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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 68 OF 2020

Anuj Arjun Pawar
C/7357, Age – 28 years old,
Occ. Convict, Presently lodged
at Kolhapur Central Prison, Kalamba 7.

...Appellant
(Accused No.2)

Versus

1. The State of Maharashtra
(At the instance of Vita Police Station,
Dist. Sangli in respect of C.R.No.126/2012
u/s. 302, 201, 376(2)(g) & 377 r/w. 34 of IPC

2. SBC (Name confidential)
Adult, Indian Inhabitant, R/o. Nevri
Road, Near Bhavani Mala Bank Colony,
Vita, Tal. Khanapur, Dist. Sangli

... Respondents

**WITH
CRIMINAL APPEAL NO. 102 OF 2020**

Lakhya @ Laxman Sandipan Sargar
R/at.7359, Age : 29 years,
Occp. Convict, Presently lodged at
Kolhapur Central Prison, Kalamba,
Dist. Kolhapur.

... Appellant
(Accused No.1)

Versus

The State of Maharashtra
(At the instance of Vita Police Station,
Dist. Sangli in respect of C.R.No.126/2012
u/s. 302, 201, 376(2)(g) & 377 r/w. 34 of IPC

... Respondent

**WITH
CRIMINAL APPEAL NO. 1777 OF 2019**

Dadaso Bhaskar Athawale
Age : 31 years, Occp. Convict,
Presently lodged at Kolhapur Central
Prison, Kalamba, Dist. Kolhapur.

... Appellant
(Accused No.3)

Versus

The State of Maharashtra (At the instance
of Vita Police Station, Dist. Sangli in
respect of C.R.No.126/2012 u/s. 302, 201,
376(2)(g) & 377 r/w. 34 of IPC.

... Respondent

Mr. Amit Mane for the Appellant in APEAL/68/2020.

Mr. Nitesh S. Newshe, Appointed Advocate with Mr. Rupesh
Jaiswal (through VC) for the Appellant in APEAL/102/2020.

Mr. Dilip Shinde with Mr. Mohan C. Kumbhar for the Appellant
in APEAL/1777/2019.

Ms. Priyanka Rane-Patil with Ms. Pallavi Dabholkar, APPs for the
Respondent – State.

Mr. Mohansinh Umeshsinh Rajput, Appointed Advocate for
Respondent No.2 in APEAL/68/2020.

**CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 27th NOVEMBER, 2025

PRONOUNCED ON : 24th DECEMBER, 2025

JUDGMENT: (PER : SHYAM C. CHANDAK, J.)

. The aforesaid appeals have been filed against the common Judgment and Order dated 16/07/2019, passed in Sessions Case No.29/2013 by the learned Additional Sessions Judge, Sangli. Thereby, except for the charge of Sections 377 and 34 of the Indian Penal Code, 1860 (“IPC”), the Appellants have been held guilty and convicted of the charge under Sections 302, 376 (2) (g), 201 and 34 of IPC. Hence, the learned Judge sentenced them as under:-

Sec. 302 and 34	To suffer rigorous imprisonment for life till the natural death of convict (rest of their life) without any benefit of remission and to pay fine of Rs.10,000/- each, i/d. to suffer RI for Six months.
Sec. 376 (2) (g) and 34	To suffer rigorous imprisonment for life and to pay fine of Rs.10,000/- each, i/d. to suffer RI for Six months.
Sec. 201 and 34	To suffer rigorous imprisonment for 07 years (Seven years) and to pay fine of Rs.5,000/- each, i/d. to suffer RI for two months.
	The sentences shall to run concurrently.
	Out of the fine amount of Rs.75,000/-, if recovered, an amount of Rs.70,000/- directed to be paid to PW-11- the father of the victim-girl, u/Sec.357 (3) of Cr.P.C. and the balance fine amount of Rs.5,000/- to be paid to the Government.
	Additionally, the accused were directed to pay Rs.25,000/- each to the family of the victim-girl, as compensation u/Sec.357 (3) of Cr.P.C.

2. The Appellants namely – *Lakhya Sargar* (Cril. Appeal. No. 102/2020); *Anuj Pawar* (Cril. Appeal. No. 68/2020); and *Dadaso Athawale* (Cril. Appeal. No. 1777/2019) and one *Sagar Hattekar* were the Original Accused Nos.1 to 4 respectively (“**A-1, A-2, A-3 and A-4**”, for short). A-4, *Sagar Hattekar* died in jail during the pendency of the trial. Hence, the proceedings abated against A-4 *vide* trial Court Order dated 31/01/2015. Thereafter, the charge was framed against A-1 to A-3 and, they faced trial.

3. Heard Mr. Jaiswal with Mr. Nitesh Nevshe, the learned Appointed Counsel appearing for A-1, Mr. Mane, the learned Counsel appearing for A-2, Mr. Shinde, the learned Counsel appearing for A-3, Ms. Rane and Ms. Dabholkar, the learned APPs appearing for the

Respondent–State and Mr. Rajput, the learned Appointed Counsel appearing for Respondent No.2.

4. Initially, the Appeals were heard and closed for judgement on 04/08/2025. However, it was not pointed out by the parties that, despite service, Respondent No.2, *i.e.*, the first informant did not file his appearance. Consequently, there was no hearing on behalf of Respondent No.2, who is the father of the victim girl. Therefore, and looking at the nature of the offence, the Registry was directed to list the Appeals on 26/08/2025, under the caption ‘for directions’ when the Court passed an Order to appoint a ‘Legal Aid Counsel’ for Respondent No.2. Accordingly, Mr. Rajput, the learned Counsel was appointed to represent and espouse the cause of Respondent No.2. However, the assignment was changed *w.e.f.* 03.09.2025. Later on, the Appeals were again assigned to this Bench on 07/11/2025. Finally, the Appeals were heard on 27/11/2025 and again closed for passing Judgement.

5. The prosecution case, as unfolded from the record, is that, on 16/10/2012, the XYZ Police Station received an information that the dead body of a woman was lying in a well belonging to Mr. Taralekar, situated on the XYZ-*Mayani* road. At around 03:30 p.m., PW-19 Awghade, PHC, proceeded to the spot and recovered the dead body from the well. In the meantime, PW-11, *i.e.*, the father of the victim arrived at the scene and identified the body as that of his daughter.

6. Then, at 05.15 pm, PW-11 filed a Report (Exh.77) as under :-

“That, I, SBC, R/o XYZ, state that I have been residing at the said address jointly with my mother, second wife, three children “S - 6yy”, “K - 4yy” and “P - 8mm” begotten from the

second wife, my Son “M”/PW-1 and daughter “A” (the victim) both begotten from my first wife and “Sau. P” wife of son “M”.

Daughter “A”, aged 19 years, was employed in a cloth shop namely “....”, at XYZ and her working timings were 9.30 am to 6.30 pm. She was studied up-to 11th Standard and she has been working there since last two months. On 12/10/2012, at about 9:30 a.m., she left home for her workplace. However, she did not return home even by 9:00 p.m. I, therefore, made inquiries with members of my community residing at *Pare Road, Ghumat Mal*, but, “A” was not found. From the following day, I was inquiring to find out as to whether “A” had gone to visit any relatives at *Karad*, *Satara*, or *Aatpadi*, but she was still not found. Similarly, I repeatedly tried contacting on the mobile phone 885****370 carried by the victim. But I realised that the mobile was switched off.

Today, on 16/10/2012, I had gone for labour work on *Karad* road. At about 4:30 p.m., I received an information that the dead body of a woman was found lying in a Well located in the field of Mr Tarlekar, near *Pawaitek*, on the *XYZ–Mayani* Road. Therefore, when I went there to see, I found that the police had already retrieved the body from the Well. I identified the body as that of my daughter “A”, aged 19 yr. However, I cannot tell how she died from falling into the Well. Therefore, it is requested to inquire about my deceased daughter.”

7. The Report (Exh.77) was registered at A.D.R. No.89/2012, under Section 174 of Cr.P.C. Shri Avaghade, PHC (PW-19) recorded the Inquest Panchnama (Exh.45). Therein, he had noted that the hands of the victim were tied with *Odhani* and the clothes on her body were in an inverted state (“worn inside out”). He referred the body for the post-mortem. On the same day, from 07.45 pm to 9.10 pm, PW-13, Medical Officer, at XYZ Rural Hospital conducted the

post-mortem. In his opinion, the cause of the death was “due to throttling” and there was vaginal tear. Thereafter, the clothes of the victim were seized under Seizure Panchnama (Exh.43).

8. On 17/10/2012, at 11.25 am, the informant – PW-1 filed a Report (Exh.31). The relevant narration therein is as follows:-

“I MSC, at present R/o “J”, Dist. Kolhapur, state that I and my wife “P” residing at the above address. My father SBC and other family members are residing at XYZ. ...

On 16/10/2012, at about 6.00 pm, my cousin brother MSC called on the mobile phone of my mother-in-law Sau MHG and informed me that, “sister “A” is hospitalised, you immediately come to XYZ”. I immediately left and came to home at XYZ. At that time, my grandmother told me that on 12/10/2012, at about 9.30 am, “A” left home for her work place. However, today on 16/10/2012, at 4.30 pm, her body was found in the said Well in a decomposed state with her hands tied. Then I went to the Rural Hospital XYZ, and saw the sister’s dead body. The clothes on her body were in an inverted state. After the post-mortem her body was given in my custody. At that time I learned from the Doctor that her death was not caused due to drowning but she died before falling into the Well. Similarly, I learned that she died prior to three days. The Doctor has preserved the viscera for CA purpose keeping his opinion.

Thus, between 9.30 am of 12/10/2012 to 4.30 pm of 16/10/2012, some unknown person has committed murder of sister “A” in unknown manner, for an unknown reason and by tying her hand, threw her dead body into the Well with intent to cause disappearance of evidence. Hence, I have a complaint against an unknown person, investigation be done.”

9. Initially, the Report (Exh.31) was regd. at C.R.No. 126/2012, under Sections 302 and 201 of IPC, against unknown accused. On 17/10/2012, Investigation Officer (PW-18) arrested the A-1 in the Police Station and seized the clothes on his person under Arrest-cum-Seizure panchnamas (Exh.59). On 18/10/2012, A-1 made a voluntary statement (Exh.47) that, “*You come with me, I will show you the spot of the incident*”. Further, A-1 led the police and panchas to *Pawaitek*, where A-1 showed the said spot. There, PW-18 recovered certain incriminating articles at the instance of A-1 and recorded its recovery Panchnama (Exh.48).

On 18/10/2012, PW-18 arrested the A-2 to A-4 and seized the clothes on their persons recording an Arrest-cum-Seizure Panchnamas (Exhs.144). On 20/10/2012, PW-18 gave a letter (Exh.89) to the Rural Hospital and obtained the samples of blood, semen, nail-clippings and pubic hair of all the accused.

On 22/10/2012, PW-18 wrote another letter (Exh.98) to the Rural Hospital and obtained fresh samples of the blood and semen of all the accused for DNA test. On the same day, PW-18 wrote a letter (Exh.147) to the FSL for DNA test and forwarded the blood and semen samples alongwith the nicker and 3 pieces of used condoms recovered from the spot (*vide* Exh.48).

On 25/10/2012, PW-18 issued a letter (Exh.100) to the Rural Hospital to preserve the DNA kits as the earlier blood samples for the DNA were not accepted by the FSL.

On 26/10/2012, A-3 made a voluntary disclosure (Exh.55). Therein A-3 confessed the crime and stated that, “*when we threw*

the victim's body into the Tarlekar's Well, I put the victim's mobile in her own purse (Art.7) and while going home, I concealed the purse to the side of a road." Then, A-3 led the police and panchas to the said place. There, the police recovered the purse and mobile of the victim, at the instance of A-3. The purse was containing some personal articles of the victim. PW-18 seized the same and recorded the recovery Panchnama (Exh.56). On the same day, PW-18 showed the recovered articles to PW-11 and others, in the presence of the panchas which they identified (*vide* Panchnama Exh.57).

On 29/10/2012, PW-18 issued a letter (Exh.101) to the Rural Hospital and obtained fresh blood samples of all the accused, for the DNA test. On the same day, PW-18 forwarded those blood samples to the FSL for the DNA test (*vide* letter Exh.153). On 30/10/2012 PW-18 forwarded to the FSL the clothes of all the accused, clothes of the victim and the remaining articles recovered from A-1 and A-3, for CA purpose (*vide* letter Exh.154).

Meanwhile, PW-18 recorded the statements of the witnesses from time to time including supplementary statements of PW-1 and PW-11. He got the statement of witnesses Santosh Shinde (PW-8) and Manoj Pawar recorded under Section 164 Cr.P.C. He seized the motorcycles used in the offence. As deposed by PW-18, on 24/10/2012, he gave a letter to the Superintendent of Police, Sangli ("**SP Sangli**") to obtain the CDRs of the mobile phones of the accused persons.

During investigation it transpired that, the victim had love affair with A-1. PW-11 used to do labour work with PW-8, who was also R/o the same place XYZ and, was doing construction business.

PW-11 had asked PW-8 to speak to the victim. Following that, PW-8 had spotted the victim and all the accused together at *Gardi* bus stand. At that time, PW-8 had advised the victim that PW-11 disapproved of her friendship with the first accused (A-1). But, the victim did not take the advice seriously. On 12/10/2012, at about 12.30 pm, on *Mayani* road, the victim had talked with A-1 on his mobile phone from the mobile phone of PW-12, who was going to his work place. The victim was pressuring the A-1 to marry her.

On the last Saturday before the incident, the victim had visited at A-1, and threatened his mother that she would marry with A-1. Therefore, A-1 wanted to get rid of the victim. On 13/10/2012, between 7.30 pm to 8.40 pm, when PW-8 and his friend Manoj Pawar were returning from a place called *Gardi Ghanwad*, riding on a motorcycle, they saw the victim and the accused person at *Pawaitek*. But before PW-8 could talk with them, A-1 and the victim sat on one motorcycle and the other three accused sat on another and they all went away. As alleged, the victim was constantly insisting A-1 to get married. Therefore, on 13/10/2012, between 8.00 pm to 8.30 pm, A-1, alongwith A-2 to A-4 took the victim to the said spot with the intent to kill her. Meantime, A-2 purchased a liquor bottle from the wine shop of PW-5 and a packet of condoms and water bottle from the shop of PW-9. At the spot, the accused forced the victim to consume liquor and committed gang rape and carnal intercourse with her. Lastly, all the accused caused the death of the victim by throttling her and threw her dead body into the Well. Investigation also revealed that, just before and around the time of the incident, there were constant mobile contacts between the victim and A-1 and also *inter se* the accused persons. This lead to filing of charge sheet u/Secs.376 (2), 302, 201 and 34 of IPC.

10. The prosecution has examined the following 20 witnesses :

PW-1	MSC	Informant - brother of victim.
PW-2	Ankush N. Shewale	Panch- seizure of victim's clothes
PW-3	RSC	Panch – Inquest Panchanama
PW-4	Sagar Ganapati Patil	Panch – Voluntary statement of A-1 and recovery at his instance.
PW-5	Dhananjay Mahamuni	Manager – Sold liquor to A-2.
PW-6	Suresh G Pawar	Panch – Voluntary statement of A-3 and recovery at his instance.
PW-7	Mangesh B. Chougule	Panch Arrest of A-1 and seizure.
PW-8	Sandeep Ashok Shinde	Employer of PW-11 and last seen.
PW-9	Vaibhav S. Kupade	Medical – Sold condoms & water.
PW-10	Sunil B. Kamble	Panch- Seizure of Mobile box.
PW-11	SBC	Father of victim. He filed ADR.
PW-12	Ranjeet Dilip Mohite	Victim used his mobile to call A-1
PW-13	Dr. Anil D. Patil	Autopsy Surgeon.
PW-14	Chandrakant K. Bhor	Nodal officer of Reliance Mobile Co. furnished information & CDR of Mobile No.957****683
PW-15	Milind D. Kolwadkar	Nodal officer – Bharati Air-tail Ltd. He furnished information & CDR of mobile Nos. 997****956, 909****349 & 997****769.
PW-16	Amit R. Karkera	Nodal officer – Uninor Cellular Co. He furnished information & CDR Mobile No.8857930370.
PW-17	Dattataram S. Angre	Nodal officer – Idea Cellular Co. He furnished an information and CDR of mobile No.830****675.
PW-18	Ravindra M. Salokhe	P. I., Investigation officer.
PW-19	P.H.C. Rajendra Awaghade	ADR inquiry.
PW-20	P.H.C.-Shahaji Jadhav	Muddemal <i>Karkoon</i> and carrier.

11. On closure of the prosecution evidence, the trial Court questioned the accused persons under Section 313 of Cr.P.C. wherein they had denied all the incriminating evidence and circumstances put to them. The defence of the accused was of total denial and false implication.

12. On appreciation of the evidence, the learned trial Court held that the prosecution has established each link in the chain of the circumstantial evidence which safely leads to the conclusion that the accused persons had gang raped the victim, killed her and caused the disappearance of the evidence. Therefore, the trial Court convicted and sentenced them as stated in paragraph 1 above.

13. Referring to the material on record, the learned Counsel appearing for the accused persons have made the following common submissions:-

a) It is not proved that there was love relations between the victim and A-1 and that, the victim pressed A-1 to marry her. As a result, the motive is not proved.

b) The testimony of PW-11 and PW-8 is not reliable to the effect that, prior to the incident, PW-11 had told the PW-8 to give an advise to the victim not to have any relation with A-1.

c) For want of the details of the relevant date and time, the testimony of PW-8 is not reliable that, he had seen the victim alongwith the accused persons at *Gardi* Bus Stand; at that time, the victim had introduced all the accused to PW-8; and that, PW-8 had told the victim that her father does not like her friendship with A-1.

d) It is not proved that the victim was missing since the time she had left her home on 12/10/2012, at 09.00 am.

e) It is not proved that the victim had her own mobile phone, and that, on 12/10/2012 and/or 13/10/2012, the victim had contacted A-1 through her alleged mobile phones.

f) It is not proved that the Mob.No.830****675 was registered in the name of Mahesh Bhise; that, at the time of the incident, the said mobile phone was being used by PW-12; and that, on 13/10/2012, the victim had contacted with A-1 through the said mobile phone of PW-12.

g) PW-8 being an interested witness, his evidence is not reliable that he had last seen the victim together with all the accused on 13/10/2012, in-between 7.30 pm to 7.45 pm.

h) Due to 3 days gap in recovering the body, and in the absence of any other link in the chain of the evidence, the accused persons cannot be convicted only on the basis of “last seen together” theory.

i) The CDRs and the allied documents were not part of the Final Report and the charge-sheet. Later on, the said material was produced during the trial. But said evidence is suffering from infirmities, therefore, it is not admissible. That apart, mere CDRs are not sufficient to prove that, just before and at the time of the incident, the victim and the accused persons were together at the same place. Moreover, no investigation has been made in that regard.

j) The purchase of the liquor bottle, water bottle and condom packet by A-2 is not proved through cogent evidence.

k) The evidence is insufficient to establish the facts that, the hands of the victim were tied; there were clothes on her body; and that, the said clothes were in an inverted state.

l) The medical evidence failed to prove that the injuries in the genital were fresh. As such, the theory of rape is also not proved. Further it is not proved that the victim's death was caused "by throttling" and that, her death was homicidal.

m) The evidence as to the disclosure statement made by A-1 leading to pointing at the spot of the incident and recovery of the incriminating articles from the spot, is not reliable.

n) The evidence as to the disclosure statement by A-3 leading to the recovery of the alleged purse and the mobile phone of the victim, is not reliable.

o) PW-13 has not done the vaginal examination. He has not deposed that the alleged perineal tear of the vagina was fresh. Without such opinion, mere tear in the vagina is not sufficient to establish the charge of the rape. The CA and DNA Reports are not sufficient, cogent and reliable. Secondly, the CA and DNA reports are not conclusive in nature, to prove that, the victim was indeed raped by the Appellants.

p) That, only because the CDRs show that immediately after the incident there was surge in the calls exchanged amongst the accused persons, it cannot lead to conclusion that since the accused had committed the crime, they were in distress, and therefore, they had called one another.

q) The conduct of PW-1, PW-8, PW-11, PW-12 and police witnesses are not natural. The testimonies of the panchas are not reliable as they were regular pancha of the police.

r) There is unexplained delay in filing the complaint/FIR and registration of the crime. There is significant delay in recording the statement of material witnesses. Thus, the investigation was unfair and tainted.

s) Certain material witnesses are not examined. This amounts to denial of a fair trial and leads to an adverse inference to be drawn against the prosecution.

t) There arises reasonable doubt about the truthfulness of the prosecution case. The evidence on record permits two views about the incident. Therefore, the accused are entitled to acquittal.

14. Mr. Jaiswal, appearing for A-1 and Mr. Shinde, appearing for A-3 have referred to the following decisions at Sr Nos.(i) to (iv) and (v) to (xii), respectively, in support of the aforesaid submissions.

i	<i>Shiva Kumar @ Shiva @ Shivamurthy vs. State of Karnataka</i>	<i>2023 CJ (SC) 260</i>
ii	<i>Pradeep Kumar vs. State of Chhattisgarh</i>	<i>(2023) 5 SCC 350</i>
iii	<i>Md. Bani Alam Mazid @ Dhan vs. State of Assam</i>	<i>2025 INSC 260</i>
iv	<i>Ramkirat Munilal Goud vs. State of Maharashtra</i>	<i>2025 INSC 702</i>
v	<i>Rambraksh @ Jalim vs. State of Chhattisgarh</i>	<i>2016 (12) SCC 251</i>
vi	<i>State of Karnataka vs. Chand Basha</i>	<i>2016 (1) SCC 501</i>
vii	<i>Krishnan @ Ramasamy</i>	<i>2014 (12) SCC 279</i>

	<i>vs. State of Tamil Nadu</i>	
viii	<i>Ganapat Singh vs. State of MP</i>	<i>2017 (16)SCC 353</i>
ix	<i>Anjan Sharma vs. State of Assam</i>	<i>2017 (14) SCC 359</i>
x	<i>Arjun Marik vs. State of Bihar</i>	<i>1994 Supp (2) SCC 372</i>
xi	<i>Bodhraj @ Bodha vs. State of J & K</i>	<i>2002 (8) SCC 45</i>
xii	<i>Digambar Vaishav vs. State of Chhatisgharh</i>	<i>(2019) 4 SCC 522</i>

15. In contrast, Ms Rane with Ms Dabholkar, the learned APPs have made the following submissions.

1. At the first place, the prosecution has proved that the victim was missing since 12/10/2012, because, despite search for 2-3 days, she was not found. Since PW-11 was busy in the search of the victim, he could not promptly file the missing complaint. PW-11 was not much literate. He was doing labour work. As such, no adverse inference is called for, for not filing the missing complaint; the delay in filing the ADR Report (Exh.77) by PW-11; and filing of the Report (Exh.77) by him.

2. It is strenuously submitted that the evidence of PW-11 and PW-8 is very consistent that there was love affair between the victim and A-1; that relationship was not approved by PW-11; that PW-11 and PW-8 were related as 'servant & master'; that they were from the same place and shared good social and family bonding. Therefore, PW-11 had requested the PW-8, to advise the victim not to have love relationship with A-1. Accordingly; PW-8 had prevailed over the victim when he had spotted her and the accused persons together; at *Gardi* bus stand. At this very juncture, the victim had introduced the accused persons with PW-8.

3. With emphasis, it is submitted that immediately after the victim went missing, she was 'last seen' together with all the accused in the evening time, as deposed by PW-8. Soon thereafter, the victim was found dead. This evidence has remained unshaken in the cross of PW-8, who had no enmity with any of the accused. However, the accused persons have failed to explain the "last seen together" circumstance.

4. It is urged that various CDRs produced as evidence, establishes that after the victim went missing and till her death, the victim and A-1 were in contact of each other through their mobile phones. This fact stands corroborated by the 'last seen' circumstance deposed by PW-8.

5. The hands of the victim were tied. The post-mortem by PW-13 revealed a perineal tear in the genitals of the victim and injury over her forehead.

6. The voluntary statement made by A-1 leading to the pointing of the spot of the incident and the recovery of the nicker, used condoms etc. have been duly proved. The CA and the DNA reports show that semen was found in the recovered condoms. One of it relates to A-4. All this proved that the accused persons had gang raped the victim. As per the CA Report, the belt of the brassier found at the spot, matched with the brassier found on the body of the victim. This is indicative of a struggle during the rape.

7. The clothes on the body of the victim were in an inverted state. This indicates that after the rape, the accused persons hurriedly put on the clothes on the victim's person.

8. The recovery of the purse and the mobile of the victim at the instance of A-3 has been duly proved. It is supported by the seizure of the mobile packaging box (*vide* Exh.70).

9. All the recovered articles belonging to the victim have been identified by her relatives and other witnesses. This has provided the requisite support to the other circumstances establishing the guilt of the accused.

10. The testimony of PW-13 coupled with the post-mortem report has established that the death of the victim was caused 'due to throttling'. Thus, the victim was silenced by accused to prevent her from complaining against them.

11. By throwing the dead body into the Well, the accused persons have caused disappearance of the evidence.

12. It is submitted that, immediately after the incident, till the arrest of A-1, all the accused were in constant contact of one another. After the body of the victim was found, there was surge in the calls exchanged by the accused persons amongst themselves. This fact is evident from the CDRs which are neither rebutted nor explained by the accused. This permits an adverse inference that since the accused persons had committed this offence, they were in distress. Therefore, they frequently called one other.

13. Looking at the quality of the prosecution evidence, the minor omissions, contradictions and inconsistencies, if any, should not weigh in favour of the defence.

14. The investigation was carried out in a fair, transparent and unbiased manner, without any influence. It is trite that, minor loopholes and irregularities in the investigation cannot dilute the strong circumstantial evidence proving the guilt of the accused.

15. In the conclusion, she urged that the findings of guilt of the accused-Appellants, as recorded by the trial Court, is based on unimpeachable and reliable evidence and it is inconsistent with their statements. Thus, looking at the heinous nature of the crime, this Court should be loath to interfere with the impugned conviction and sentence passed by the trial Court. Ms Rane has cited the decision in *Pappu vs. The State of Uttar Pradesh*, reported in *(2022) 10 SCC 321*, to fortify her submissions.

16. Mr. Rajput, the learned Appointed Counsel, appearing for Respondent No.2, has adopted the aforestated submissions made by the learned APPs.

17. We have considered these submissions and examined the prosecution evidence on record in the light of the settled legal principles and the reported cases cited at bar. The prosecution relies upon several circumstances to support its contention that the charge has been proven beyond reasonable doubt. The circumstances are as under :

Proof of the homicidal death and the rape:-

18. The learned Counsel for the accused persons, at the outset, have strongly contested the cause of the death. Therefore, the first question that falls for our determination is, whether the death of the victim was caused “by throttling”.

19. In this regard we have found that, the testimonies of the inquest panch PW-3 RSC, informant PW-11 and PW-19 established that on 16/10/2012, at about 3:30 p.m., PW-19 visited the said Well and took out the dead body with the help of XYZ Nagar Parishad. The clothes worn on the dead body were in inverted state. Then, PW-11 filed the A.D. report (Exh.77) as instructed by PW-19. It was followed by recording the Inquest Panchnama (Exh.45). Therein PW-19 noted the appearance of the body. Then, PW-19 sent the body for post-mortem giving his request letter (Exh.167). Lastly, as deposed by Spot Panch PW-10 Sunil Kamble and PW-19, the latter recorded the Spot Panchnama (Exh.69).

19.1 The testimonies of PW-2 Ankush Shewale and PW-19 proved that, on 16/10/2012, PW-19 seized the clothes (Art.1 to 6) of the victim and recorded its Seizure Panchnama (Exh.43). PW-2 has identified the said clothes. This evidence remained unshaken in the cross-examination of the witnesses.

20. PW-13 Dr.Patil, the autopsy surgeon, testified that he had noticed the following external and internal injuries on the body of the victim which, in his opinion, were ante-mortem in nature.

External Injuries:- The whole body was decomposed. The skin over the body was peeled off. The body was swollen and distended. The eyes were closed and tongue was in between the teeth.

- i) Watery in reddish fluid was coming out through the mouth and nostril.
- ii) perineal tear of vagina 3 cm. in length 1/2 to 1 cm. In depth. Arms were extended over head and tied with *Odhani* at forearm level. Three knots were present.
- iii) C.L.W. over forehead 1 x 1 cm. in mid part.

Internal Injuries:- Brain of the deceased was found to be congested. Pleura of both lungs appeared congested. Sub-mucosal haemorrhages were noted at various places within the larynx and trachea. Both lungs were found to be congested. Congestion was also observed in the pericardium, heart, and major blood vessels. All internal organs were noted to be congested.

21. PW-13 has asserted that in view of the above findings, he preserved the viscera samples and issued the 'Cause of death Certificate' (Exh.86) opining that, "*death due to "throttling"*". In the original post-mortem report he had noted that, the "*death due to "throttling", however, viscera is preserved*". The post-mortem report (Exh.85) is in his handwriting and it bears his signature.

22. PW-19 has deposed that, PW-13 had reserved the opinion as to the cause of the death. Therefore, on 17/10/2017, he issued a letter (Exh.87) seeking the opinion of PW-13. In turn, PW-13 gave a letter-cum-cause of death certificate (Exh.88). PW-13 has deposed on the same line. Additionally, PW-13 has deposed that in his letter (Exh.88) he had opined that, the death had occurred before the body

was immersed into the water; that, the death was not due to drowning; and that, the time since death was about 3 days.

23. In the cross, PW-19 has admitted that he had received the post-mortem report with the cause of death certificate (Exh.86) on 16/10/2012. The 'cause of the death' was not evident from the said documents. Therefore, he gave the letter (Exh.87) to seek a clear opinion as to the cause of death, but without enclosing the original post-mortem report and the cause of death certificate (Exh.86).

23.1 In the cross, PW-13 has admitted that in the copy of the post-mortem report produced by him, it is written that, "viscera preserved, opinion reserved". But when he had handed over the original post-mortem report to the police, he had mentioned the cause of the death in it. PW-13 has admitted that, on 17/10/2012, for the first time he had intimated to the police that the death occurred before the body was immersed into the water; that the death was not due to drowning; and that, the time since death was 3 days. He has admitted that, he has not mentioned in the post-mortem report about the contents of the large and small intestine.

24. On a careful scrutiny, we have found that the aforesaid evidence of PW-13 is consistent with the Inquest Panchanama, post-mortem report, the cause of the death certificate (Exh.86) and the letter-cum-opinion (Exh.88). There is nothing in the material to disagree with that expert's opinion. Therefore, we have placed our full reliance on the testimony of PW-13.

24.1 To fortify our conclusion above, we deem it apt to refer the cited decision in *Pappu* (supra). Therein, in paragraph 22.9, the

Hon'ble Supreme Court referred to its earlier decision in ***Ramesh Chandra Agrawal vs. Regency Hospital Ltd. & Ors***, reported in **2009 (9) SCC 709**. The issues therein pertained to medical negligence. However, as regards the principle concerning expert evidence in terms of Section 45 of the Evidence Act, the Apex Court recorded its observation in paragraph 20 thereof which is reproduced as under:

“**20.** An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions.....”

25. In the cross of PW-13, an attempt was made to evince that there were no signs of throttling, therefore, his opinion as to the cause of the death was wrong and, it was given at the instance of the police. However, there is nothing in the evidence that lends credence to the suggestions made by the defence during the cross of PW-13. Apart from that, the defence has not proposed any alternative cause of death. Not even of ‘drowning’. On the contrary, the evidence indicates that the hands of the victim were tied above her head. Therefore, we are unable to disagree with the finding of the trial Court that ‘throttling’ was the cause of the death of the deceased and that her death was homicidal.

25.1 The testimony of PW-13 that there was perineal tear of vagina “3 cm. in length 1/2 to 1 cm. in depth” remained unshaken in his cross. Ms Rane, the learned APP has submitted that the said evidence has proved that the victim was gang raped.

25.2 The learned Counsel for the accused have pointed out that, as admitted by PW-13, he had not done the vaginal examination. PW-13 has not deposed that the alleged/said perineal tear was fresh or old. Without such opinion, mere such tear is not sufficient to hold the charge of rape. Therefore, initially, offence of Section 376 was not alleged in the crime registered on the Report (Exh.31) filed by PW-1. Additionally, it is also highlighted that, no DNA was obtained of the victim and from the lubricant or substance present on the outer side of the condoms to compare it and confirm the rape. Therefore, the CA and DNA Reports are not sufficient, cogent and reliable nor conclusive in nature, to prove that, indeed, the victim was raped by the Appellants.

25.3 However, looking at the condition in which the victim’s body was found; that the clothes on her body were in an inverted state; the size of the vaginal tear; and in absence of the contrary material to show as to whether, the said tear was old, we are of the considered view that the trial Court has rightly held that the victim was raped. Therefore, said finding need not be disturbed.

Victim gone missing:-

26. PW-11 has deposed that on 12/10/2012, the victim had gone to her workplace; however, she did not return home by 9:00 p.m. He

had called on her mobile phone, but it was switched off. He, alongwith his relatives, had searched for the victim in the nearby areas including *Pare Road* and *Ghumat Mal* but she was not found. On 16/10/2012, he had gone to *Karad* for labour work and returned at around 4:00 to 4:30 p.m. At that time, he overheard a public discussion stating that a dead body had been found in the said well. This evidence is corroborated by the Report (Exh.77) filed by PW-11. We have found nothing in the cross of PW-11 to discard this assertion. Therefore, we accept that after the victim left her home on 12/10/2012, she did not return home till 9:00 p.m. and from that point onward, she went missing.

27. The evidence of PW-11 indicates that, despite search, the victim was not found till 10/10/2012, nor the inquiry with the relatives provided any clue about her. However, as admitted by PW-11, he was at home from 12/10/2012 to 15/10/2012. He did not work during that period. But, on 16/10/2012 PW-11 went to *Karad*, for labour work. The victim was just aged 19 year. Yet, till 16/10/2012, PW-11 did not find time nor did he try to even file a missing complaint of the victim. The evidence indicates that PW-11 had the contact number of PW-1. However, till 16/10/2012, PW-11 did not inform the PW-1 that the victim was missing. The reason behind not taking such steps is not explained from the material on record. However, all this is not sufficient to disbelieve the fact that, the victim went missing from 12/10/2012, because she was later found dead in the Well and her body was decomposed. As per the expert opinion of PW-13, the victim had died about three days before.

Love relations between the victim and A-1:-

28. PW-11 has deposed that, since four to five months prior to the incident, the victim was having a love relationship with A-1. He, along with his wife and mother, had tried to persuade the victim to end her relationship with A-1, but she turned a deaf ear to them. PW-11 has deposed that he had told PW-8 Sandeep Shinde about the said love affair and asked him to advise the victim which the PW-8 did.

29. PW-1 has deposed that, upon receiving the news about the victim, he came to his home at XYZ, where his grandmother informed him that the victim had a love affair with A-1. He has deposed that his parents and the grandmother had advised the victim to discontinue her relationship with A-1. However, their advice went in vain.

30. Adding strength to the said evidence, PW-8 Sandeep Shinde has deposed that he used to reside at XYZ and, he was doing construction business on contract. For the last 3 to 4 years prior to the incident, PW-11 had been working with him as a labourer. He was familiar with the family members of PW-1 and the victim. Two months prior to the incident, PW-11 had told him that the victim was wandering with the A-1 and requested him to advise the victim to conduct herself properly. PW-8 has deposed that one week thereafter, he and his friend Manoj Pawar had gone to village *Gardi Ghanwad*, for work. At that time, he saw the victim and all the accused standing together at *Gardi* bus stand. He enquired with the victim about the accused. She replied that the accused persons were her friends and told him their names. PW-8 has deposed that he

informed the victim that her father, PW-11 did not approve of her friendship with A-1, and thereafter, he left.

31. PW-16 Amit Karkera, Nodal Officer, Uninor Cellular Co., has deposed that pursuant to the e-mail letter (Exh.126) received on 07/11/2012, from SP Sangali, his company had provided the information of Mob.No.885****370, by an e-mail alongwith the customer's application form and the ID proof (Exh.128). On 27/11/2017, he received the Court summons to certify the information provided earlier. Accordingly, he has produced the copy of the CDR (Exh.127) and the subscriber's applications with address and ID proof (Exh.128). He has deposed that, the said information is as per the company's record and it bears the company seal. Its contents are correct and true. To support this evidence, PW-16 has produced a Certificate u/Sec.65-B of the Evidence Act (Exh.129). PW-16 has deposed that the said CDR are of 13/10/2012 and in the format of 24 hours, *i.e.*, hours, minutes and seconds. The CDR and the allied information proved by PW-16 show that Mob.No.885****370 was in the name of PW-11.

32. PW-15, Nodal Officer, Bharti Airtel Ltd. has deposed that on 06/11/2012 he had received an e-mail from SP Sangli to provide CDR and subscriber's name of Mob.Nos. 997****956, 909****349 and 997****769. The photocopy of the e-mail (Exh.117) is the same. PW-15 has deposed that, accordingly, he has produced the required information in the Court alongwith his signed letter dated 14/02/2018 (Exh.118), addressed to the Trial Court.

32.1 PW-15 has deposed that Mob.No.997****956 was in the name of A-1. In this regard, PW-15 has referred the A-1's Application for

the mobile SIM and the address proof (Exh.120). PW-15 has deposed that the Mob.No.909****349 was in the name of Sita Arjun Pawar (mother of A-2). In this regard, PW-15 has referred Sita's Application for the mobile SIM and the address proof (Exh.121). PW-15 has further deposed that the Mob.No.997****769 was in the name of A-3 Dadaso Bhaskar Athawale. In this regard, PW-15 has referred to the A-3's Application for the mobile SIM and address proof (Exh.119). Lastly, PW-15 has referred to the CDRs alongwith the location chart and the Certificate u/Sec.65-B of the Evidence Act (Exh.122 colly.) related to the aforesaid information. The CDRs are of only one day, *i.e.*, 13/10/1012 (for 24 hours). The testimony of PW-15 is consistent with the record he has referred to in his deposition.

32.2 The subscriber's application etc. (Exh.112) and the allied CDR (Exh.114) produced and proved by PW-14 show that Mob.No. 957****683 was registered in the name of Mr. Shankar Jagannath Jadhav.

33. The said CDRs (Exh.128 & 117) show that, on 13/10/2012, four calls were made from Mob.No.885****370, allegedly regd. in the name of PW-11, to the Mob.No. 997****956 regd. in the name of A-1. The details thereof are as follows:-

Mobile Number	Called mobile	Date	Call time	Duration	Incoming/ Outgoing	Location
885****370 Victim-girl	997****956	13.10.2012	00:00:26	41	outgoing	Vita, Khanapur, Sangli
"-	"-	"-	00:00:04	29	"-	
"-	"-	"-	00:12:24	12	"-	
Victim-girl	A-1	13.10.2012	01:02:06	79	"-	

34. On the strength of the aforementioned testimonies, Ms. Rane, the learned APP, has submitted that the prosecution has established that prior to the incident, there existed a love relationship between the victim and the A-1. However, the learned Counsel for the accused persons have contended that, looking at the unnatural conduct of the said witnesses and in light of the admissions made by them during their cross-examination, the submission advanced by the learned APP lacks merit.

35. In view of the above submissions, we have examined the testimonies of PW-1, PW-8, PW-11, the related CDRs and the surrounding circumstances. On such examination, we are disposed to be in unison with the contentions of the learned Counsel for the accused. Because, at the out set, we have noticed that PW-11 has not informed the source which intimated him about the love affair between the two. In the cross, PW-11 has admitted that on 16/10/2012, there was a discussion amongst him, his wife, his son and his mother regarding the victim's love affair. PW-11 has admitted that on 16/10/2012, police had asked him as to whether, the victim had gone with anyone and whether she had a love affair. Yet, PW-11 has admitted that on 16/10/2012, he did not inform the police about the victim's love affair. PW-19 has admitted that PW-11 had not raised suspicion about the victim's death. Therefore, he also did not enquire with him about the same. Notably, on his own, PW-11 did not make any reference to the alleged love relationship in his Report (Exh.77). As such, the conduct of PW-11 is unnatural.

35.1 It is pertinent to note that, as admitted by PW-1, there was no discussion between him and his father, PW-11, regarding the victim's friends on 16/10/2012 and 17/10/2012. PW-1 has further

admitted that, he did not tell the police about the love affair of the victim. Moreover, PW-1 also admitted that he became aware of the accused and the alleged love affair between A-1 and the victim only after the police informed him of the matter. As such, this evidence runs counter to the evidence of PW-11 that, on 16/10/2012, there was discussion in the family about the said love relation. The said evidence also indicates that, since PW-1 had no knowledge of the love affair, it did not occur to him to mention the fact of the said discussion in his Report (Exh.31).

35.2 PW-8 did not inform the exact date and the time when he saw the victim and the accused persons standing together at *Gardi* bus stand and he had enquired with the victim about the accused etc., as above. Admittedly, since 3 to 4 years prior to the incident, PW-11 had been working with PW-8. This fact, coupled with the conduct of PW-11 in making request to PW-8 to prevail over the victim, manifests that, the relation between the two was cordial. According to PW-8, the presence of the victim alongwith the A-1 at *Gardi* stand, was an important fact; and that, it was important to tell the said fact to PW-11. Yet, PW-8 has admitted that he did not convey this fact to PW-11.

35.3 PW-11 has admitted that PW-8 had his mobile number. As admitted by PW-8, distance between *Bhavani Mal* and *Ghumat Mal* was about 3 to 4 Kms. (The places, where PW-11 and PW-8 used to reside at XYZ). Thus, it is evident that PW-11 and PW-8 were not residing far from each other. PW-8 had his own motorcycle. PW-11 has admitted that prior to 12/10/2012, PW-8 met him personally. However, either over the phone or visiting PW-11's residence, PW-8 did not inform PW-11 that he had seen the victim in the company of

the accused persons at the *Gardi* bus stand; that he had enquired with the victim about the accused; or that she had responded by stating they were her friends and had disclosed their names, as stated above. Thus, the conduct of PW-8 is also very unnatural. Surprisingly, even PW-11's Report (Exh.77) is silent about the fact that he had informed PW-8 about the alleged love affair and had requested him to advise the victim. Although, PW-11 deposed that PW-8 had advised the victim, he did not inform as to when PW-8 had told him about that. Therefore, we find it difficult to rely on PW-8's assertion that he had seen the victim in the company of the accused persons at the *Gardi* bus stand etc.

35.4 Looking at the quality of the evidence of PW-11 and PW-8, it appears that, PW-8 is an interested witnesses. This fact alone, as we are aware, will not discredit his testimony. Therefore, as required by the decision in *Arjun Marik* (supra), we have scrutinised his evidence with great care and caution. However, in view of our discussion above, we find that, his testimony is not beyond reproach nor free from vital infirmities, thus, making it unreliable and untrustworthy.

36. In so far as the CDRs (Exhs.127 & 122) are concerned, it clearly show that only 4 calls were made from Mob.No. 885****370 regd. in the name of PW-11 to Mob.No. 997****956 regd. in the name of A-1 and the timings were from 00:00:26 to 01:02:06. However, the CDRs of the period prior to 13/10/2012 of the said mobile numbers are not produced. No justifiable reason is discernable from the record for withholding such CDRs.

36.1 In the cross, PW-1 has admitted that he was residing at place 'J' (Dist. Kolhapur) and was working as a driver. He had shifted

there one month before October 2012. PW-1 has admitted that his mother-in-law had a mobile phone. On a few occasions, he used to call his father/PW-11 and the victim on the mobile phone of his mother-in-law. PW-1 has also admitted that PW-11 had the mobile number of his mother-in-law. PW-1 has also admitted that during his initial one month stay at place 'J', he had called the victim for about 7-8 times. His last call to the victim was 4-5 days prior to 16/10/2012. Yet, the prosecution has not produced the CDR of the victim's alleged mobile number of the period prior to the incident.

36.2 Admittedly, the victim and A-1 were both young persons. According to the prosecution, they both were in love relationship since 4 to 5 months prior to the incident. The victim wanted to marry A-1. Therefore, considering the timings of the said 4 phone calls, it is safe to presume that, prior to the incident, there must have been constant telephonic conversations in-between the victim and A-1. However, such relevant and important record, which, in the facts, would have reinforced the story of the 'love relations' has not been adduced in evidence. Therefore, an adverse inference is permissible that if the relevant records were produced it would not have supported the prosecution case. That apart, the evidence of PW-16 and the subscriber's record he has produced, is not sufficient to understand as to exactly when the Mob.No.885****370 got active. In fact, to our surprise, the subscriber's Application (Exh.128) does not bear the date of its signing, submission and the acknowledgement. Consequently, the seizure of the box of this mobile phone under Panchnama (Exh.70), as proved by PW-10 Sunil kamble and PW-18, is of no help to the prosecution.

36.3 As claimed by the prosecution, the victim had this mobile number with her since the time she left the home on 12/10/2012. The Recovery Panchnama (Exh.56) mentions that, there were two charger with wires in the purse (Art.7), allegedly recovered by A-3. All the said 4 phone calls were allegedly made by the victim in the midnight. As such, it was highly probable that, after the dawn of 13/10/2012, at least, the victim would make one phone call to A-1. But it is not the case here. In the cross, PW-1 has admitted that the victim had no mobile phone of her own; and that, there was only one mobile number of his father, PW-11 till 16/10/2012. PW-1 has stated that, lastly, he had called his father prior to 16/10/2012 and, at that time, he spoke with all the members in the family. Therefore, we find it difficult to hold that at the relevant time, the victim was using the Mob.No.885****370.

36.4 PW-16 has admitted that the CDR of the mobile mentions about the location. He has admitted that first cell ID means the number of the tower where the call started, and last cell ID means wherein the call ended. He has admitted that as per the CDR, first cell ID and the last cell ID of the mobile in question is one and the same, and therefore, it can be said that the calls were made from one and the same ID. He cannot tell the location of the said mobile number from the relevant cell ID. He has admitted that the police did not enquire with him about the location of 885****370.

36.5 It is important to note that, PW-13 has admitted that as per the MLC Entry No.660 (1st page of Exh.90), A-1 was produced at the Rural Hospital on 17/10/2012, at about 11.00 am; and that, on that day, A-1 was referred by the police. However, PW-18 has not deposed this fact nor produced the relevant police *Yadi* pertaining to

that reference. That apart, PW-18 has not informed as to from where and at what time, A-1 was apprehended and why A-1 was shown arrested at 22.15 hrs. of 17/10/2012 (*vide* Exh.59). On the same day, the statement and supplementary statement of PW-11 and PW-1 respectively were recorded by PW-18. In these statements, for the first time, the son and the father mentioned about the love relations. At the cost of repetition, it would be pertinent to note herein that PW-1 has admitted that he became aware of the accused and the alleged love affair between A-1 and the victim only after the police informed him of the matter. These facts indicate that after apprehending A-1 in the morning of 17/10/2012, PW-18 interrogated him, and whatever information A-1 had revealed, based on that, PW-18 had recorded the statement and supplementary statement of PW-11 and PW-1 respectively, on 17/10/2012.

36.6 Similarly, there is reference of love relation in the voluntary statement of A-1 (Exh.47). Thereafter, the statement of PW-8 was recorded on 20/10/2012. Therein, for the first time, PW-8 had narrated the fact which he has deposed in his examination-in-chief. Thus, the unnatural conduct of PW-1, PW-8, PW-11, suppression of the time of apprehending the A-1, taking him in custody and the manner of the investigation suggest that, only on the basis of preliminary investigation and the alleged voluntary inadmissible statement of A-1, these witnesses and PW-18 – the investigating officer, had put forward the story of love affair. Therefore, their evidence is not found to be reliable as regards the fact that there was love affair between the victim and A-1.

36.7 In view thereof, we are in agreement with the learned Counsel for the accused persons that the prosecution has failed to prove that

there was love relation between the victim and the A-1. Therefore, the question of the victim proposing A-1 to marry her is also found to be improbable. This finding takes the motive out of the case.

Victim contacted A-1, through the phone of PW-12:-

37. PW-12 Ranjeet Mohite has deposed that in the year 2012, he used to work as a part-time 'salesman' at *Pruthwiraj* Wine Shop and he was studying in 12th Standard, in a school at XYZ. He was using the Mob.No.830****675. PW-12 has deposed that, on 13/10/2012, at around 8:00 a.m., he had gone to his college. At about 12:30 p.m., he was proceeding to his workplace and had reached the bridge at *Mayani* Road. There, one girl approached him and asked for his mobile phone on the pretext of making a phone call. Said girl did not reveal the reason why she was making the phone call. He handed over his mobile phone to the girl, whereupon, she stepped aside to make the call. On completing the call, she returned the phone but after deleting the call history. Then the girl proceeded towards XYZ Road and he went to work.

37.1 PW-12 has deposed that the Mob.No.830****675 was issued in the name of one Mahesh Bhise, who was his friend for the past 3-4 months. He had been using that mobile SIM card in his mobile phone for 2 to 3 months prior to 13/10/2012. He has deposed that on 19/10/2012, he read a news and also saw a photograph (of victim) published in the newspaper. He has deposed that, the victim (in the photo) was the same girl who had used his mobile phone on 13/10/2012. Therefore, he immediately went to the Police Station and informed the said fact to the police.

38. The subscriber's application etc. (Exh.120) and the allied CDR (Exh.122) produced and proved by PW-15 Milind Kolwadkar show that, a mobile bearing No.997****956 was in the name of A-1. The subscriber's applications etc. (Exh.137) and the allied CDR (Exh.138) produced and proved by PW-17 show that, a mobile No.830****675 was in the name of one Mahesh Bhise. The said CDRs (Exhs.127 & 138) show that, on 13/10/2012, at about 13:10.06 hrs and 13.11.19 hrs, mobile No.830****675 had contacted with the said mobile No. of A-1.

39. However, the aforesaid testimony of PW-12 is not reliable and the said CDRs (Exhs.127 & 138) are not sufficient to hold that on 13/10/1012, PW-12 was using the Mob. No.830xxx675; he was carrying that mobile phone number; and that, the victim had called A-1 and talked with him, through that mobile phone, allegedly carried by PW-12. And the reasons are as under :

39.1 In this context, it is significant to note that, in the cross, PW-12 has admitted that while recording his police statement, he did not inform the police that the said SIM card was issued in the name of Mahesh Bhise. He has also admitted that Mahesh Bhise was not his classmate. He has also admitted that, Mahesh Bhise used to reside at *Ghumat Mal*, which is not near his residence. It is not the case that PW-12 had any relationship with Mahesh Bhise, whatsoever. PW-12 has admitted that Mahesh Bhise had his independent mobile phone with a different SIM card registered in his name. However, PW-12 has not informed as to why Mahesh Bhise gave him his said mobile phone and allowed him to use it. Moreover, said Mahesh Bhise is not examined as a witness to prove

that he had obtained the Mob.No.830****675; the related documents; and that he had given that Mob. SIM to PW-12.

PW-12 was resident of XYZ place. PW-12 has admitted that after completing 10th Standard, he had been working in the said wine shop. PW-12's evidence indicates that he was literate, had local acquaintances and had the proof of his permanent residence. Thus, he was eligible to get his own mobile phone. Yet, PW-12 did not inform the reasons that hindered him from getting a mobile number of his own, as well as the circumstances that led to his use of Mahesh Bhise's mobile SIM. Therefore, the testimony of PW-12 is not reliable that, at the relevant time, he had the mobile SIM No.830****675 in his mobile handset.

39.2 Admittedly, the victim was a stranger to PW-12, as he had never seen her prior to 13/10/2012. As provided in Section 228A of I.P.C. publication of a matter relating to a rape victim alongwith her photograph is permissible but only in the conditions stated in the said Section. However, the prosecution did not produce the authorisation or the source of the publication of the photo of the victim as deposed by PW-12. Furthermore, PW-12 did not disclose the name of the said newspaper, nor was a copy of it produced by the prosecution. PW-12 did not clarify whether the photograph of the victim was of the time when she was alive or of her deadbody showing her face, post her death. The body of the victim was fully decomposed and her face was not recognizable. PW-12 has admitted that he did not ask the victim her name and the reason to make the phone call. He has admitted that, until 19/10/2012, he did not inform anyone that a girl had met him and used his mobile phone to make a call. PW-12 has admitted that the victim had spoken on the

call for about 10 minutes. But the total duration of the said calls was $27 + 18 = 45$ seconds. For all these reasons, we find that the testimony of PW-12 is not reliable. Therefore, even if, for the sake of argument, it is assumed that PW-12 had the said mobile SIM No.830****675 in his mobile, it is not safe to accept PW-12's assertion that the victim had taken his mobile phone and she contacted A-1, from his mobile. No doubt, the A-1 has not explained the said call. But it is of no consequence because the evidence of PW-12 is not found to be reliable.

Last seen together:-

40. PW-8 Sandeep Shinde has deposed that, on 13/10/2012 in between 4.00 pm and 4.30 pm, he alongwith his friend Manoj Pawar had gone to *Gardi*, by riding on a motor-cycle. When they were returning, at about 7.30 to 7.45 pm, they saw the victim and the accused persons together at *Pawaitek*. Two motor-cycles were standing there. PW-8 has deposed that till such time they alighted from the motor-cycle, A-1 and the victim sat on one motor-cycle and the three accused persons sat on the other, and they all went towards the water tank of village *Gardi*.

41. Ms. Rane, the learned APP has submitted that the said evidence of PW-8 regarding the "last seen together" circumstance remained unshaken. Secondly, it is substantiated by the testimonies of the various Nodal Officers, who have proved the CDRs demonstrating constant telephonic contact between the victim and A-1 and the accused persons *inter se*. Therefore, the learned Trial Court has committed no error in accepting the said evidence.

41.1 In *Pappu* (supra), in paragraph 22.13, as regards the last seen theory and operation of Section 106 of the Evidence Act, the Hon'ble Supreme Court referred to its earlier decision in State of *Rajasthan vs. Kashi Ram*, reported in (2006) 12 SCC 254 and quoted its paragraph 23 with approval, which reads as follows :-

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohd., Re. [AIR 1960 Mad 218]”

41.2 The learned Counsel for the accused contend that the evidence regarding the last seen together circumstance suffering from inexcusable debility which made it liable to be discarded. In this

regard, our attention has been drawn to some admissions made by PW-8, PW-11, and PW-18, during their cross.

42. Let us deal with the said controversy. As noted above, the relationship between PW-11 and PW-8 was cordial. However, PW-11 did not make a phone call to PW-8 to assist in searching the victim. PW-11 has admitted that, after 16/10/2012, for about 4 to 5 days, he did not meet PW-8. In his deposition, PW-8 has claimed that after reading a newspaper on 19/10/2012, he came to know about the victim's death. But, in the cross-examination, PW-8 himself has deviated when he admitted that, on 16/10/2012, at about 7 pm to 8 pm, he had come to know about the death of the victim. Yet, PW-8 has stated that he did not meet PW-11 on 17/10/2012. According to PW-8, upon learning about the victim's death, he met PW-11 during the third-day ritual following her death, and not before. When confronted, PW-11 denied having stated the "Portion marked-A, (Exh.159)" in his statement before PW-18 to the effect that, "on getting the said news, he had gone to PW-11's residence on the next day, to meet him". However, this contradiction was proved through PW-18. Thus, it is evident that PW-8 had visited PW-11 not once, but twice, immediately following the victim's death. Yet PW-8 has admitted that he did not feel it necessary to disclose PW-11 that he had seen the victim and all the accused persons together on 13/10/2012. But, in the very next breath, he has stated that upon learning of the victim's death on 16/10/2012, he did feel it necessary to disclose the said fact to PW-11. PW-8 has admitted that he was with PW-11 for approximately 10 to 15 minutes during the third-day rituals. However, he did not inform PW-11 about the "last seen together" fact, thus contradicting this statement made to the police.

42.1 According to PW-8, after reading the news paper on 19/10/2012, on the next day, he went to the Police Station accompanied with Manoj Pawar. The record also shows PW-8's statement was recorded on 20/10/2012 by PW-18. However, PW-8 has not informed the circumstances which stopped him from going to the police immediately after he learnt about the victim's death on 16/10/2012 and/or on the same day, when he read the news about her death in the newspaper.

42.2 Ms Rane submitted that, since the family was grief-stricken, PW-8 avoided to share the "last seen" fact with PW-11. However, PW-8 has not offered this explanation in his deposition, although, according to Ms Rane, it forms part of his statement before PW-18.

42.3 It is commonly observed that those who attend the post-death rituals typically discuss with one another and with the grieving family when and how the deceased passed away. Therefore, since PW-11 and PW-8 were from the same place XYZ and they shared a friendly relationship, it was highly probable and it can reasonably be inferred, that when PW-8 had visited PW-11 on the two occasions, he learned about the suspicious circumstances surrounding the victim's death, its cause, and the condition of her body. However, PW-8 did not convey to PW-11 that he had seen the victim alongwith the accused persons on 13/10/2012. Nor did he met the police immediately after 16/10/2012, when the said suspicious circumstances were very fresh and within his knowledge. Thus, this stoic and unexplainable silence of PW-8 again projects an element of unnaturalness, which, in the given circumstances, cannot be regarded as a mere coincidence.

42.4 We are *qui vive* on the caution expressed in ***Bodhraj @ Bodha*** (supra) that mere delay in examination of a particular witness by police, will not make the prosecution version a suspect. It would depend upon several factors. If the explanation offered for such a delay is plausible and acceptable, the Court would accept it. In the case in hand, the conduct of PW-8 in remaining indifferent and failing to disclose the vital information to PW-11 and the police entirely discredits his version and thus, makes his above testimony unreliable.

Purchase of liquor from PW-5 by A-2:-

43. PW-5 Dhananjay Mahamuni has deposed that, at the time of the incident, he was working as a Manager with M/s Neelam Wine Shop, owned by one Mr U N Shaikh. The timings of the wine shop were from 9.30 am to 10.00 pm. On 21/10/2012, the police had called him at XYZ Police Station and confronted with the accused persons. On seeing all the accused, he had remembered that A-2 had visited his shop to purchase liquor. He had identified the A-2, as he was young and bald. The police had told him the name of A-2.

44. In the cross-examination, PW-5 has admitted that he has no documentary evidence to show that he had sold liquor to A-2. PW-5 has voluntarily stated that A-2 had been to the shop in the evening, in busy hours. However, he has admitted that the police did not ask him the time of the visit by A-2; that, there were 4 employees in the Wine Shop; that, three employees were responsible for handing over the liquor to the customers, and he himself was in charge of collecting payments for the liquor.

44.1 From this evidence it was clear that, due to rush hours, PW-5 had very little time to observe the appearance of A-2, when the A-2 had allegedly visited his wine shop. It is a matter of common understanding that it does not take one a long time to purchase a liquor bottle from a shop. PW-5 has admitted that he cannot state the number of bald persons, age old persons and young persons who had visited his shop on that particular day. Admittedly, PW-5 was responsible to collect the payment and not to deliver the liquor. However, PW-5 did not depose as to how he was able to keenly observe the appearance of A-2 in such a brief span of time, especially when he was occupied with collecting payments during busy hours, and was unable to specify the number of bald individuals, elderly persons, or young persons who had visited his shop on that particular day. PW-5 has admitted that “Imperial Blue” liquor was available in all the wine shops. Therefore, in our considered view, there was a need to hold ‘Test Identification Parade’ (TIP) to ascertain as to whether A-2 had really visited the wine shop of PW-5 to purchase the liquor or not. Had such evidence been available, it would have corroborated the identification of A-2 by PW-5. However, the record does not disclose any reason for not conducting the Test Identification Parade (TIP) of the accused. For these reasons, we have difficulty in accepting the evidence of PW-5 that the A-2 had visited his wine shop and purchased the liquor.

44.2 PW-5 has not deposed as to why the police had called him to the Police Station. PW-18 has not deposed as to why it was necessary to call PW-5 in the Police Station to confront him with the A-2 for the purpose of identification and how far such a method of the identification was permissible in law. Thus, a completely illegal way was adopted by PW-18 to get A-2 identified to serve the purpose of the prosecution. Considering the evidence of PW-5, it appears that,

A-2 had not at all visited his wine shop or PW-5 was not at all capable of identifying the A-2. Therefore, PW-5 was called at the Police Station to get the A-2 identified, and accordingly, he had identified the A-2 in the Police Station and then in the trial Court. PW-5 has admitted that liquor “Imperial Blue” was available in all the wine shops. The empty bottles of said brand were available on road. Therefore, according to us, PW-5 is also an unreliable witness.

Purchase of water bottle and condom packet by A-2:-

45. PW-9 Vaibhav Kupade has deposed that, he has been running a medical shop named *Madhuri Medicals*, located on XYZ-Mayani Road. Its timing are 8.30 am to 9.00 pm. On 21/10/2012, police had called him at the XYZ police station. At that time, all four accused were shown to him. He has deposed that A-2 had identified him and then, the A-2 had disclosed that he had purchased a water bottle and a packet of condoms from his medical shop on 13/10/2012, at about 7.00 pm to 7.30 pm. The condom packet/Art.14 was of “Zaroor” brand and it contained three pieces. The water bottle/Art.17 was of the *Davar’s* brand. PW-9 has identified these articles.

46. In his cross, PW-9 has admitted that he had learnt about the incident from a newspaper in which photographs of the accused were published after the incident. He has admitted that thereafter, he did not go to the Police Station on his own and informed the aforesaid facts to the police. He has admitted that, the subject condom packet and the water bottle have no mark of his shop. However, he has not disclosed as to on what basis he has identified these articles. He has admitted that while recording his statement, he did not state before the police that, originally, the condom packet

had three pieces inside. He has admitted that, the condom packet had contained only two pieces and the said packet was not sold by him. He has admitted that, in his statement before the police he had stated the 'Portion Marked 'A' (Exh.65), which is to the effect that, "*However, I does not remember as to where I had seen the said accused (four) persons*". He has admitted that since the A-2 had not visited his shop, he could not recognize him. This has rendered his version self contradictory. Therefore, we hold that the testimony of PW-9 is of no avail to the prosecution. In fact, PW-9 appears to be a planted witness.

Arrest of A-1 and seizure of his clothes:-

47. The testimonies of PW-7 and PW-18 is that, on 17/10/2012, PW-18 had arrested A-1 at the Police Station and seized the clothes which were on his person, *vide* Arrest-cum-Seizure Panchnama (Exh.59). Said clothes are; shirt Art.20, pants Art.21 & underwear Art.22. PW-18 has deposed that then he handed over the clothes to PW-20, the *Muddemal* Clerk, as per the Receipt (Exh.142).

47.1 In the cross-examination, PW-7 has admitted that except the seized clothes, he did not see another set of shirt, pant and underwear at the Police Station. He has admitted that in his presence nothing was mentioned in the panchnama about giving another set of the clothes to A-1, as the replacement of the seized clothes. He has admitted that the Panchnama does not mention that someone brought the second set of clothes to give it to A-1. He has admitted that he had no knowledge as to who had brought the second set of clothes and gave it to A-1, to wear.

Discovery by A-1 leading to the recovery:-

48. The panch, PW-4 Sagar Patil deposed that, on 18/10/2012 at 3:45 PM, in the presence of the panchas, “A-1 shown his willingness to show the spot where he had committed the rape”. PW-18 has deposed that he recorded the Memorandum (Exh.47) of the said voluntary statement by A-1. Thereafter A-1 led the police and panchas to Shivaji Chowk, then, A-1 led them to *Pawaitek* by XYZ-*Mayani* Road and he took them 100 mtrs. inside from the road and shown the said spot admeasuring 6 x 6 ft. It was a barren piece of land with grass approximately six inches in height. The grass appeared to be in a pressed or flattened condition. The following articles were found at the center of the said spot:- 3 used condoms of *Zaroor* company, a hair clip (Art.11), a pair of ear rings (Art.12), nicker (Art.13), a condom packet (Art.14), 2 empty sachets of *Yatri Gutka* (Art.15), an empty liquor bottle namely ‘Imperial Blue’ (Art.16), a plastic water bottle of “Dawar Co.” (Art.17), broken belt of a brassier (Art.18) and A-1’s election ID card (Art.19). PW-4 has deposed that, the police kept the said articles in separate carry bags and sealed the same with the label bearing signatures of the panchas. Lastly, PW-18 recorded the Recovery Panchnama (Exh.48). PW-4 has identified the said article.

48.1 PW-18 has deposed that, on 18/10/2012, A-1 showed his willingness to show the spot of the incident. He recorded its Memorandum (Exh.47). He has deposed that, then A-1 led them to the spot and there, he found the said articles. PW-18 has deposed that, he seized the said articles in the presence of panchas and, accordingly recorded the Recovery Panchnama (Exh.48). PW-18 has

also identified the said articles including the 3 used condoms the *chappals* (Art.10).

48.2 PW-18 has deposed that, on 18/10/2012 he had deposited the aforesaid articles with the *Muddemal Karkun* PW-20 Shahaji Jadhav. PW-20 has deposed that he had received the said articles in his charge on that day, thus, he has supported PW-18. In this regard, PW-20 has referred to the *muddemal* Receipt (Exh.172) and its entry bearing M.R. No.113/2012 (Exh.173).

49. However, we are not persuaded to hold the said recovery at the instance of A-1, as worthy of reliance. In this context it is significant to note that, as admitted by P.W18, the distance between the said Well and the spot of the incident (rape) was 100 meters. But, in the cross, PW-4 has stated that the said spot was situated at the distance of 100 ft. from the said Well. Be that as it may, PW-18 has admitted that he had visited the said Well on 17/10/2012. He had personally inspected the area near the Well to find out incriminating article (evidence), if any (lying there). He had conducted that inspection for about 4 to 5 hours, covering an area of about 500 meters around the said Well. During that inspection he did not notice anything incriminating. In the light of these admissions, one is compelled to pose a question as to why despite such a through search, PW-18 had failed to notice the allegedly recovered articles lying at the spot?" PW-4 has deposed that, police were present with them when they were led to the spot. Therefore, and considering the grave nature of the offence, it would be reasonable to presume that the said police personnel assisted PW-18 during the said inspection. Nevertheless, PW-18 or his assisting police did not see those articles there on 17/10/2012. This is highly

improbable. In the cross, PW-19 has admitted that huge mob had gathered on the spot to see the dead body. This fact indicates that public must have come from all directions of the Well. In the cross, PW-4 has admitted that, 1 police officer and 4 other police were present at the spot with PW-19 on 16/10/2012. However, surprisingly no one saw the said articles at the spot.

49.1 That apart, during the cross of PW-3, when the nicker (Art.13) was shown to her, she admitted that the nicker was on the dead body of the victim at the time of the inquest. This evidence is inconsistent with the prosecution case, because, the Inquest Panchnama was recorded on 16/10/2012 and the nicker was allegedly recovered on 18/10/2012. However, PW-3 was not re-examined to clarify the said ambiguity.

49.2 The combined testimonies of PW-18 and PW-20 Shahaji Jadhav, P.H.C./*Muddemal* Clerk, *muddemal* receipt (Exh.172) and the *muddemal* register entry extract (Exh.173) show that, the seized clothes of A-1 were put in charge of PW-20 on 17/10/2012. PW-20 had entered the said clothes at M.R.No.114 of 2012. Further, the articles allegedly recovered at the instance of A-1 were deposited with PW-20 on 18/10/2012, which he had entered at M.R. No.113 of 2012. In the cross, PW-20 has admitted that since the *muddemal* deposited with him on 18/10/2012 was given the M.R. No.113, the *muddemal* deposited with him on 17/10/2012 cannot be entered as M.R. No.114. PW-20 has admitted about applying whitener below the date '18/10/2012'. Same is the case with the date '17/10/2012'. Thus, it is clear that the M.R. Entries were tampered. To salvage this situation, PW-20 has deposed that it was the mistake of the *Muddemal* Clerk. However, PW-20 has not specifically deposed

that there was such a mistake on his part, in assigning the correct M.R. Nos., as stated above. On the contrary, in his chief-examination, PW-20 has not spoken about the deposit of the clothes of A-1 on 17/10/2012, at M.R. No.114. Thus, it is safe to infer that, by not deposing the said fact, PW-20 wanted to conceal the tampering of M.R. Nos.113 & 114. Therefore, possibility of manipulation of record, also cannot be completely ruled out in this case.

49.3 As admitted by PW-18, the A-1 was produced before the Court on 18/10/2012, at about 15.40 hrs., for the remand purpose. Immediately thereafter, at 16.00 hrs. PW-18 started to record the voluntary statement of A-1 and finished it at about 16.15 hrs. But, after grant of the remand, at what time the police party alongwith A-1 returned to the Police Station; at what time the interrogation was started with A-1; whom did and at what time PW-18 sent to call the panchas; and in what time the messenger returned accompanied with the panchas, all these facts were not informed by PW-18.

49.4 As noted in the cross of PW-13, on 17/10/2012, at 11.00 am, the A-1 was referred to the local Rural Hospital by local police. However, both PW-18 and PW-19 have not informed as to exactly when, where and who had apprehended the A-1; why immediately thereafter and/or before referring A-1 to the hospital he was/could not be shown as arrested; how long A-1 was in the charge of police until he was referred to the hospital as above; who gave the relevant medical *Yadi* on that occasion; which police attended A-1; how much time was required for A-1's medical and where A-1 was taken after that medical; and why A-1 was shown arrested on that day but at 22.15 pm. Answers to all these questions were necessary in the

testimonies of PW-18 and PW-19 to complete the chain of circumstances, which the prosecution has not brought on record.

49.5 Considering the timings of A-1's production in the Rural Hospital on 17/10/2012, it can be safely inferred that, after the police had apprehended A-1, he was under the charge of PW-18/police for more than 24 hours until the PW-18 produced him before the Court on 18/10/2012, for the remand purpose. As noted in the format of FIR (Exh.158), the spot of the incident was situated at the distance of 3 kms. toward the north of the XYZ Police Station. However, PW-18 did not depose as to why he could not complete the investigation with A-1 during the said 24 hours time notwithstanding the fact that, on 17/10/2012, he could spent 4 to 5 hours of investigation time in inspecting about 500 meters area around the said Well. Yet, he could carry out the investigation with A-1 at 16.00 hours, *i.e.*, just 20 minutes after the sanction of his remand and miraculously, could also finish it within the next two hours, *i.e.*, 18.00 hours, including the recovery. Therefore, and considering the discrepancies in respect of MR Nos.113 and 114, it would be safe to presume that on 17/10/2012 itself, some of the articles allegedly recovered by A-1 were found at the spot by PW-19 or PW-18 and, on the same day, the said articles were deposited with PW-20. Therefore, there is reasonable doubt about the truthfulness of the said recovery.

49.6 In the case of *Pappu* (supra), the Hon'ble Supreme Court has observed that in the case of *Rammi Alias Rameshwar vs State of Madhya Pradesh*, reported in (1999) 8 SCC 649, after finding that there was material discrepancy as to the time of arrest of the accused, the top Court had declined to place reliance on the evidence

of the IO as to the recovery of weapon on the information furnished by the accused in police custody.

49.7 In the cross, PW-4 has admitted that, on 18/10/2025, he had no special reason to visit at the XYZ Police Station. He had gone to the vicinity of that Police Station to get a photocopy of a document. He used to reside at a distance of 2 kms from the Police Station. He has admitted that there were various shops including shops for typing and photocopying, at a distance of 1/2 km from his residence. He has admitted that besides photocopying, he had no other work to visit in the said vicinity. According to him, the said shop was situated opposite to the Police Station. He has admitted that the police had called him from the said photocopying shop. The police had not called him by his name but had only asked to come to the Police Station. However, PW-4 has not informed as to why he had gone that far to get the photocopying done. Thus, the conduct of PW-4 in going up-to 2 kms for photocopying appears unnatural. PW-4 has admitted that he drives his own car on hire. He used to rent his car on hire for carrying passengers. He did not possess necessary permit to run the vehicle on hire. He has admitted that police used to check vehicles for permit. He has admitted that, police had stopped his vehicle for the said purpose. He has admitted that till the date of his evidence, he had no permit to ply his car for hire. He has admitted that police did not file any case against him for driving without permit. From this evidence and considering the other circumstances revolving around the said recovery, it appears that, since PW-4 has been working in transport line without a valid permit to operate the vehicle, therefore, he was acquainted with the police. As a result, he had signed the ready-made Memorandum and the Recovery Panchnama to help the police.

49.8 In view of the above discussion, the claim of PW-4 and PW-18 that the A-1 had made the voluntary statement and the said articles were recovered from the spot at the instance of A-1, is not only in the girth of doubt but it is also found not reliable.

Arrest of A-2 to A-4 and seizure of their clothes:-

50. PW-18 deposed that he had arrested A-2, A-3 and A-4 on 18/10/2012 and seized the clothes on their person under Arrest-cum-Seizure Panchanama (Exh.144). He has identified the clothes of A-2 (Arts.23, 24 & 25); the clothes of A-3 (Arts.26, 27 & 28) and the clothes of A-4 (Arts.29, 30 & 31). He deposited the said clothes with the *Muddemal* Clerk under receipt (Exh.145). This evidence remained firm in the cross-examination of PW18.

Discovery and Recovery by A-3:-

51. PW-6 Suresh Pawar has deposed that, on 26/10/2012, at about 1.30 pm, when he was proceeding to XYZ S.T. Stand, police had called him to the Police Station. At that time, in the presence of the panchas, A-3 had voluntarily stated that the purse was kept at Gardi, which was situated near XYZ-Mayani Road. The police recorded the Memorandum (Exh.55) of the said statement. PW-6 has deposed that then they boarded in the police vehicle. The A-3 led the police and panchas to *Pawaitek*, on *Gardi* Road. From there, A-3 led them to a gutter, at a distance of 150 to 175 ft. There, A-3 produced the purse by inserting his hand in a cement pipe. Then, A-3 opened that purse. Following articles were found in the purse:- a tin of talcum powder, a small bottle, a comb, brown talcum powder and 2 mobile chargers with wires. All the aforesaid articles were

placed back into the purse. Then, the police packed the mobile and the purse separately in brown paper and sealed the packets with wax seal and paper seal bearing signature of the panchas. Lastly, the police recorded the Recovery Panchnama (Exh.56) of the said action. PW-6 identified the purse (Art.7) and the mobile (Art.8). PW-6 has deposed that thereafter, they had returned to the Police Station. In support of the aforesaid evidence, PW-18 has deposed that, on 26/10/2012, A-3 had made the voluntary statement (Exh.55). Then, A-3 produced the aforesaid purse and black mobile handset of Samsung company. He had recorded its Recovery Panchanama (Exh.56). Lastly, the PW-18 had showed the said Articles to the relatives of the deceased and they identified the same. In this regard, PW-18 had recorded the Panchanama (Exh.57).

51.1 In the cross-examination, PW-6 has admitted that, for the first time, he came to know that the said mobile was inside the purse, when one of the shelves of the purse was opened at the spot. He has denied that, while giving the voluntary statement, the exact spot of concealment was not stated.

51.2 However, according to us, the above facts stated by the PW-6 and PW-18 do not sufficiently prove the voluntary disclosure by A-3 leading to the recovery of said articles at his instance. In this context we have noted that, as recorded in the Memorandum of discovery (Exh.55), the A-3 had stated that, when they threw the victim's body into the Tarlekar's Well, he put the victim's mobile in her own purse (Art.7) and while going home, he concealed the purse to the side of a road. However, these contents have not been exactly reproduced by PW-6 and PW-18 in their deposition. In fact, PW-6 has stated that the A-3 merely stated that the purse was kept at Gardi, which was

situated near XYZ-Mayani Road. There is not even a whisper about the mobile. On the contrary, in the cross, PW-6 has admitted that, for the first time, he had come to know that the said mobile was inside the purse, when one of its shelves was opened at the spot.

51.3 In so far as the evidence of PW-18 is concerned, he has only deposed that, on 26/10/2012, A-3 had made the voluntary statement (Exh.55). Then, A-3 produced the aforesaid purse and black mobile handset of Samsung company. He had recorded its Recovery Panchanama (Exh.56). Thus, it is apparent that PW-18 has also has not even attempted to reproduce the voluntary disclosure statement made by A-3 before him. Similarly, PW-18 has not deposed exactly how and where the A-3 had led him and the panchas for the purpose of the said recovery. In fact, both PW-6 and PW-18 have not ascribed to A-3 the act of concealment of the recovered articles. As such, the said recovery cannot be accepted.

51.4 To fortify this conclusion we have considered the decision in ***Babu Sahebagouda Babu Rudragoudar and Anr. vs State of Karnataka, 2024 INSC 320***, wherein, the Hon'ble Supreme Court had observed that, when the Investigating Officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused had actually stated to him. The Investigating Officer essentially testifies about the conversation held between himself and the accused which has been taken down in writing leading to the discovery of incriminating fact(s). Further, the Apex Court has referred to its earlier decision in the case of ***Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh***, reported in ***2022 SCC OnLine SC 1396***, wherein it held that mere exhibiting of memorandum prepared by the Investigating Officer during

investigation cannot tantamount to proof of its contents. While testifying on oath, the Investigating Officer would be required to narrate the sequence of events which had transpired, leading to the recording of the disclosure statement.

51.5 In *Babu Sahebagouda* (supra), the Investigating Officer (PW-27) gave no description at all of the conversation which had transpired between himself and the accused which was recorded in the disclosure statements. The Investigating Office also stated that in furtherance of the voluntary statements of A-1 and A-2, he recovered and seized two axes and one *koyta* produced by A-1 in certain field and one *jambiya* produced by A-2. The Investigating Officer nowhere stated in his deposition that the disclosure statement of the accused resulted into the discovery of these weapons pursuant to being pointed out by the accused. The Investigating Officer further stated that he arrested A-3, recorded his voluntary statement and seized two sickles. However, neither the so called voluntary statement nor the seizure memo were proved by the Investigating Officer in his evidence. Therefore, it is held that, these disclosure statements cannot be read in evidence and the recoveries made in furtherance thereof are *non est* in law.

Other CA and DNA Reports:-

52. The testimonies of PW-13 and PW-18 together show that, on 20/10/2012, PW-18 gave his letter (Exh.89) bearing Ow. No. 2540/2012, dtd.20/10/2012 to the Rural Hospital to obtain the samples of semen, pubic hair, nail-clippings and blood of all the accused. PW-13 examined the accused persons at about 12.15 pm and on the same day, the said samples of each accused were handed

over to the police. In this regard PW-13 has referred to the relevant MLC entries bearing Nos.670/A-1, 671/A-2, 672/A-3 and to 673/A-4 (at Exhs.90 to 93, respectively).

52.1 As per the CA Report (Exh.21) the results of the analysis of the semen samples were “Inconclusive”. As per the CA Report (Exh.24), no semen was detected on samples of the pubic hairs. As per the CA Report (Exh.25), no blood and semen was detected on samples of the nail clippings. As per the CA Report (Exh.26), the blood of A-2 is of “Group-O”. But, the results were “Inconclusive” in respect of the analysis of the blood samples of A-1, A-3 and A-4.

53. The testimonies of PW-13 and PW-18 further show that, again on 22/10/2012, PW-18 gave a letter No.2543/2012, dtd.22/10/2012 (Exh.98) to the Rural Hospital to take fresh samples of the blood and the semen of all the accused, for DNA purpose. PW-13 has deposed that on this occasion such samples were taken by the 2nd Medical Officer Mr Shashikant Bhise and handed over to the police on the same day. To confirm this assertion, PW-13 has referred to the case papers/OPD papers of the accused, *i.e.*, Exh.95/A-1, Exh.96/A-2, Exh.94/A-3 and Exh.97/A-4. Additionally, PW-13 has referred to the ‘Form to CA’ dated 22/10/2012 (Exh.99). These samples were taken at 2.30 p.m. and having reference, “No.679/2.30pm, 22/10/2012 and handed over to the police”.

53.1 On 22/10/2012 itself, PW-18 gave a letter bearing Ow. No. 2544/2012, dtd. 22/10/2012 (Exh.147) to the FSL for the purpose of DNA and forwarded the aforesaid blood and semen samples alongwith the nicker and the 3 pieces of used condoms recovered from the spot (*vide* Exh.48).

53.2 The relevant CA Report (Exh.20) of the blood mentions that, the blood of A-1, A-3 and A-4 is of “Group-B”. The blood of A-2 is of “Group-O”. The semen of A-1 and A-3 is of “Group-B”. But, the results of the analysis of the semen of A-1 & A-4 were “Inconclusive”.

53.3 Another relevant CA Report (Exh.22) of the nicker and the semen states that, ‘no blood’ and ‘no semen’ detected on the nicker. The 3 used condoms were referred for DNA analysis.

54. Jointly, the evidence of PW-13 and PW-18 show that, on 25/10/2012, PW-18 gave a letter (Exh.100) to the Rural Hospital to preserve the DNA kits as the earlier blood samples for the DNA were not accepted by the FSL. On 29/10/2012, PW-18 gave a letter (Exh.101) to the Rural Hospital and obtained fresh blood sample of all the accused, for the DNA test. On the same day, PW-18 forwarded said blood samples to the FSL with his letter bearing Ow.No. 2610/2012, dtd. 29/10/2012 (Exh.153), for DNA test.

54.1 The relevant DNA Report (Exh.177) states that, the semen found in the used condom (*vide* police ex/2, ex/3 and ex/4 in the letter Exh.147) matched with the DNA of deceased A-4. However, the DNA of the semen found in the other two condoms did not match with the DNA of A-1, A-2 or A-3.

55. On 30/10/2012 PW-18 issued a letter (Exh.154) to the FSL and forwarded the clothes of all the accused, clothes of the victim and the remaining articles recovered by A-1 and A-3, for the purpose of CA. The relevant CA Report (Exh.27) in respect of the aforesaid clothes and other articles is as under:-

i) No blood and semen found on victim's Bra-Art.3. Human blood stains found on her clothes Arts.1, 2, 4, 5 and 6. Said blood is of "Group-B" in respect of Arts.1, 4 and 6 and result "Inconclusive" in respect of Arts.2 & 5.

ii) Human blood and semen stains found on A-1's pants (Art.21) and underwear (Art.22). Said blood is of "Group-B" and semen result "Inconclusive".

iii) Human blood stains found on A-2's shirt (Art.24) but result "Inconclusive". Human semen stains found on A-2's underwear (Art.26), but, result "Inconclusive".

iv) Human blood stains found on A-3's Track pants (Art.27) and underwear (Art.28), but, result "Inconclusive". Human semen stains found on A-3's underwear (Art.28), but, result "Inconclusive".

v) Human semen stains found on A-4's underwear (Art.31), but, result "Inconclusive".

vi) The CA Report (Exh.28) states that the belt of the brassier (Art.18) recovered from the spot tallied with the brassier, (Art.3) seized under Panchnama (Exh.43). This opinion fortifies our conclusion that the victim was raped.

56. However, the aforesaid CA Reports are not enough to draw the conclusion of the guilt against the A-1, A-2 and A-3. That is because, firstly; the evidence as to the crucial circumstances, *i.e.*, love affair between the victim and A-1 plus the "last seen", are not reliable. Secondly; it is not probable that after committing such a serious offence, till their arrest, the accused would carry the same clothes on their person, which they had at the time of the incident. Thirdly; the blood of A-1, A-3 and A-4 is/was of "Group-B". Fourthly; it is not proved that A-2 had purchased the wine, condoms and the water bottle. Fifthly; the recoveries at the instance of A-1 &

A-3 are not reliable. Lastly; the DNA test is negative as against the A-1, A-2 and A-3.

Other CDRs:-

57. The prosecution has alleged that, at the time of the incident, the A-2, Anuj pawar was using the Mob.No.909****349 which was regd. in the name of A-2's mother namely Mrs Sita Arjun Pawar (*vide* subscriber's application etc. Exh.121). As alleged, the deceased A-4, Sagar hattekar was using the Mob.No.957****683 which was registered in the name of Mr. Shankar Jagannath Jadhav (*vide* subscriber's application etc. Exh.112). The CDRs proved by PW-14 to PW-17 show that, around the day of the incident and immediately thereafter, the accused persons had allegedly exchanged several phone calls amongst themselves. It is as under:-

A-1 : Laxman Sargar : 997****956 (Exh.122)

Mobile Number	Call mobile	Date	Call time	Duration	Incoming/Outgoing	Location
909****349 (A-2)	997****956 (A-1)	13.10.2012	13:00:43	67	In-call	
830****675 (PW-12)	(A-1)	13.10.2012	13:10:06	27	"-	The victim called A-1 from mobile of PW-12
"-	(A-1)	13.10.2012	13:11:19	18	"-	
909****349 (A-2)	997****956 (A-1)	13.10.2012	14:18:39	08	In-call	Cell ID-3132; 29472 At present Gardi Tal. Khanapur Dist.Sangli
"-	"-	"-	14:19:20	15	"-	
"-	"-	"-	14:35:30	01	"-	
997****769 (A-3)	997****956	13.10.2012	22:19:00	27	In-call	

	(A-1)					
909****349 (A-2)	997****85 6 (A-1)	13.10.2012	13:00:43	67	Out call	Cell ID-3132; 29471 A.P.Gardi Tal. Khanapur Dist.Sangli
-"	-"	-"	14:18:39	08	Out call	
-"	-"	-"	14:19:20	15	Out call	
-"	-"	-"	14:35:30	01	Out call	

A-2 : Anuj Arjun Pawar : 909****349 (Exh. 122).

Mobile Number	Call Mobile	Date	Call time	Duration	Incoming/Outgoing
909****349 (A-2)	997****956 (A-1)	13.10.2012	13:00:43	67	In-Call
909****349	997****956	13.10.2012	14:18:39	8	In-Call
909****349	997****956	13.10.2012	14:19:20	15	In-Call
909****349	997****956	13.10.2012	14:35:30	01	In-Call

A-3: Dadaso Athawale : 997****769 (Exh.122)

Mobile Number	Call Mobile	Date	Call time	Duration	Incoming/Outgoing
997****769	997****956 (A-1)	13.10.2012	22:19:00	27	In-Call

A-4 : Deceased Sagar Hattekar (Exhs.112 to Exh.114)

Mobile Number	Call Mobile	Date	Call time	Duration	Incoming/Outgoing
957****683 (A-4)	997****956 (A-1)	12.10.2012	10:30:42	16	Out Call
-"	-"	-"	10:31:15	85	Out Call
-"	997****956	-"	13:33:17	15	Out Call
-"	-"	-"	13:34:11	17	Out Call
-"	997****956	13.10.2012	09:16:47	32	Out Call
RM-615181	957****683	13.10.2012	12:30:10		In SMS
957****683	997****956 (A-1)	14.10.2012	09:49:38	104	Out call
957****683	997****956	14.10.2012	12:14:57	47	Out call

997****956	957****683	14.10.2012	12:45:7	08	In-Call
957****683	997****769 (A-3)	15.10.2012	19:51:38	78	Out call
957****683	997****956 (A-1)	-"	20:44:03	16	Out Call
957****683	997****769 (A-3)	-"	21:32:45	94	Out Call
957****683	997****769	-"	23:04:50	02	Out Call
957****683	997****769	-"	23:05:06	57	Out Call
957****683	997****769	15.10.2012	23:57:39	68	Out Call
957****683	-"	16.10.2012	00:34:34	57	Out Call
957****683	-"	16.10.2012	01:12:55	21	Out Call
957****683	-"	-"	01:24:23	53	Out Call
957****683	-"	-"	01:58:56	33	Out Call
957****683	-"	-"	15:31:01	252	Out Call
957****683	997****769 (A-3)	-"	15:50:48	209	Out Call
957****683	-"	-"	16:32:00	137	Out Call
957****683	-"	-"	18:16:06	74	Out Call
--"	-"	16.10.2012	21:23:00	85	Out Call
-"	(A-3)	17.10.2012	10:31:27	105	Out Call
-"	-"	-"	12:40:52	22	Out Call
-"	-"	-"	13:14:11	21	Out Call
-"	-"	-"	13:20:03	26	Out Call
-"	-"	17.10.2012	21:07:24	18	Out Call

57.1 The aforesaid extract from the CDRs on record indicate that on 13/10/2012, there were 4 calls between the mobile numbers allegedly used by the victim and the A-1. However, as held above, said calls are not sufficient to hold that only the victim and the A-1 had talked with each other. Secondly, the timings of the said calls do not suggest that, at the time of the incident, the victim, the A-1 and all other accused were together. No doubt, the CDRs show that there was little surge in the calls allegedly exchanged amongst the A-1, A-3

and A-4 on 15/10/2012 and 16/10/2012. However, that itself is not sufficient to draw any adverse inference. Because, the prosecution asserted that the accused were friends. So a surge in calls like that was not completely unusual. Be as it may, said calls, in the absence of the proof of the other circumstance, will not make the prosecution case totally acceptable. Moreover, no evidence is produced about the relationship between A-4 and Shankar Jagannath Jadhav, in whose name Mob.No.957****683 was registered.

The seizure of the motorcycles:-

58. The deposition of PW-7 Mangesh Chaugule and PW-18 show that on 21/10/2012, brother of A-1 produced a motorcycle bearing No.MH-10/BH-1588. PW-18 seized it under Panchanama (Exh.60) and deposited with the *muddemal* Clerk under a Receipt (Exh.146). The defence has admitted the Panchanama (Exh.66) of the seizure of Bajaj motorcycle No.MH-10/AD-5759, produced by the brother of A-3. However, this evidence is of no use in the absence of the proof of other crucial circumstances.

59. The law is well settled as to appreciation of evidence in cases based on circumstantial evidence. The Hon'ble Supreme Court, in ***Sharad Birdhichand Sarda vs. State of Maharashtra***, reported in ***AIR 1984 SC 1622***, introduced the Panchsheel Test for the relevance and evaluation of circumstantial evidence in cases where direct evidence is not available. The five principles of the Panchsheel Test are:

1. The circumstances from which the conclusion of guilt is to be drawn must be fully established.

2. The facts established should be consistent with the hypothesis of the guilt of the accused.
3. The circumstances should be of a conclusive nature and tendency.
4. They should exclude every possible hypothesis except the one to be proved.
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that within all human probability, the act must have been done by the accused.

59.1 As held in the case of *Shri. Sujit Biswas vs. State Of Assam*, reported in *AIR 2013 SC 3817*, "... In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take the place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the Court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all

features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.” In ***Shri. Sujit Biswas*** (supra), it is also laid down that, in a case of circumstantial evidence, the Judgment remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The Court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.

59.2 In the case of ***Sharad Birdhichand Sarda*** (Supra), the Hon’ble Supreme Court held that, “*fouler the crime higher the proof*”. Meaning, graver the charge, greater should be the standard of proof. In ***Kali Ram vs. State of Himachal Pradesh***, reported in ***AIR 1973 SC 2773***, the Hon’ble Supreme Court enunciated that, “A golden thread which runs through the web of the administration of justice in criminal cases is that, if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence”.

Summary:-

60. The summary of the aforesaid discussion is that, on careful scrutiny and re-appreciation of the evidence on record in the light of the settled principle of law, we are of the considered view that the prosecution has failed to prove the chain of circumstances including the 'motive' for the crime and the 'last seen together' theory so as to point towards the only hypothesis that, except the Appellants, no other person has committed rape on the victim, caused her murder and the disappearance of the evidence. A reasonable doubt lingers with respect to the probability or conclusiveness of the circumstance relied on by the prosecution, forming a link in the chain of circumstances pointing towards the guilt of the Appellants. On the contrary, we find from the material on record that the possibility of planting witnesses by the police so as to stage manage the prosecution story cannot be ruled out in this case. There is, therefore, reasonable doubt as to the veracity of the prosecution story. The benefit of doubt, therefore, must go to the Appellants. As a result, all the Appeals deserve to be allowed.

60.1 Hence, the following Order :-

60.2 The impugned Judgment and Order of conviction and sentence dated 16/07/2019, passed in Sessions Case No.29/2013 by the learned Additional Sessions Judge, Sangli, is quashed and set aside.

60.3 The Appellants -Anuj Arjun Pawar (Accused No.2), Lakhya @ Laxman Sandipan Sargar (Accused No.1) and Dadaso Bhaskar Athawale (Accused No.3) are acquitted of the offences punishable

under Sections 376, 302, 201 and 34 of the I.P.C. by giving them the benefit of doubt.

60.4 Record indicates that, presently Appellants -Anuj Arjun Pawar (A-2), Lakhya @ Laxman Sandipan Sargar (A-1) and Dadaso Bhaskar Athawale (A-3) are lodged in Kolhapur Central Prison, *Kalamba*. Hence, said Appellants shall be released from the prison forthwith, if not required to be detained in any other crime/case.

60.5 All the Appellants shall execute a P.R. Bond in the sum of Rs.50,000/- each, under Section 481 Of the Bhartiya Nagrik Suraksha Sanhita, 2023 (corresponding u/Section 437A of the Cr.P.C.), for their appearance, in case an Appeal is preferred.

60.6 Fine amount, if any, paid by the Appellants be returned.

60.7 Criminal Appeals are allowed in the aforesaid terms. Consequently, the Interim Applications, if any, are also disposed off.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)