws house. When she came near Zhilha Parishad School, some boys from their village were sitting on the ooata (platform) of the flag. There were three boys. She cannot tell their names. They started blowing vistles, when they saw her. Thereafter, she came back home.

15. She further stated that those boys did not do anything with her. Thereafter, she went back to the home of her father. She told about the incident to her husband. She had gone to Hasanabad police station to lodge complaint. She has narrated the names of accused nos. 01 to 03 to the police. She denied that all the three accused persons took her to the corn field and committed rape on her.

16. Since the victim did not support the prosecution case she was cross-examined by Ld. APP at length. But, she did not accept the contents of Portion Mark " A" in her police complaint.

17. On the point of identification of the accused, the victim did not identify the accused persons before the Court.

18. Witness no. 02 is the father of the victim. He stated in his evidence that victim is his daughter, he cannot tell her date of birth. Incident took place last year during the Diwali festival. At the time of

incident, he was ill. Therefore, his victim daughter came to see him. At the time of incident, his victim daughter was married. Her in-laws house was situated in their village. He do not know what happened with his victim daughter. He denied that accused persons raped his daughter.

19. This witness also did not support the case of the prosecution. Therefore, declared hostile by Ld. APP and cross-examined at length.

20. In cross-examination this witness stated that his victim daughter was born at Talegaon Tq. Phulambri, Dist. Ch. Sambhajinagar. He do not know whether her birth was registered in Gram-Panchayat Talegaon. He do not know whether the date of birth of his daughter is 21.08.2010. At the time of incident, he was ill. Therefore, his victim daughter came to his home. He did not accept contents of portion mark "A" of his police statement.

21. The defence admitted birth certificate, school admission register extract, Medico-legal examination report, case papers, crime detail form, spot panchnama, seizure panchnama of the accused persons. Therefore, they are exhibited.

22. It is the case of the prosecution that on 05.09.2025 at about 02.00 a.m. accused persons in furtherance of their common intention committed gang rape on the victim which also amounts to aggravated penetrative sexual assault as the sexual assault was committed by more than one person and at the time of committing the sexual assault the victim was pregnant.

23. The victim herself only stated in her evidence that on 05.09.2025 at about 02.00 a.m. when she was proceeding from her parents house towards her in-laws house, the accused persons only blowed whistles when they saw her and nothing happened. Similarly, the father of the victim whom as per the case of the prosecution, the victim narrated the incident of gang rape/aggravated penetrative sexual assault also did not supported the case of the prosecution. He has stated in his evidence that he do not know as to what happened with his victim daughter. He denied that accused persons raped his victim daughter.

24. In absence of any incriminating evidence against the accused persons by the victim herself and the fact that the victim did not identify accused persons. The case of the prosecution cannot be proved against the accused. Therefore, prosecution has fail to discharge the initial burden and foundational facts to raise the presumption of guilt against the accused.

25. Since the documents are admitted by the defence, it is also necessary to find out whether the case of the prosecution can be proved on the basis of those documents. As far as, the charge on the accused U/Sec. 5 of the POCSO Act is considered, prosecution has to prove the age of the victim. In other words, it is to be proved that, on the date of the incident victim was minor. Birth certificate of the victim Exh. 56 bears the date of birth as 21/08/2010. The alleged date of incident is 05/09/2025. This fact shows that, at the time of incident, the age of the victim was 15 years, 15 days. Even though, it appears that, on the date of incident victim was minor. She has not stated in her evidence that, any act of gang rape or aggravated penetrative sexual assault was committed by the accused person.

26. The defence has admitted medical examination report of sexual violence of the victim which is at Exh. 47. On careful perusal of the report, particularly page Nos. 9 to 12, no injury was seen on the interior aspect, posterior aspect, inner and outer area of legs or other part of vagina of the victim. On perusal of Exh. 48, it appears that, accused persons were mentally and physically fit. On the basis of the spot panchnama Exh. 49, it appears that, the spot of incident was near the house of the complainant in one crop field. It is specifically mentioned in spot panchnama that, due to rain, sunlight and air nothing was found on the spot. On the basis of the seizure panchnama Exh. 50 and 51, it appears that, the clothes of the victim as well as accused persons were seized by the police. On the basis of the medical examination of the accused persons Exh. 52, it appears that, the Medical Officer has opined that, there is nothing to say that, the accused persons are not capable of performing sexual intercourse.

27. The admitted evidence by the defence looses its value for the reason that, the victim has not supported the case of the prosecution Therefore, the admitted documents are not sufficient to prove any charge against the accused persons. Hence, accused persons are entitled for acquittal. Therefore, I answer points No. 1 to 3 in the negative and answer to point No. 4 accordingly and proceed to pass the following order ;

ORDER

1. Accused No. 1. Abuzar Sandu Kha Pathan, accused No. 2. Pathan Sahil Ismail Kha and accused No. 3. Pathan Sahil Amjat Kha are hereby acquitted of the offences punishable U/Sec. 64(2)(h), 70(1) r/w sec 3(5) of the BNS as well as section 5(g) (q) punishable under Sec. 6 of the Protection of Children from Sexual Offences Act, 2012. vide Sec. 258 of the BNSS.

2. The bail bond and surety bond of the accused are hereby discharged.

3. Accused are hereby directed to furnish surety and personal bond of Rs.15,000/- each under Sec.482 of the BNSS with a direction to appear before the Higher Court in respect of any appeal or petition filed against this judgment and such bail bonds shall be in force for six months from the date of this order. The indemnity bond be treated cancelled after the appeal period is over.

4. Muddemal property clothes of accused and victim girl being worthless be destroyed after appeal period is over.

5. Copy of the Judgment be forwarded to District Magistrate Jalna in compliance with sec. 406 of the BNSS.

6. Proceeding is closed.

7. Delivered in open Court.

DISTRICT COURTS MAHARASHTRA

Digitally signed by KRUPESH VIJAY MORE
Date: 2026.03.18 17:46:02 +0530

Place:- Jalna
Date:- 18-03-2026

(Krupesh V. More)
District Judge 3 and
Additional Sessions Judge,
Jalna.

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER."

Sd/-
(Jitendra G. Mitkari)
NAME OF STENOGRAPHER