

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Appeal No. 144 of 1999

* Mahesh Vasant Rao Motaphale,
Age 31 years, Occupation : Nil,
R/o Parbhani,
Taluka and District Parbhani. .. **Appellant.**

Versus

- 1) The State of Maharashtra.
- 2) Panchaseela @ Panchphula
d/o Waman Rao Jayebhaye
Age Major, Occupation Nil,
R/o Partur, District Jalna.
- 3) Sangeeta d/o Rameshwar Agrawal,
Age Major, Occupation Nil,
R/o Partur, District Jalna. .. **Respondents.**

Shri. A.B. Kale, Advocate, for appellant.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.

With

Criminal Appeal No. 151 of 1999

* Munna alias Ravindrasingh
Dilipsingh Parihar
Age 38 years,
Occupation : Agriculture,
R/o Parbhani. .. **Appellant.**

Versus

- 1) The State of Maharashtra.
- 2) Panchaseela @ Panchphula
d/o Wamanrao Jayebhaye
Age Major, Occupation Nil,
R/o Partur, District Jalna.
- 3) Sangeeta d/o Rameshwar Agrawal,
Age Major, Occupation Nil,
R/o Partur, District Jalna. .. **Respondents.**

Shri. Joydeep Chatterjee, Advocate, for appellant.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.

With

Criminal Appeal No. 158 of 1999

- * Bhansing s/o Harnamsingh Bundeale
Age 37 years,
Occupation : Railway Service,
R/o Parbhani. .. **Appellant.**

Versus

- 1) The State of Maharashtra.
- 2) Panchaseela @ Panchphula
d/o Wamanrao Jayebhaye
Age Major, Occupation Nil,
R/o Partur, District Jalna.

- 3) Sangeeta d/o Rameshwar Agrawal,
Age Major, Occupation Nil,
R/o Partur, District Jalna. .. **Respondents.**

Shri. Shirish Gupte, Senior Counsel, instructing by Shri.
Mahesh Kale, Advocate, Advocate, for appellant.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.

With

Criminal Appeal No. 216 of 1999

- * Raju s/o Eknath Mahalge
Age 28 years,
Occupation : Labour,
auto-rickshaw driver,
R/o Parbhani
Taluka & Dist. Parbhani. .. **Appellant.**

Versus

- 1) The State of Maharashtra.
- 2) Panchaseela @ Panchphula
d/o Wamanrao Jayebhaye
Age Major, Occupation Nil,
R/o Partur, District Jalna.
- 3) Sangeeta d/o Rameshwar Agrawal,
Age Major, Occupation Nil,
R/o Partur, District Jalna. .. **Respondents.**

Mrs. R.V. Daxini, Advocate, with Mr. H.F. Pawar, Advocate
appointed for appellant.

Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.

With

Criminal Appeal No. 306 of 1999

* The State of Maharashtra
Through PSO Kotwali
Police Station Parbhani. **... Appellant,.**

Versus

- 1) Abbas Baig s/o Afzal Baig
Age 33 years,
Occupation : Labour,
R/o Parbhani,
Taluka and District Parbhani.
- 2) Ashok s/o Tulshiram Sarode
Age 38 years,
Occupation: Service,
R/o Parbhani,
Taluka and District Parbhani.
- 3) Tabuka Ramlu Kishtayya
Age 32 years,
Occupatin : Railway Service,
R/o Secundrabad (Andhra Pradesh)
- 4) Bhansing s/o Harnamsingh Bundele,
Age 32 years,
Occupation : Service
R/o Parbhani.
- 5) Raju s/o Eknath Mahalge,
Age 28 years,
Occupation: Labour, auto-rickshaw
Driver, R/o Parbhani.
- 6) Munna alias Ravindra Singh
S/o Dilip Singh Parihar,
Age s33 years,
Occupation: Agriculture
R/o Parbhani.

- 7) Mahesh s/o Vishwanathrao Motaphale,
Age 28 years, Occupation: Nil,
R/o Parbhani,
Taluka & District Parbhani.
- 8) Panchaseela @ Panchphula
d/o Wamanrao Jayebhaye
Age Major, Occupation Nil,
R/o Partur, District Jalna.
- 9) Sangeeta d/o Rameshwar Agrawal,
Age Major, Occupation Nil,
R/o Partur, District Jalna. **.. Respondents.**

Shri. S.J. Salgare, Additional Public Prosecutor, for
appellant.

Shri. Shirish Gupte, Senior Counsel holding for Shri. N.G.
Kale, Advocate, for respondent Nos.4 and 5.

Shri. A.B. Kale, Advocate, for respondent No.7.

Appellants Nos.1 to 3 are deleted from the appeal.

**Coram: T.V. NALAWADE &
S.M. GAVHANE, JJ.**

Judgment reserved on: 22 September 2017

Judgment pronounced on : 21 November 2017

JUDGMENT (Per T.V. Nalawade, J.):

- 1) All the appeals are filed against the judgment
and order of Sessions Case No.139/1994 which was
pending in the Court of the learned Sessions Judge,

Parbhani. The learned Sessions Judge has convicted and sentenced accused Nos.4 to 7 for offence punishable under section 366 read with section 34 of Indian Penal Code and for offence punishable under section 376(2)(g) of Indian Penal Code. Accused Nos.4 and 5 are convicted and sentenced for offences punishable under section 342 read with section 34 of IPC also. The convicted accused persons have filed the first four appeals. The State has filed Criminal Appeal No.306/1999 as the trial Court has given jail sentence of 10 years rigorous imprisonment to accused Nos.4 to 7 and the State wants to see that they get imprisonment for life. Both the sides are heard.

2) In short, the facts leading to the institution of the appeals can be stated as follows :--

3) Two minor village girls were ravished in Parbhani city and at the outskirts of Parbhani city by different persons. In respect of these incidents two separate charge-sheets were filed and two cases were tried separately against those persons in respect of

different incidents. In respect of some incidents, Sessions Case No.121/1994 was filed and that case is also decided by the same learned Judge of the Sessions Court. In that case some accused persons are convicted. That decision is also challenged by the State and the convicted accused and those appeals are being decided separately. In view of the nature of allegations made by the two victim girls in the two cases, the case of the prosecution in its entirety mentioned in both these cases need to be mentioned for better appreciation of the facts and also to understand the plight of the two victim girls.

4) The two victim girls PW-1 and PW-2 were friends. They were residents of Partur, District Jalna. At the relevant time they had not crossed age of 16 years. Mother of PW-1 was working as maid servant to earn livelihood and she was required to maintain not only the prosecutrix but also other issues as her husband is dead. The parents of PW-2, other prosecutrix, hail from Hiwarkheda. The parents of PW-2 are very poor and as they could not afford to maintain PW-2, they had kept PW-

2 in the house of sister of mother of PW-2 in Partur. PW-2 was not happy due to poverty and also due to bad treatment which she was receiving in the house of her aunt on maternal side.

5) On 3-7-1994, PW-2 had some dispute with her maternal aunt. As she was being starved she met PW-1 and expressed that she wanted to work to earn for her livelihood. PW-1 has a relative by name Sham Agrawal and he was running a shop in Parbhani city, District Parbhani. PW-1 expressed that Sham Agrawal can help them in giving job in Parbhani. Due to these circumstances on 3-7-1994 PW-1 and PW-2 left Partur for Parbhani without informing anything to anybody from Partur.

6) PW-1 and PW-2 first walked up to Raipur where there is a field of relative of PW-1. Persons working in the field knew PW-1 and they gave food and shelter to PW-1 and PW-2. PW-1 and PW-2 slept in the field from Raipur on the night between 3-7-1994 and 4-7-1994. On 4-7-1994 early in the morning they went to Osmanpur railway

station on foot and there they boarded a train proceeding to Parbhani.

7) On the train, PW-1 and PW-2 met Raju and Abhay, the boys who were known to PW-2. These boys were also proceeding to Parbhani as they were doing some diploma course in Parbhani. During talk, PW-1 and PW-2 disclosed to these boys that they were going to Parbhani in search of job. These boys advised the victim girls not to go to Parbhani and return to home. They informed that it was not safe for them to go to Parbhani. PW-1 and PW-2 and the two boys alighted at Parbhani from train. As the boys were advising the girls to return home but as there was no train up to 3 p.m. the boys gave tea and food to these girls in a hotel. As there was time upto 3 p.m., the boys took these two girls to Talreja Talkies to see a movie. It was a matinée show and after seeing the movie the girls were expected to return by train to home.

8) In Talreja Talkies three youngsters namely Suryakant Dhage, Arun Mapari and Suresh Kopre (accused Nos.1 to 3 from Sessions Case No.121/1994) occupied the seats by the side of the two girls. They opened talk with the two girls and during talk the three accused realised that these two girls wanted to go to Sham Agrawal. Accused Nos.1 to 3 from Sessions Case No.121/1994 falsely represented to these girls that they knew Sham Agrawal and Sham Agrawal was their friend. They gave false promise to the victim girls that they would take them to Sham Agrawal. After arrival of accused Nos.1 to 3 from Sessions Case No.121/1994 in the theatre, the aforesaid two boys viz Raju and Abhay left the theatre.

9) Accused Nos.1 to 3 from Sessions Case No. 121 of 1994 took the two girls in an auto-rickshaw first to the house of a friend where they provided meals to the girls. From this house accused Nos.1 to 3 from Sessions Case No.121/1994 took the girls to a banana garden situated at the outskirts of Parbhani city. In the banana garden, accused No.1 of Sessions Case No.121/1994 took PW-1 to

one side and then he committed rape on her. Similarly, accused Nos.2 and 3 of the same case took PW-2 to other side and there they committed rape on PW-2. After that accused No.1 to 3 from that case took PW-1 and PW-2 towards side of a brook known as Pingad-Gad-Nala. There was water in the brook. There also accused Nos. 1 to 3 committed rape on PW-1 and PW-2. Here accused No.1 committed rape on PW-2 and accused Nos.2 and 3 committed rape on PW-1. PW-1 and PW-2 could not resist as threats were given to them.

10) From the side of the brook accused No.1 to 3 of Sessions Case No.121/1994 took PW-1 and PW-2 towards the side of road. There they met accused No.4 of that case namely Rameshwar. From there, accused Nos.1 to 4 of Sessions Case No.121/1994 took PW-1 and PW-2 to a lodge of Parbhani by name Visawa Lodge. They reached there at about 10.00 p.m. There accused Nos.1 to 4 of Sessions Case No.121/1994 informed to PW-1 and PW-2 that two Sahibs, accused Nos.6 and 7 of Sessions Case No.121/1994, were to come to the lodge and they would

help PW-1 and PW-2 for getting work. After some time accused Nos.6 and 7 of that case namely Nitin Dudhgaonkar and Kalyan Renge came to the lodge. Under threat, accused No.6 committed rape on PW-2 and accused No.7 committed rape on PW-1. They gave threats not to disclose the incident to anybody. Accused Nos.8 and 9 of Sessions Case No.121/1994 were managing the lodge and they kept watch to see that there was no interference or there was no help to the victim girls. When accused Nos.6 and 7 left the lodge, accused Nos.1 to 4 of Sessions Case No.121/1994 took PW-1 and PW-2 to campus of Shanti Niketan school. There accused Nos.1 to 4 consumed liquor. In the campus of the school, accused Nos.1 and 2 of Sessions Case No.121/1994 committed rape on PW-2 and accused Nos.3 and 4 committed rape on PW-1. Accused Nos.2,3 and 4 then left the campus of the school.

11) From the campus of the school, accused No.1 took the two victim girls to other place which is called as Wada, big house, where accused No.5 Tukaram Kharat of Sessions Case No.121/1994 was present. Tukaram gave

threats to PW-1 and PW-2 to facilitate rape which accused No.1 wanted to commit. Accused No.1 then committed rape on PW-2 and accused No.5 committed rape on PW-1.

12) From the last place accused No.1 took the two victim girls to Parbhani Railway Station and there he left them. While leaving, he again gave threats to them not to disclose the incident to anybody. In respect of the aforesaid five incidents of rape separate charge sheet was filed and Sessions Case No.121/1994 was tried against the aforesaid 9 accused persons. In that case accused Nos.1 to 4 and accused Nos.6 and 7 are convicted and sentenced for offence of gang rape. Accused Nos.1 to 3 are also convicted and sentenced for offence punishable under section 366 read with 34 of IPC. These accused are convicted for different incidents mentioned above.

13) The second part of the prosecution case starts from the incident which took place at Parbhani Railway Station. As per the case of the prosecution, accused No.1 had left PW-1 and PW-2 at Parbhani Railway Station on

night between 4-7-1994 and 5-7-1994 and the last incident of rape was committed by accused No.7 of Sessions Case No.121/1994 on the night between 4-7-1994 and 5-7-1994.

14) In the early hours of 5-7-1994 when PW-1 and PW-2 were sitting on the stair case of the bridge situated on the platform of the railway station, accused No.1 of the present case, Sessions Case No.139/1994, Abbas Baig, who was working as coolie at the railway station approached PW-1 and PW-2. Under the pretext that he would help PW-1 and PW-2 he took these two girls to retiring room situated at railway platform. Abbas Baig then called accused No.2 Ashok, who was working as Police Head Constable and accused No.3 Tabuka, who was working as Railway ticket booking clerk to the room. One more person also came with them. The retiring place had many rooms. Accused No.3 Tabuka and the other person took PW-1 to one room and there they raped her. Accused No.1 Abbas and accused No.2 Ashok raped PW-2. After committing the rape these persons allowed the victim girls to leave the retiring room. The victim girls were very

much frightened and in that condition they went to the bridge of the railway and from there in search of water they went towards railway quarters situated by the side of the railway station. It was day time. There, accused No.4 Bhansing Bundele, who was occupying a railway quarters as he was employee of railway, promised them to help and took them to his residential quarters. In his quarters, accused No.5 Raju was already present and one young boy aged about 12 years was also present. accused No.4 supplied water to the victim girls and then he left the railway quarters by informing to accused No.5 that he would return after some time (after attending the duty). While leaving, he took care to see that the railway quarters was locked from outside and the key is given to accused No.5.

15) At about 2.30 p.m. of 5-7-1994 accused No.4 of the present matter returned to the railway quarters. He had brought with him a bottle of liquor and some food items. He gave the food items to the victim girls and asked the aforesaid young boy to leave the quarters. When the young boy left the quarters, accused No.5 took PW-1

to one room and there he raped her. Accused No.4 raped PW-2. In this railway quarters, a lace of the *Salwar* which PW-2 was wearing got broken and so the lace of shoe of accused No.4 was used for the *Salwar* by PW-2.

16) Accused Nos.4 and 5 of the present matter virtually used PW-1 and PW-2 upto 4.00 p.m. of 5-7-1994 and then they called accused No.6 Munna @ Ravindra Singh and accused No.7 Mahesh to the railway quarters. They were friends of accused Nos.4 and 5. From the railway quarters PW-1 and PW-2 were taken by accused Nos.4 and 5 in an auto-rickshaw to other place by name Shakti Bungalow from Parbhani. Accused No.6 and 7 had come on their motor cycle and they followed auto rickshaw to that place on their motor cycle. In Shakti bungalow accused No.6 Munna @ Ravindrasingh raped PW-2. After that accused No.4 raped PW-2. After that accused No.7 Mahesh raped PW-2. Accused No.5 also raped PW-2. This incident was going on upto early hours of 6-7-1994 (upto 3 A.M.). PW-1 somehow saved her by giving information regarding her menstruation period. On

the night between 5-7-1994 and 6-7-1994 the two victim girls were present in Shakti Bungalow.

17) On 6-7-1994, in the morning when PW-2 woke up from sleep, she noticed that PW-1 was not there. Accused No.5 Rameshwar from the present matter was present in Shakti Bungalow and he informed that PW-1 had already left the building. PW-2 searched for some time to find PW-1 and then she went to Parbhani Railway Station as she intended to return to home by railway. In the meantime PW-1 had gone to other station viz. Purna and from there a lady police constable took her in railway to Parbhani Railway Station. At Parbhani Railway Station PW-1 pointed PW-2 to the lady constable and due to that the lady constable took PW-2 to Railway Police Chowki and PW-2 was asked to stay there.

18) The lady police constable Giribai reached PW-1 to Partur by train. After returning from Partur, Giribai took PW-2 to Purna Railway Police Station. There, the FIR of PW-2 came to be recorded and the crime came to be

registered. PW-2 was taken to Parbhani for medical examination on 7-4-1994 and she was medically examined. During course of investigation her clothes were taken over.

19) On 9-7-1994 PW-2 was taken to New Mondha Police Station Parbhani where another FIR came to be recorded and another crime came to be registered. Sessions Case No.121/1994 is filed in the crime registered at New Mondha Police Station Parbhani in respect of the incidents which took place in banana garden, near Pingad-Gad-Nala, Visawa Lodge, Shanti Niketan school and one Wada. On 7-7-1994 police from Kotwali Police Station Parbhani went to Partur and they brought PW-1 to Kotwali Police Station. There the report given by PW-1 came to be recorded and that report is a part of Sessions Case No.121/1994. PW-1 was then sent to New Mondha Police Station and in the crime registered there, her statement came to be recorded. PW-1 was also sent for medical examination and she was medically examined on 7-7-1994.

20) Separate complaint of the incidents which took place in retiring room of the railways station, railway quarters and Shakti Bungalow came to be recorded as per the narration made by PW-2 and Sessions Case No. 139 of 1994, present matter, was filed after making investigation of that crime. During course of investigation statements of PW-1 and PW-2 came to be recorded under section 164 of the Code of Criminal Procedure. PW-2 took police to various places where the offence was committed against them. Accused persons came to be arrested. Some incriminating articles like clothes, carpets came to be recovered on the basis of statements given by accused persons. Blood samples of the accused persons came to be sent to CA office along with blood samples of the two victim girls along with vaginal swabs collected by medical officer. Charge sheet came to be filed in the present matter in Crime No.29/1994 registered in Purna Railway Police Station and Crime No.82/1994 registered in New Mondha Police Station Parbhani.

21) After making investigation of the two crimes like Crime No.73/1994 registered with Kotwali Police Station and Crime No.81/1994 registered with New Mondha Police Station Parbhani and the case came to be registered as Sessions Case No.121/1994.

22) Charge was framed against accused separately in accordance with the allegations made against him by the two victim girls and the material collected against accused. All the accused pleaded not guilty. Prosecution examined 23 witnesses who include the two victim girls. All the accused took the defence of total denial. No defence evidence is given.

23) The prosecution relied on both, direct and the circumstantial evidence. The trial Court has believed both the victim girls so far as the evidence given by them as against accused Nos.4 to 7 is concerned. The evidence given as against accused Nos.1 to 3 is not believed by the trial Court. The trial Court has held that there is circumstantial check to the evidence given as against

accused Nos.4 to 7 and the evidence as against these accused given by the two victim girls is consistent with each other. The appeal is filed by the State only for enhancement of sentence given to accused Nos.4 to 7 and it is not against the decision of acquittal given in favour of accused Nos.1 to 3. In view of these circumstances the evidence of prosecution given as against accused Nos.4 to 7 only and with regard to the incidents in which they were involved need to be considered and appreciated.

24) Both the victim girls have given evidence in respect of the incidents which took place between 4-7-1994 till early hours of 5-7-1994 and that evidence shows that prior to the incidents in which accused Nos.4 to 7 were involved both the victim girls were ravished by other persons at various places like banana garden, near brook, in a lodge, in the campus of a school, in Wada and also in the retiring room of Parbhani Railway Station. It needs to be mentioned here that the Court has not believed the victim girls in respect of the incidents of rape took place in the retiring room in which accused Nos.1 to 3 and one unknown person were involved.

25) PW-1 (hereinafter referred to as "the victim girl No.1") has given evidence that when the incident which took place in retiring room was over, she and PW-2 (victim girl No.2) came out of the retiring room, went to the stairs of the bridge and stayed there for some time. She has deposed that they wanted to have drinking water and so they started to proceed towards railway quarters of the railway employees situated by the side of the railway station. She has given evidence that on the way one man who was known, accused No.4, Bhansing, met them. This accused is identified by both the victim girls in the Court. She has given evidence that accused No.4 took them to his railway quarters by promising to give them drinking water. She has given evidence that inside of this quarters, accused No.5 was already present and he was a friend of accused No.4. She has given evidence that one boy aged about 12 to 13 years was also present in this residential quarters. She has given evidence that accused No.4 gave water to them and then said that there was train for Partur at 3.00 p.m. and he would arrange to send them by train to Partur. She has given evidence that by saying so

he left the quarters but while leaving, he closed the entrance door of the quarters and put a lock on it from outside. She has given evidence that this way they were virtually confined in the railway quarters of accused No.4. According to her, the key of the lock was given by accused No.4 to accused No.5.

26) PW-1 has deposed that accused No.4 returned to his quarters at about 2.00 p.m. and till that time they were kept in the quarters of accused No.4. She has deposed that accused No.4 had brought liquor bottle with him. She has given evidence that accused No.4 supplied food to both of them and then accused Nos.4 and 5 consumed liquor. She has given evidence that the boy aged about 12-13 years was virtually driven out of the quarters by accused No.4.

27) PW-1 has given evidence that accused No.4 then took PW-2 to a room of the quarters and closed the door of the room from inside. She has given evidence that accused No.5 then raped her by removing her clothes. She

has described the incident of rape in her evidence. She has given evidence that after some time PW-2 came out of the aforesaid room and she informed that accused No.4 had raped her. She has given evidence that accused No.5 gave threats to finish them by breaking glass and so they could not resist and they stayed inside of the quarters.

28) PW-2 (second victim girl) has given similar evidence against accused Nos.4 and 5. She has given specific evidence as against accused No.4 that in the noon time, when accused No.4 returned to the railway quarters, accused No.4 raped her. She has given evidence that the act was against her will. She has given particulars of the incident of rape. She has given evidence that during the incident the lace of her *Salwar* got broken and so accused No.4 gave lace of his shoe for using it as lace of her *Salwar* and she used that lace for her *Salwar*. She has identified accused Nos.4 and 5 in the Court and she has also identified her *Salwar* having lace of the shoe which was produced by her during course of investigation before police. She has given evidence that when accused No.4

was committing the offence, accused No.5 had done the same thing against PW-1 and that incident was disclosed by PW-1 to her. PW-2 has given evidence that the offence was committed by accused Nos.4 and 5 at about 4.00 p.m. in the railway quarters of accused No.4. The evidence given by PW-1 and PW-2 as against accused No.4 and 5 on the incident of rape which took place in the railway quarters of accused No.4 is consistent with each other. There is also circumstantial check and those circumstances are being discussed at other place.

29) PW-1 has given evidence that at 7.30 p.m. two unknown persons came to the railway quarters of accused No.4. PW-1 has identified accused No.6 Munna @ Ravindrasingh and accused No.7 Mahesh Motaphale as the two persons who had come to the railway quarters of accused No.4. She has given evidence that they had talk with accused No.4. PW-2 has given similar evidence as against accused Nos.6 and 7 and their evidence leads to inference that it is accused No.4 who had called accused No.6 and 7 to his railway quarters. PW-2 has identified

accused Nos.6 and 7 in the Court and she gave their description also.

30) PW-1 has given evidence that from the railway quarters of accused No.4 she and PW-2 were taken in an auto-rickshaw by accused Nos.4 and 5 to one bungalow viz. Shakti Bungalow. She has given evidence that accused Nos.4 and 5 were sitting on the two sides of PW-1 and PW-2. Similar evidence is given by PW-2 and their evidence shows that this incident took place at about 7.30 p.m. of 5-7-1994. PW-1 has given description of this bungalow and the substantive evidence which is being discussed shows that only due to information given by PW-2, police could trace both, the railway quarters of accused No.4 and Shakti bungalow. Some articles were also recovered in connection with the crime by police at the instance of one accused and on the basis of statement given under section 27 of the Evidence Act.

31) PW-1 has given evidence that in Shakti Bungalow accused Nos.4,5,6 and 7 committed rape on

PW-2. She has given evidence that she was not raped because she was in menses. She has given evidence that accused Nos.4 to 7 ravished PW-2 till 3.00 a.m. of 6-7-1994. She has deposed that after coming from the room where rape was committed, PW-2 narrated the incident to her by saying that all the four accused (accused Nos.4,5,6 and 7) had raped her. She has deposed that PW-2 was weeping, she was feeling tired and she was having pains.

32) PW-2 has given evidence that in Shakti bungalow she was taken to one room by one of the accused from accused Nos.4 to 7. She has specifically pointed accused No.6 in that regard. She has deposed that first, accused No.6 raped her against her will by removing her clothes. She has described the incident of rape in her evidence. She has given evidence against accused No.4 that he had raped her in Shakti bungalow against her will. She has given evidence that accused No.7 then committed rape on her and at the end accused No.5 committed rape on her. She has identified these four accused persons in the Court as the persons who had raped her in Shakti

bungalow. She has given evidence that she was ravished for long time by these four persons, till early hours of the next day. She has given evidence that when she came out of the room she saw PW-1 and she informed the incident to PW-1. She has given evidence that she was having pains, she could not walk and she was frightened and as she was not able understand what to do, she slept in Shakti bungalow on that night for the remaining period.

33) The remaining evidence given by PW-1 and PW-2 is with regard to their subsequent conduct. The evidence shows that after the incident of rape which took place in Shakti bungalow they were allowed to leave Shakti bungalow. Their evidence shows that they could not meet each other on the morning of 6-7-1994. Their evidence shows that first PW-1 left the Shakti bungalow, she went to Purna station where a lady constable made inquiry with her and by way of precaution the lady constable took PW-1 with her. Evidence of PW-2 shows that after searching for PW-1 for some time, she went to Parbhani Railway Station as she wanted to return to

Partur and there the aforesaid lady constable came to her and then she was taken to railway police Chowki by the said lady constable. The evidence of PW-1 shows that from Purna Railway Station she was taken to Partur to her residential place by the lady constable and she was reached to her house. The evidence of PW-1 shows that when train reached Parbhani, she showed PW-2 to the lady constable and so the lady constable took aforesaid step.

34) The evidence of PW-2 shows that from Railway Police Chowki Parbhani the aforesaid lady constable took her to Purna Railway Station in the night time i.e. on the night between 6-7-1994 and 7-7-1994. The evidence of PW-2 shows that in the Parbhani Railway Police Station one PSI Khan made inquiry with her and he recorded her statement. PW-2 has tried to say that her entire version was not recorded by Khan and only the portion which he felt necessary was recorded by him. On that statement her signature was obtained by Khan. She has given evidence that on 7-7-1994 she was taken to Parbhani from Purna

for her medical examination and there she was medically examined.

35) PW-2 has given evidence that on 8-7-1994 her clothes were taken over by police which were *Salwar* and *Kurta* and they were the clothes which were on her person when she was raped in railway residential quarters of accused No.4 and in Shakti Bungalow. She has identified articles 9,10 and 11 as her clothes which were produced before police by her. She has deposed that her signature was obtained on the seizure panchanama (Exhibit 28) when the clothes were taken over by police. She has given evidence that on 8-7-1994 P.S.I. Yeshwant took over inner wear, nicker, which is article 6 and separate panchanama in that regard was prepared.

36) PW-2 has given evidence that on 10-7-1994 she showed the places where the incidents narrated by her had taken place. The places were the railway quarters of accused No.4 and the Shakti Building. The evidence as regards the other place viz. retiring room of railway

station need not be considered as that matter is not before this Court. PW-2 has deposed that panchanama of the incidents in which she showed the places was prepared in her presence.

37) PW-2 has given evidence that during investigation, she was given opportunity to identify the accused persons. She has deposed that in the test identification parade dated 2-8-1994 she identified accused No.4 Bhansing and accused No.5 Raju. This witness has identified accused Nos.4 and 5 during the deposition in the Court also. PW-2 has given evidence on test identification parade dated 20-8-1994 in which she identified accused No.6 Ravindra @ Munna and accused No.7 Mahesh. PW-2 identified accused Nos.6 and 7 during deposition in the Court also.

38) PW-2 has given evidence that the Judicial Magistrate recorded her statement (under section 164 of the Cr.P.C.) during the course of investigation. It is brought on the record in her evidence that the term used

in Marathi by her viz. "*Angawar Haat Takla*" (अंगावर हात टाकला) means the commission of rape.

39) PW-1 has given evidence that on 7-7-1994 PSI Yeshwant took her from her residential place from Partur to Parbhani Police Station and then her report was recorded. That report is a part of Sessions Case No.121/1994. PW-1 has given evidence that PSI Khan recorded her statement in Parbhani on 8-7-1994 but that statement was not recorded as per the version given by her. PW-1 has deposed that her clothes viz. article Nos.4 and 5 (shown to be seized in Sessions Case No.121/1994) were taken over during investigation and she was wearing these clothes viz. *Salwar* and *Kurta* at the time of the incidents in question.

40) PW-1 has given evidence that opportunity was given to her to identify accused persons in test identification parades. She has deposed that in the test identification parade dated 2-8-1994 she identified accused No.4 Bhansing and on that occasion she was

asked to identify associate of the accused who raped her. She has deposed that accused No.4 had raped PW-2. PW-1 has deposed that on 20-8-1994 in other test identification parade she identified accused No.6 Munna and accused No.7 Mahesh. In the Court during deposition, PW-1 identified accused Nos.4,6 and 7.

41) PW-1 has given evidence that her statement was recorded by the Judicial Magistrate (under section 164 of the Cr.P.C.) but she could not give the narration of the incidents correctly when the statement was recorded as she was still in shock. She has given evidence that she was referred for medical examination and she was medically examined.

42) The prosecution has given other circumstantial evidence. Eknath (PW-3) panch witness is examined to prove the seizure of the clothes of PW-1 on 8-7-1994. His evidence shows that PW-1 produced *Salwar* and *Kurta* and they came to be seized. Panchanama of seizure of the clothes of PW-2 is also proved in his evidence as Exhibit 37 and there were blood stains on the underwear of PW 2.

43) Shivaji (PW-4) is examined as panch witness on the following panchanamas :

(i) Statement was given by accused No.4 Bhansing dated 17-7-1994 in which he stated that he would show the places of the incidents like residential quarters of the railway and Shakti bungalow. No recovery or seizure of articles took place on the basis of the statement. The memorandum in respect of statement and panchanama of incidents of showing places cannot be used in evidence in view of the object behind the provision of Section 27 of Evidence Act and as it cannot be said that these places were not known to police.

(ii) Panchanama of arrest of accused Nos.6 and 7. These panchanamas are proved at Exhibits 41 and 42. These panchanamas are of no help to prosecution. However, there is circumstance that only after showing the places of the incidents by PW-2 and after arrest of accused No.4, accused Nos.6 and 7 were traced and arrested. They were not known to PW-2 prior to the date of incident.

(iii) The memorandum panchanama of statement of accused No.6 which was in respect of carpet used at the time of the incident and it is proved at Exhibit 43. Carpet came to be recovered and seized from the house of accused No.6 under panchanama at Exhibit 44.

(iv) Memorandum of the statement of accused No.7 with regard to his clothes which were kept by him in his house and it is proved at Exhibit 45. The accused then took police and panchas to his house from where his clothes came to be recovered and seized under panchanama at Exhibit 47.

(v) Memorandum of statement of accused No.6 in respect of his clothes which were on his person on the date of the incident and it is proved at Exhibit 47. Panchanama of seizure of underwear and 'T' shirt of accused No.6 is proved at Exhibit 48 and the clothes were recovered on the basis of statement mentioned in Exhibit 47.

(vi) Panchanama of seizure of motor cycle of accused No.6 is proved at Exhibit 49. The evidence on record shows that this motor cycle is not identified by the two victim girls. The evidence is given that on a motorcycle accused No.6 and 7 had come upto Shakti bungalow from the residential quarters of accused No..4.

44) Vaijnath (PW-12) is another panch who has given evidence on the seizure of clothes of accused No.4 Bhansing and on his arrest panchanama. The clothes are given article Nos.9,10 and 16 and they were shown to be seized in CR No.82/1994.

45) Abdul Samad (PW-13) is examined as panch witness to prove the seizure of some articles from the residential quarters of accused No.4. His evidence shows that PW-2 was with police and panchas when they visited the quarters. The evidence shows that on 10-7-1994 the articles like empty liquor bottle, two glasses, two mats having some stains came to be taken over under panchanama at Exhibit 76 from railway quarters of

accused No.4. One underwear having stains of blood was also taken over. A pair of shoes was taken over and to one shoe there was no lace. Here only it needs to be again mentioned that it is the case of PW-2 that she was given lace of this shoe by Bhansing as the lace of her Salwar got broken during the incident. Another document at Exhibit 77 is proved in the evidence this witness. This document shows that Shakti bungalow, the other place of the incident, was also shown by PW-2.

46) Dr. Jaishri Deshpande (PW-14) is examined by prosecution to give medical evidence. She examined PW-2 on 7-7-1994 at about 4.p.m. She examined PW-1 on 8-7-1994. On local examination she noted following things in respect of PW-2 :-

1. Matting of pubic hair was seen.
2. Blood stains on clothes and genitals.
3. No evidence of external injuries over genitals.
4. Hymen - torn, congested+ oozing through tear present.
5. P.S. : Speculum could be passed with difficulty tenderness i.e. severe tenderness.

On PV examination she found following things :

Vagina admits one finger with pains i.e. severe tenderness.

Bleeding through cervical was present.

She has given specific evidence that on clinical examination she formed opinion that there was sexual intercourse with PW-2. She had collected vaginal swab, pubic hair and the blood of PW-2. The medical certificate prepared by her is proved in her evidence at Exhibit 79. This document is consistent with the oral evidence of the witness.

47) Dr. Jaishri (PW-14) examined PW-1 on 8-7-1994 at 9.00 p.m. She has deposed that on local examination she found following things :-

1. Matting of pubic hair not seen
2. Blood stains on the clothes and genitals were seen
3. Posterior fourchette congested and redness. Lebia minora was slightly congested.
4. Hymen torn (old tear), no oozing bleeding through vagina was present.
5. No evidence of injury over the external genitals.

Dr. Jaishri (PW-14) found following things on PV examination of PW-1.

"Medium size speculum passed with a minimum tenderness means pains. Bleeding through cervical os seen. The vaginal mucosa is congested. Vagina admits two fingers with tenderness. Uterus - normal size, retroverted bleeding through cervical seen. No living or dead spermatozoa. "

48) The evidence of Dr. Jaishri Deshpande shows that on microscopic examination no living or dead spermatozoa were revealed. Her evidence, however, shows that living spermatozoa can be seen within 2 to 3 hours after sexual intercourse and dead spermatozoa can be seen within 24 hours of sexual intercourse. The evidence on the record shows that both the victim girls were examined after 24 hours of the last incident of rape.

49) Dr. Jaishri (PW-14) has given evidence on the examination done by her of both the victim girls to ascertain their age. Her evidence shows that she had taken X-rays and she had done clinical examination also. In respect of PW-2 she has deposed that iliac crest had appeared but not fused. The process of fusion of lower end was not yet started but the head of radius was found

fused. The X-ray plates are produced in the Court. On the basis of the clinical and radiological examination she gave opinion about the age of PW-2 as age between 14 and 16 years which include margin of error which is 1 to 2 years. She has given specific opinion that the age of PW-2 was less than 16 years.

50) Dr. Jaishri (PW-14) has given similar evidence in respect of PW-1. She has given evidence that the age of PW-1 was between 14 and 16 years which include margin of error. She has given specific evidence that the age of PW-1 was not more than 16 years on the date of examination. X-ray plate of this victim girl was also produced. The certificate in respect of age of PW-2 is at Exhibit 79 and the certificate in respect of the age of PW-1 is at Exhibit 80. This record is consistent with the oral evidence of Dr. Jaishri. Specific opinion was obtained by police from this doctor by putting some queries and that opinion is given at Exhibit 81 which is proved in her evidence. At Exhibit 82 there is the record with regard to radiological examination.

51) Prosecution has given evidence on the dates of birth also in respect of two victim girls. Krishnarao Choudhari (PW-15) is working as Clerk in Dhapibai Maternity Home Amarawati. He has given evidence that as per the record one Kirandevi Mor was admitted in this hospital for delivery on 12-3-1979 and on the same day she delivered a female child at 1.30 p.m. According to him, as per the record, it was second female child to Kirandevi. Certificate was issued by this hospital and the original certificate is produced in Sessions Case No.121/1994. This certificate is signed by Dr. Ladda of the hospital and it is at Exhibit 84. He has given evidence that after the delivery, information was given to local body, Municipal Corporation by this hospital. Challenge with regard to the surname of the mother mentioned in the register is being discussed at later place. It is the case of the prosecution that this record is in respect of PW-1. Original record was brought to the Court and Exhibit 84 is consistent with the original record.

52) Dr. Rajkumar (PW-16) who is working as medical officer in the Department of Registration of Births and death of Municipal Corporation Amarawati is examined by the prosecution to prove the registration of birth of PW-1 on the basis of information give by Dhapibai Maternity Home, mentioned above. He had brought original record to the Court and it was for the period from 5-3-1979 to 14-5-1979. Entry was made at Sr. No.2131 in the register in respect of PW-1 and he has given evidence that it is in respect of female child name of whose father was Rameshwar Gangabhishan Mor and the name of the mother of the child was Kiran. The date of birth is recorded as 12-3-1979 and the girl was born in Dhapibai Maternity Home Amarawati. It was the second female child to this couple. Copy of this entry of birth register is produced on record at Exhibit 86. Thus, the prosecution has given medical evidence that age of PW-1 was around 16 years and the evidence is given on the date of birth as she was born on 12-3-1979.

53) Arjun Kukde (PW-22), Headmaster of Lal Bahadur Shastri High School Partur is examined by the prosecution to prove the date of birth of PW-2 on the basis of her school record. His evidence shows that prior to the admission of PW-2 in his school, she was student of C.P.S. Partur (Ganj) and she was admitted in his school on the basis of transfer certificate issued by C.P.S. Partur on 25-6-1991. The transfer certificate issued by C.P.S. is proved in Sessions Case No.121/1994 as Exhibit 229 and its copy is produced in the present matter. He has given evidence that as per original transfer certificate which was received by his school, the PW-2 was admitted on 10-7-1981 and accordingly the date of birth was recorded by his school. The original admission form which was filed in his school for admission of PW-2 was also brought to the Court and its copy is produced at Exhibit 176. The original form is given Exhibit 270 in Sessions Case No.121/1994. Copy of the transfer certificate is taken on the record at Exhibit 175 in the present matter. In the school register entry of the admission was taken and the original school record was also brought to the Court. The entry of admission of

PW-2 in this school is on record at Exhibit 177. This school had issued school leaving certificate in favour of PW-2 and this document is at Exhibit 178. All this record shows that the date of birth of PW-2 is 10-7-1981. Thus, there is medical evidence and also the evidence given on the basis of school record by the prosecution to show that the age of PW-2 was not more than 16 years at the relevant time. The dates of birth of both the victim girls show that their age was less than 16 years at the relevant time.

54) Namdeo Jadhav (PW-17), Executive Magistrate, has given evidence on test identification parades (hereinafter referred to as "T.I. Parade") held by him in the campus of Parbhani Jail. He has given evidence that after receipt of letter of police, he collected information about the case and then he arranged for conducting T.I. parade. The correspondence with police is at Exhibits 88 and 89. The evidence of T.I. parade was seriously challenged before the trial Court. Though the learned Senior Counsel for the present appellants-accused submitted that the trial Court has discarded the evidence of T.I. parade, the

judgment does not show that there is such specific finding. The trial Court has held that two victim girls were in the position to identify the accused, who were identified by them in the Court and identification in Court is sufficient.

55) Namdeo Jadhav (PW-17) has given evidence that in the T.I. parade held on 2-8-1994 PW-2 identified accused Nos.4 and 5 of the present matter. The evidence of Jadhav shows that he used 7 dummy persons for T.I. parade dated 2-8-1994 and they were resembling to the accused persons in appearance, in age and in height. He has given evidence that opportunity was given separately to PW-1 and PW-2 to identify accused Nos.4 and 5 though accused Nos.4 and 5 were standing in the same group of aforesaid 7 dummy persons. He has given evidence that PW-1 and PW-2 were asked to identify the accused persons who had raped them and also the persons who had acted as associates in the incidents. He has given evidence that PW-1 identified accused No.4 Bhansing as an associate.

56) Jadhav (PW-17) has given evidence that report of T.I. parade was prepared by him which is at Exhibit 90. This record is consistent with the evidence of Jadhav and also the substantive evidence given by PW-1 and PW-2 on T.I. parade.

57) On 20-8-1994 Jadhav (PW-17) held T.I. parade in which opportunity was given to PW-1 and PW-2 to identify accused Nos.6 and 7 of the present matter. The correspondence in respect of this T.I. parade is at Exhibits 94 and 95 and the memorandums of the T.I. parade are at Exhibits 96 and 97. On this occasion he used six dummy persons. Evidence of Jadhav shows that in the T.I. parade dated 20-8-1994 the position of accused Nos.6 and 7 was changed and second opportunity was given to both PW-1 and PW-2 to identify these two persons. His evidence and the record show that in the first opportunity PW-1 identified both accused Nos.6 and 7 but in the first opportunity PW-2 could identify only accused No.6. In the second opportunity PW-2 identified both, accused Nos.6 and 7.

58) The prosecution has given evidence of the investigating officers also. Khan (PW-18) is the first investigating officer and he was attached to Purna Railway Police Station as Police Sub Inspector. He was in charge of Parbhani Railway Police Station also. According to him, the railway quarters of the employees of the railway like accused No.4 is not within his local jurisdiction. This circumstance needs to be kept in mind as some incidents are omitted in the report recorded by Khan (PW-18).

59) The evidence of Khan (PW-18) shows that he took over the investigation of the matter on 7-7-1994 at 4.00 p.m. According to him, he recorded the first disclosure of PW-2. According to him, after recording the report of PW-2 he took steps like sending PW-2 for medical examination on 7-7-1994. He took over the clothes of PW-2 which were on her person like *Salwar, Odhani* and *Kurta* (articles Nos.9,10 and 11) under Exhibit 28 in CR No.29/1994 registered by him in Purna Railway Police Station. According to him, during investigation he

collected record of Lal Bahadur Shastri High School in respect of PW-2 to ascertain the date of her birth. His evidence shows that he arrested accused No.5 Raju and he seized the clothes of Raju after his arrest (articles 7 and 8) under panchanama at Exhibit 60. He has given evidence that he had sent PW-1 and PW-2 to the Judicial Magistrate First class for recording their statements under section 164 of the Cr.P.C. He has given evidence that he had sent articles which were seized by him to C.A. office on 14-7-1994 with covering letter. He has given evidence that he was required to hand over the investigation of the case to C.I.D. Crime on 11-8-1994.

60) Khan (PW-18) was cross-examined by learned Special Public Prosecutor. The evidence of both the victim girls shows that they had the grievance against PW-18 that their versions were not completely and correctly recorded by PW-18 Khan. It is suggested to him that he did not record the incidents which took place near brook, the incident of rape which took place in Visawa Lodge and the incident of rape which took place in the campus of a

school even when they were disclosed. These incidents are not involved in the present matter but due to these circumstances, Khan was cross-examined by the learned Special Public Prosecutor.

61) In the examination-in-chief itself Khan (PW-18) has deposed that PW-2 was appearing weak and she was not able to speak and so he had obtained the information by putting some questions to her. This evidence also needs to be kept in mind as some incidents were not recorded by him. After giving such evidence, he has given evidence that PW-2 did not disclose the aforesaid incidents to him and so he did not record those incidents in the report of PW-2.

62) Here only it needs to be observed that the mental condition of these two girls needs to be kept in mind at the time of the appreciation of the evidence of PW-1 and PW-2 and at the time of consideration of absence of some incidents in the first disclosures made by them to police. They had left the shelter of their parents/

guardians, they were minor and were afraid of some action against them. It also needs to be kept in mind that their evidence shows that their guardians/parents preferred to stay away from them and they did not opt for the custody of these two minors and the minors were required to be kept in Remand Home. These victims girls must have felt that they were responsible for everything including the incidents that had taken place against them. The circumstance that PW-1 had given her age as 18 years at the relevant time also needs to be kept in mind. However, PW-2 had given her age as 14 years. It can be said on the basis of evidence of PW-1 that she was little more mature than PW-2 at the relevant time. Even when their evidence was being recorded, they were kept in Female Reformatory school.

63) Chandrabhan (PW-19) was attached to Kotwali Police Station Parbhani as Police Sub Inspector. He has deposed that he recorded statement of PW-1 and then sent her to New Mondha Police Station Parbhani. He registered crime at CR No.73/1994 in Kotwali Police

Station on the basis of report recorded by him. He has given evidence that he took over the clothes of PW-1 (articles 4 and 5) in CR No.73/1994 under panchanama at Exhibit 36. His evidence shows that this record was used in Sessions Case No.121/1994 which was in respect of the incidents which took place in Banana garden, near brook, in the lodge, in the campus of the school and then in one Wada. He has given evidence that during investigation he seized under-wear of PW-2 (article 6) in CR No.73/1994 under panchanama Exhibit 37. On the basis of the evidence of Chandrabhan it can be said that only after recording of the statement by Chandrabhan of PW-1, he realised that some more incidents had taken place and then PW-1 was referred to other Police Station, New Mondha Police Station as other incidents had taken place within local jurisdiction of New Mondha Police Station. Police realised that in the disclosure recorded on 7-7-1994 of PW-2 by Khan (PW-18) many incidents were not recorded. Evidence is given by PW-18 that after recording statement of PW-1 he referred PW-1 for medical examination on 8-7-1994. He recorded the age of PW-1 as

16 years and the age of PW-2 as 14 years when he recorded their statements.

64) Shaikh Mujib (PW-20) is other investigating officer who was working as Assistant Police Inspector in New Mondha Police Station. He has deposed that on 9-7-1994 he recorded statement of PW-2 and in that statement she narrated all the incidents including the incidents of retiring room of Railway Station Parbhani. This statement of PW-2 is given Exhibit 29 and on that basis crime at CR No.82/1994 was registered in New Mondha Police Station Parbhani. Shakti bungalow where one incident took place is within local jurisdiction of New Mondha Police Station. According to PW-20 he recorded two separate F.I.Rs (after realising the aforesaid things). PW-20 has given evidence that the first F.I.R. was recorded by him in respect of the incidents of Banana garden, brook, Visawa Lodge, school campus and one Wada (Munde Wada) and these places were situated within the local jurisdiction of Kotwali Police Station. He has deposed that Circle Police Inspector Chalak was having jurisdiction over both New Mondha

Police Station and Kotwali Police Station. Thus, Chalak could have made investigation of all the incidents of rape.

65) Chalak (PW-21), Circle Police Inspector, has given evidence that aforesaid two police stations were under his jurisdiction he had power to make investigation of all the incidents. However, he has given evidence that he took over the investigation of CR No.82/1994 registered in New Mondha Police Station from Shaikh Mujib (PW-20). He has given evidence that he arrested accused No.4 Bhansing on 9-7-1994 and during his arrest he took over the clothes of Bhansing (articles, 9,10 and 16) under seizure panchanama at Exhibit 74 prepared in CR No.82/1994.

66) Chalak (PW-21) has given evidence that on 10-7-1994 PW-2 showed to him the places where the incidents of rape had taken place. He has deposed that the railway quarters of Bhansing, accused No.4 was also shown by PW-2 and during that incident he took over the articles like a pair of shoes in which one shoe was not having lace under panchanama at Exhibit 77.

67) Chalak (PW-21) has given evidence on the arrest of accused No.5 Raju in Crime No.82/1994. It appears that Raju was already arrested and he was taken in custody by Chalak after transfer of this accused in CR No.82/1994.

68) Evidence is given by Chalak that during the course of investigation he collected blood sample of accused No.4 and it was sent to CA office along with covering letter at Exhibit 168. He has given evidence that he had requested the learned Executive Magistrate to hold T.I. parade. Chalak has given evidence that accused Nos.6 and 7 from the present matter, CR No.82/1994 of New Mondha Police Station, were absconding and so he had requested the Judicial Magistrate to take action against them under sections 82 and 83 of the Cr.P.C. He has given evidence that he could arrest accused Nos.6 and 7 on 7-8-1994 and then he prepared panchanamas at Exhibits 41 and 42. He has given evidence that he collected blood samples of these persons and sent them to CA office along with covering letter which is at Exhibit

169. He has given evidence that he had sent PW-1 and PW-2 to the learned Judicial Magistrate for recording statements under section 164 of the Cr.P.C.

69) Chalak (PW-21) has given evidence that during investigation, accused No.6 Munna gave statement to him in the presence of panchas and he prepared memorandum statement which is at Exhibit 43. He has given evidence that after giving statement, accused No.6 produced one carpet from his house and the carpet came to be seized under panchanama at Exhibit 44 in CR No.82/1994 and the carpet is Article No.8.

70) Chalak (PW-21) has given evidence that he seized clothes of accused No.7 on the basis of statement given by accused No.7. He prepared memorandum of the statement which is at Exhibit 45 and the panchanama of the seizure of the clothes of accused No.7 is at Exhibit 46. Articles 5, 6 and 7 are the clothes of this accused in CR No.82/1994.

71) Chalak (PW-21) has given evidence that accused No.6 also gave statement to him and he prepared memorandum of his statement. He has given evidence that on the basis of this statement, articles 1,2,3 and 4, which were the clothes of accused No.6 were recovered and they were seized under panchanama Exhibit 48.

72) Chalak (PW-21) has given evidence that he had sent some articles to CA office on 10-8-1994 with covering letter Exhibit 170 but after that he was required to hand over the investigation to CID on 11-8-1994.

73) Sahebrao Vyavahare (PW-23) was working as Police Inspector in CID and he made remaining investigation of the case. He has deposed that, he took over the investigation of CR No.29/1994 registered in Purna Railway Police Station by PSI Khan and he also took over the investigation of CR No.82/1994 registered with New Mondha Police Station which was with Chalak. He has deposed that he took over investigation of CR Nos. 73/1994 and 81/1994 which were registered in Kotwali Police Station from P.S.I. Yeshwant and P.S.I. Jagadale.

74) Sahebrao (PW-23) has deposed that he requested the Executive Magistrate to hold T.I. parade in respect of accused No.6, Munna and accused No.7 Mahesh who were arrested in CR No.82/1994. He has given evidence that he had sent a lace of the shoe which was recovered from the house of accused No.4 in the present case along with lace of PW-2 to CA office for comparison purpose along with covering letter at Exhibit 182.

75) The record of investigation and the aforesaid evidence show that blood samples of all the accused were collected and the samples of blood of the two victim girls were collected. Similarly, vaginal swab collected by the medical officer along with pubic hair so also the clothes of the accused mentioned above and the mattresses used at the time of rape in the lodge, in railway quarters of accused No.4 and in the Shakti bungalow were sent to C.A. office. The CA reports in respect of these articles are produced before the Court. The trial Court has considered all the aforesaid evidence for giving conviction against the appellants in the present appeals.

76) The C.A. reports in respect of the clothes of PW-2 is at Exhibit 189, the articles like clothes *Salwar, Odhani, Kurta*. Covering letter dated 12-7-1994 is there. On the article *Salwar*, blood mixed with semen stains was found. Group of the blood of PW-2 is "A" and the stains gave reaction for both "A" and "B" groups. C.A. report at Exhibit 194 is in respect of carpet shown to be recovered on the basis of statement given by accused No.6 and blood group "B" was found on it. Though it was sent to C.A. office on 11-8-1994 as this accused came to be arrested late, the fact remains that there was blood on the carpet which ought to have been explained by accused No.6. Similarly, on the clothes of PW-1 like *Salwar, Kurta, jangiya* human blood was found. Though it is true that she was observing menses, as per CA report, on other article like *Kurta* blood was found and this fact needs to be kept in mind. The blood group of PW-2 is "B". These circumstances give corroboration to the versions of PW-1 and PW-2.

77) The evidence and the record show that though it transpired that accused Nos.6 and 7 were involved in the incident of rape which took place in Shakti bungalow, they were not available and they came to be arrested after about one month. This circumstance also is not explained by these accused persons.

78) Challenges of the accused to the aforesaid evidence of the prosecution and other contentions of the accused made during arguments of these matters are as under :

CHALLENGES

(i) Both the victim girls did not disclose the incidents immediately even when they had opportunity to disclose the incidents to the persons in the vicinity and even to the parents. They disclosed the incidents only when police specifically made inquiry with them.

(ii) Both the victim girls gave different versions when different police officers recorded the reports. Both the victim girls did not narrate some of the incidents of rape

when they made first disclosure and then did not disclose some incidents even when their statements were recorded by the Judicial Magistrate under section 164 of the Cr.P.C.

(iii) The victim girls had left the shelter of their guardians/parents on their own and so no offence of kidnapping or abduction was committed by any of the accused.

(iv) The evidence given by the prosecution on age is not that convincing and the victim girls had probably crossed the age of 16 years at the relevant time.

(v) There is probability that the victim girls were major and they consented to the alleged acts of the accused.

(vi) The medical evidence is not that convincing and it does not give corroboration to the versions of the prosecutrix. Other circumstantial evidence like CA reports also do not corroborate the case of the prosecution.

(vii) The evidence of T.I. parade cannot be relied upon as the procedure laid down in Criminal Manual of this High Court was not followed. The Executive Magistrate did not

act fairly and he arranged even second T.I. parade for giving one more opportunity to the victim girls.

(viii) The evidence of the investigating officers shows that the State was required to change the officers many times. Their evidence creates probability that they were not fair during conducting the investigation.

79) This Court is considering the aforesaid challenges one by one. The first challenge regarding the age of the victim girls needs to be considered first.

AGE OF THE VICTIM GIRLS.

80) The evidence of the prosecution on the age of the victim girls needs to be considered first. The finding on the age of the victim girls will help in deciding the other points like the possibility of consideration of defence of consent. Finding on the age of the victim girls will also help in appreciating the evidence of the two girls in entirety as the conduct and reaction of minor is ordinarily different than the conduct and approach of an adult. The evidence on the record shows that these two girls were in

distress as the financial condition of their parents/guardians was not that good and they were feeling that they had no prospects with their guardians/parents.

81) For proving the age of PW-1 the prosecution has relied on the evidence of PW-1, the evidence of entry in the birth register, the entry in the hospital where PW-1 was born, the evidence of opinion of doctor about age which is on the basis of clinical and radiological examination.

82) Learned Single Judge of this Court (one of us) had occasion to consider the evidence which can be available for proving the date of birth, the age of a person and the importance of various kinds of evidence which can be available for proving the date of birth or the age. In the case reported as **2014(2) Mh.L.J. (Cri.) 353 (Mahesh vs. State of Maharashtra)** this Court has made following observations on the basis of the observations made by the Supreme Court in the case reported as **AIR 1982 SC 1297, Jaya Mala vs. Home Secretary, Government of Jammu and Kashmir and others).**

"13. 'Age' as ingredient of both the aforesaid offences is required to be proved beyond reasonable doubt. This 'proved' under section 3 of Evidence Act need to be proved like any other fact in criminal case. Oral evidence as to the age may always be available in such a case. Where a person gives evidence on oath, the Court is expected to start with presumption that he has spoken the truth. Only because in a case like present one, when there is oral evidence on age and it is given by the interested witnesses like mother or father, the Court is expected to look for corroboration. Corroboration need not be only of expert evidence. Corroboration may be of circumstances which may differ for each case. The opinion of doctor on clinical or radiological examination cannot be accepted straight way as a legal proof. The margin of error is of two years on either side even when the age is ascertained on the basis of radiological examination. (Reliance placed on *AIR 1982 SC 1297, Jaya Mala vs. Home Secretary, Government of Jammu and Kashmir and ors.*). It is only medical opinion and other evidence including oral evidence cannot be discarded only because the medical evidence is in conflict with the oral evidence. Further, the medical evidence cannot stand against entries made in birth register, which are properly authenticated. Entry made in birth register has presumptive value in view of section 17(2) of Birth and Death Registration Act, 1969 and this position of law needs to be kept in mind, when there is conflict between medical evidence and the other evidence.

14. In view of section 35 of Evidence Act, the entry made in school register about the date of birth also needs to be treated as relevant. Such register is kept in regular discharge of duty by school and it is required to be kept as per the Rules made by the State Government. When such entry was made before starting of dispute, many years prior to the commission of offence and when entry is proved by giving oral evidence of the concerned, due weight needs to be given to such entry. Such entries need to be treated as relevant and admissible in evidence, though such entry cannot form sole clinching factor for determining the age. It has no presumptive value like

in the case of entry made in birth register as already observed."

This Court is endorsing the view expressed by the learned Single Judge in the case of Mahesh (cited supra).

83) PW-1 has given evidence that she was born at Amarawati on 12-3-1979 but she received education in Partur upto 5th standard. She has given evidence that one Gangabhishan Mor was her grand father of parental side. She has given name of her father as Rameshwar. She has given evidence that her mother had informed to her the date of birth. In the cross-examination of PW-1 it is brought on record that Rekha is her elder sister and Rekha was given in marriage about 1 and half years prior to the date of incident. Her evidence shows that she was daughter No.2 to her parents.

84) It is brought on record in the cross-examination of PW-1 that she received education upto 4th standard in Ganj school Partur and then she was admitted to other school. It is brought on the record that when her

statement was recorded by police, she had not informed the date of birth to police. It is already observed that the mind set of such girls needs to be kept in mind at the time of considering the discrepancies which can be there in the disclosures made by them and the record which is available. Further the record in respect of date of birth in such cases has the precedence. It appears that PW-2 had given age more than 16 years on different occasions to police. Her evidence shows that she was frightened and she did not want to inform the incident even to her mother. The evidence on the record also shows that when she was reached to Partur by a lady constable she did not disclose the incident to her mother and she disclosed the incident only when the report of PW-2 was recorded and she was brought to Parbhani from Partur for the purpose of investigation.

85) In the cross-examination, PW-1 has specifically deposed that at the time of the incident her age was 15 years. In the cross-examination some questions were to put to her in respect of her two sisters. Even if the

answers given by PW-1 to those questions are accepted as they are, those answers have not created probability that she had crossed the age of 16 years at the relevant time. In any case, if there is a record of date of birth which has presumptive value, that record needs to be given more weight than the information supplied to police by the victim girl like PW-1.

86) In the record of birth register initially the surname of her parents was recorded as "Mor" and the surname "Agrawal" was shown as other surname. PW-1 is cross-examined at length to test as to whether she was knowing the particulars of the family of her grandfather from paternal side, Gangabhishan Mor @ Agrawal. She successfully faced the test of cross-examination and she gave the particulars of the family of Gangabhishan. Father of PW-1 is dead though mother is alive. Mother of PW-1 is not examined in Sessions Case No.139/1994. The record shows that evidence of PW-1 is on the basis of information supplied by mother and it can be said that it is also on the basis of the record of her birth. She has received education

at least for some time and so it can be said that she can give evidence about the birth date also.

87) Evidence of Krishnarao Choudhari (PW-15), one employee of the hospital where PW-1 was born, is on the basis of record of the hospital. If the evidence of PW-1 is compared with the description of the parents given in the register of the hospital, the description tallies. The record shows that second daughter was born to Kirandevi Rameshwar Mor (Agrawal), the mother of PW-1. Original register was brought to the Court and it showed that it was regularly maintained. As per the oral evidence and the record, intimation of this birth was given by the hospital to the local body, Amarawati Municipal Corporation. In view of this check and the manner in which the record was maintained, this Court has no hesitation to observe that there was no possibility of interpolation. There is only suggestion from defence that surname Agrawal was added subsequently in the register.

88) Evidence of Dr. Rajkumar (PW-16), the officer in-charge of the birth and death register of Amarawati Municipal Corporation is there on the certificate of birth issued in favour of PW-1. This register was also regularly maintained. Names of father and mother mentioned in the register of the issue tally with the names given in the present matter. The entry was made on the basis of information supplied by Dhapibai Maternity Home. In the cross-examination of this witness it is brought on record that in the original register there is one correction and name of the hospital which was initially mentioned as "Ji.Stri.Ru." was changed to make it as Dhapibai Maternity Home. This change was not only for the present entry but it was for many entries. Entries were made on the basis of information given by Dhapibai Maternity Home at Sr. Nos.2116 to 2124 and after correction these entries were also made from Sr. Nos.2125 to 2131. The present entry is shown at Sr. No.2131. Thus, the correction was made in respect of many entries viz. 2125 to 2131 and it does not look probable that for the present matter any manipulation was done by the local body. In this register

the date of birth which was informed by the hospital was recorded as 12-3-1979. Thus, at the relevant time, in July 1994, the age of PW-1 was below 16 years.

89) PW-2 has given evidence that her date of birth is 1-7-1981. She has given evidence that she received education in Lal Bahadur Shastri High School Partur till 6th Standard. Her evidence shows that she was kept in Partur by her parents who are residents of Hiwarkheda and so she was admitted in this school by her uncle living there. Her evidence shows that prior to her admission in Lal Bahadur Shastri High School she was receiving education in Ganj school Partur. Even before police she had given her age as 14 years. Her cross-examination shows that when she was a kid, she was shifted to Partur. She does not know even the particulars about her brother and sister, what they are doing. Her evidence shows that her parents visited Partur only twice after sending her to Partur from Hiwarkheda. These circumstances show that whatever happened to her was due to her poverty and absence of care and protection of the parents.

90) The evidence of Kukde (PW-22), Headmaster of Lal Bahadur Shastri High School Partur shows that it is on the basis of the original admission form in respect of PW-2. His evidence shows that Ganj school had given transfer certificate and on that basis PW-2 was admitted in Lal Bahadur Shastri High School. In the school register, on the basis of transfer certificate and the date mentioned on the admission form the date of birth was recorded as 10-3-1981. Original register was brought to the Court and it was found to be regularly maintained. Though Kukde (PW 22) could not say as to who had admitted PW-2 in the school on the basis of the signature, there is evidence of PW-2 that her uncle/guardian at Partur had admitted her in the school. In view of nature of evidence and the record there was no possibility of interpolation or manipulation. This record is very old and it is relevant in view of provision of section 35 of the Evidence Act.

91) In the evidence, Dr. Jaishri (PW-14) has given approximate age of PW-2 as already quoted. There is no reason for not accepting the opinion given by Dr. Jaishri in

view of the aforesaid record and the substantive evidence. The medical evidence of the doctor of opinion is consistent with the school record and the evidence of PW-1. No other probability is created during cross-examination of this witness. It is not even suggested to PW-2 that she was studying in any other institution. At the cost of repetition this Court feels it necessary to mention here that due to the incidents in question, the parents and guardians of PW-1 and PW-2 disowned them, they did not even turn up to give evidence for the prosecution.

92) The provisions of Birth and Death Registration Act, 1969 quoted already, and the provision of section 35 of the Evidence Act show that even without examining the official, certified copy of entry made in the birth register is admissible in evidence. Further, when there is such record giving specific date of birth, such record needs to be given precedence over the school record if there is inconsistency between the two records. Similarly, the opinion given by doctor on age if it is inconsistent, ordinarily precedence needs to be given to the record of

birth date prepared under the aforesaid Act. In the present matter, the medical evidence is also consistent with this record and no probability is created in this matter that age of PW-1 was more than 16 years at the relevant time.

93) Evidence of Dr. Jaishri on opinion as expert under section 45 of Evidence Act is challenged by submitting that she is not Radiologist and the X-rays were not taken by Radiologist. It was also argued that Dr. Jaishri used a chart given by civil hospital for ascertaining the age in which tests/data were given. There is no force in both the challenges. Evidence of Dr. Jaishri shows that under her instructions and supervision the X-rays were taken by the technician. She has completed post graduate course after completing MBBS. The trial Court has rightly observed that the chart used by this witness has the basis of the chart given in Modi's book on medical jurisprudence in Edition 21. Thus, it cannot be said that Dr. Jaishri committed error when she used the chart for giving her opinion on the basis of radiological

examination. Evidence of Dr. Jaishri shows that no other criteria or tests were confronted by showing the book of another expert. Thus, no probability is created that the opinion given by the doctor is not correct. To challenge the evidence of expert like doctor the opinion of the other expert needs to be confronted and then the matter needs to be left to the court to decide the point. When the opinion is based on some data and the Court is satisfied with the opinion given by such expert, it becomes the opinion of the Court. In view of these circumstances it is not possible to interfere in the finding given by the trial Court on the age of PW-1 and PW-2 which is to the effect that both the victims had not completed 16 years of age at the relevant time. This Court holds that the age of both the victims was below 16 years at the relevant time.

94) Both the sides placed reliance on some reported cases. In the case reported as **(2011) 2 SCC 385 (Alamelu v. State)**, there was inconsistency in the opinion given by the medical officer which was on clinical examination and the opinion given by Radiologist. The

Radiologist had given higher age and the age was given approximately. The Apex Court considered the possible margin of error. Further the school record was not proved properly. Thus, the facts of the reported case were altogether different. Similarly, in the case reported as **(2016) 1 SCC 696 (State of M.P. v. Munna)** the facts were different. There was no record of birth register. Mother's evidence on factual aspect was not found convincing and the Court held that the opinion of the Radiologist was necessary, which was not available.

95) In the case reported as **(2010)1 SCC 742 (Sunil v. State of Haryana)** on which reliance was placed by the counsel for the accused, the facts were different. The prosecutrix was not certain about her age and there was no record on the basis of which she had given age. In that case the doctor had clinically examined the prosecutrix and had sent the prosecutrix to Dental Surgeon/ Radiologist for verification but such verification was not done. Thus, the doctor who had done clinical examination was also not sure about the opinion which was possible on

the basis of clinical examination. In view of these circumstances, the Apex Court held that the age of the prosecutrix was not below 16 years. However, the Apex Court made it clear that there is no rule as such that such examination needs to be done in every case.

96) In the case reported as **2010 Cri.L.J. 192 (State of H.P. v. Jarnail Singh)**, in view of the facts and circumstances of that case the school record and the Panchayat record was not believed by the Court. The learned Additional Public Prosecutor placed reliance on the case reported as **(2015) 7 SCC 773 (State of M.P. v Anoop Singh)**. In this case the importance of the documents in respect of date of birth is discussed by the Apex Court. It is laid down by the Apex Court that such record has the precedence over medical opinion. There cannot be dispute over this proposition.

Evidence on wrongful confinement and abduction:

97) The evidence given by PW-1 and PW-2 against accused No.4-Bhansing that he took them to his

residential quarters under pretext that he will supply drinking water is consistent with each other. It can be said that there could have been charge against accused No.4 for this incident also. There was intention of accused No.4 right from the beginning to commit the offence of rape by exploiting the situation in which PW-1 and PW-2 were found. Both these girls have given evidence that they were kept in the railway quarters and the quarters was locked from outside by accused No.4 and the key was handed over to respondent No.5 Raju by accused No.4. The evidence shows that accused No.5 did not allow them to leave from the quarters when the key was with him. In the noon time, accused No.4 returned to the quarters and even after that they did not allow the two victim girls to leave the railway quarters. Both the victim girls were kept in the railway quarters and from there they were taken to Shakti Bungalow by accused Nos.4 to 7 in the evening time. This evidence is sufficient to prove that there was wrongful confinement from accused Nos.4 and 5 of PW-1 and PW-2 and they committed offence punishable under section 342 read with 34 of Indian Penal Code.

98) PW-1 and PW-2 have given evidence that after returning to the railway quarters from the office, some food items were supplied to them by accused No.4. Accused No.4 then consumed liquor along with accused No.5. PW-1 has given evidence that accused No.5 committed rape on her. PW-2 has given evidence that accused No.4 committed rape on her. The trial Court has considered some omissions in the first disclosure made by the girls in respect of this incident and that point is being discussed at later place. It can be said that accused Nos.4 and 5 both wanted to commit offence as both the victim girls were available. Considering the intention of accused Nos.4 and 5 and the fact that both girls were kept in the railway quarters with that intention, this Court holds that the act amounts to gang rape.

99) The evidence of PW-1 and PW-2 given on rape committed on PW-2 in Shakti Bungalow is consistent with each other. The evidence of these two girls shows that after every incident they used to disclose about the incident to each other as they had no other option. The

evidence shows that to Shakti Bungalow PW-1 and PW-2 were taken by accused Nos.4 and 5 in a vehicle and accused Nos.6 and 7 had followed that vehicle up to Shakti Bungalow. The evidence on the record shows that accused Nos.6 and 7 were using that premises, Shakti Bungalow. The very nature of the evidence given by PW-1 and PW-2 shows that it is accused Nos.4 and 5 who had contacted accused No.6 and 7 and it was informed to accused No.6 and 7 that these two victim girls were available for commission of rape. The evidence of PW-2 shows that accused Nos.4 to 7 raped her one by one by many hours on that night, till 3.00 a.m. Thus there is specific evidence from PW-2 that in Shakti Bungalow accused Nos.4 to 7 raped her one after other and they committed offence of gang rape.

100) The record which is referred during cross-examination of PW-1 and PW-2 by the defence counsels for proving the inconsistencies in the versions of the PW-1 and PW-2, the omissions and the contradictions show that the relevant portions were confronted to the witnesses

and on proof, the relevant portions are exhibited. Much was argued on this circumstance by the learned Senior Counsel and other counsels for the appellants. At the time of considering these inconsistencies or omissions, it is necessary to keep in mind in a case like the present one that many police officers have recorded the statements of PW-1 and PW-2 and many supplementary statements were recorded by them. Even statements under section 164 of the Cr.P.C. were recorded many times. It can be said that the statements were recorded from 7-7-1994 till 29-7-1994. PW-1 and PW-2 have made allegations against investigating officer Khan (PW-18) that their versions were not correctly and completely recorded by him. It needs to be kept in mind that two girls are from very poor families and there was no support of anybody to them at the relevant time. Some accused persons from the two cases were employees in Railway and some were involved in politics. The evidence and the record is sufficient to prove that the incidents did take place as disclosed by PW-1 and PW-2 but the police officers recorded only some instances when they recorded the statements and the

supplementary statements of PW-1 and PW-2. It can be said that only the officer of C.I.D., who ultimately took over the investigation, made an attempt to record the statements in detail and those statements cover all the incidents. Police officers acted as per their notions. Even, the learned Judicial Magistrate did not record the statements in respect of all the incidents and it can be said that the learned Judicial Magistrate had not gone through the record of the investigation already made by police before recording the statements. When statement is being recorded under section 164 of the Cr.P.C., it is the duty of the learned Judicial Magistrate to ascertain the nature of allegations, disclosures already made by the witnesses and then elicit the information from the witness by putting questions if they are missing something while disclosing the incidents before him. It can be said that most casual approach was used by the Judicial Magistrates while recording statements under section 164 of the Cr.P.C. What is important in a criminal case like the present one is the substantive evidence given by the victim girls. Due to the existence of the circumstances like

above, the Court can look for corroboration but the Court cannot discard the substantive evidence only due to the existence of such circumstances. In the present case, the accused persons were not known to PW-1 and PW-2 though a probability is created that PW-1 knew accused No.4 Bhansing. This point is discussed afterwards. The circumstance that the two victim girls did not know the accused and only on the basis of disclosures made by them the accused were traced and police went to the various places where the incidents took place need to be kept in mind while considering the defence of the aforesaid nature of the accused.

101) It is true that in the initial disclosure, PW-1 had not informed that she was raped by accused No.5 in the railway quarters of accused No.4. PW-2 had not specifically contended that accused No.4 had raped her in his quarters though she had indirectly contended that after making her to drink liquor, something was done against her in the railway quarters by accused No.4. There was contention that due to something which was

done against her (when she was under intoxication) she had suffered pains in the private part. While ascertaining the exact omissions in the evidence of the victim girl, narrations of the victim girl before police in entirety need to be considered and then the nature and extent of the omission needs to be ascertained by the Courts.

102) PW-2 has given evidence on the rape committed on her by accused Nos.4 to 7 in Shakti Bungalow. In that regard also some omission is brought on record in the previous statement about the actual act. In the previous statement, PW-2 had stated before police that she was feeling drowsy due to liquor but she was feeling that these persons were doing something against her and she could see that. What is said above, needs to be applied in respect of this omission also. In the subsequent disclosure made to police they had specifically contended that accused No.4 had raped PW-2 and accused No.5 had raped PW-1 in the railway quarters. PW-2 had disclosed that she and PW-1 both were raped in Shakti bungalow one by one by accused Nos.4 to 7 and it can be said that

to some extent there is inconsistency and even contradiction in the evidence of PW-2 in relation to such previous statement. PW-1 has deposed that as she was observing menstruation period and that disclosed by her to the accused, she was not raped in Shakti Bungalow. While considering such inconsistencies, omissions and contradictions the evidence as a whole needs to be considered and the evidence as a whole shows that they had named accused Nos.4 to 7 as the persons who had exploited the situation, who had raped them at two places.

103) In the statements recorded under section 164, Cr.P.C. of PW-2 there are some omissions and also inconsistencies. If the evidence of PW-2 is compared with the disclosures made to Judicial Magistrate on 29-7-1994 it can be said that in the statement dated 29-7-1994 these witnesses did not disclose the incidents of Shakti Bungalow. Necessary observations in respect of this omissions are already made by this Court.

104) There is corroboration of medical evidence given by Dr. Jaishri (PW-14) to the versions of PW-1 and PW-2. PW-2 had recent tear of hymen. There were other signs showing that there was sexual intercourse with these two minor girls. Dr. Jaishri was extensively cross-examined by the defence counsel on the opinion given by her on the basis of her observations but she stood to the test of the cross-examination. PW-1 was examined on 8-7-1994 when PW-2 was examined on 7-7-1994. The last incident as against PW-1 took place in the railway quarters on 5-7-1994.

105) Dr. Jaishri (PW-14) has given evidence that she found blood stains on the clothes and genital of PW-2. Such things were there as from the railway quarters itself on 7-7-1994 PW-2 was picked up and she was referred by police for medical examination. PW-14 Jaishri noticed bleeding through cervical OS. On PV examination, speculum tenderness and vagina admitted one finger with pains. The record of the examination of PW-2 is at Exhibit 79 and it is consistent with the oral evidence of the doctor.

106) Dr. Jaishri (PW-14) has given evidence that she noticed posterior fourchette congested and redness and she noticed that hymen was congested. She found that vagina was admitting one finger with minimum pains, bleeding through cervical was present. The record of the examination is at Exhibit 79 and it is consistent with the oral evidence.

107) Many persons had raped these two victim girls. Though it is possible for the accused from the present case to say that these two victim girls were raped already in other incidents which had already taken place and so the medical evidence cannot be used for the purpose of corroboration in the present matter, that proposition could not have been accepted by the trial Court. These persons exploited the situation in which PW-1 and PW-2 had found themselves and there are specific allegations against the accused from the present matter. As the acts against PW-2 were continued till 3.0 a.m. of 7-7-1994, there were aforesaid signs of rape. Only due to the period expired, living spermatozoa could not be noticed by the doctor.

This Court has no hesitation to hold that the medical evidence gives corroboration to the ocular version of PW-1 and PW-2.

108) While considering the challenge to the prosecution evidence on the ground of delay caused in giving F.I.R. and on that ground it is very difficult to ascertain as to which was the first statement given in respect of the incident by PW 2, this Court holds that whatever is said in respect of approach and conduct of PW-1 and PW-2 already is applicable as explanation to the delay caused in making the disclosure. To add few more circumstances it can be said that these girls were new in the city and they must have been shocked due to the behavior of the accused persons with them and the things which were done to them by many persons who included some influential persons and some persons holding posts in Government departments. Further, PW-1 has given specific evidence that she did not want to disclose the incident out of fear to anybody including to her mother. They had left the shelter of their guardians without

informing anything to anybody and they must have guilty feeling that they were responsible for whatever had happened to them. It can be said that the first disclosure of PW-2 was made only due to the inquiry made by police specifically with her on 7-7-1994. If police had not intervened, the girls would not have even approached police on their own. Due to these circumstances, this Court holds that not much can be made out due to delay caused in disclosing the incidents to police. In such cases due to delay caused in making disclosures, the Court can scrutinize the evidence minutely but only on that ground the Court cannot discard the substantive evidence.

109) In respect of the challenge to the evidence given on T.I. parade it can be said that there is substance in the contentions that there was no strict compliance of the guidelines given in Criminal Manual in paragraph 16 of Chapter I by this Court. Number of dummies used by Jadhav at the time of conducting T.I. parade were less than the number expected in the guidelines. There is no record to support the evidence of Jadhav that the dummy

persons had appearance which was similar to the accused persons. However, the evidence of Jadhav shows that he was satisfied about the identification of the accused persons made by the two victim girls during T.I. parade.

110) Accused No.4 was identified by PW-1 though as associate. PW-2 identified all the remaining accused in T.I. parade. Though accused No.5 was not identified by PW-1, he is identified by PW-2 and there is no reason to discard the evidence of T.I. parade given as against accused No.5 by PW-2. These two girls were together. There is possibility that PW-1 was misled at the time of identification as, according to her, she was asked to identify the associate and so she identified accused No.4. Evidence of PW-1 shows that accused No.4 had not raped her. Thus, the evidence of PW-2 on identification given as against accused No.5 can be used in the present matter.

111) The trial Court has considered the CA reports in respect of incriminating articles recovered during investigation by police. Different police officers had taken

over different articles. The beds, the carpets were recovered from the lodge, from the railway quarters of accused No.4 and also on the basis of statement given by accused No.6. Some stains of blood were found on those articles as per the CA reports. Similarly, some stains of blood were found on the clothes of some accused persons. Accused Nos.6 and 7 came to be arrested after many days though accused Nos.4 and 5 were arrested immediately. Due to the circumstances of the present matter even if this circumstantial evidence is ignored, there is more than sufficient evidence against accused Nos.4 to 7 to hold them guilty for the offences for which they were charged and tried.

112) The prosecution has proved that both the victim girls had not crossed the age of 16 years at the relevant time. As per the old provision of section 375 IPC the age for defence of consent which could have been considered was 16 years. The learned counsel for the appellants have placed reliance on some observations made by the Apex Court in the case of **S. Varadrajan v. State of Madras**,

reported as **AIR 1965 SC 942**. The observations were made after interpreting the term "taking" used in section 361 of IPC. When there is a case of rape, the Court is not expected to consider the defence of consent when the age of the prosecutrix is below 16 years. The accused cannot take defence that he was under impression that the prosecutrix had crossed 16 years of age. Whenever such incidents take place, Courts need to adhere strictly to the provisions of law and the Court needs to go with the presumption that it was up to the accused to take decision and if he takes the risk, he should be ready to face the penalty. Thus the defence of consent is not available to any of the accused from the present appeals. The tenor of the cross-examination made by learned counsels of the accused show that indirectly it was suggested that the prosecutrix was the consenting party. It was also suggested that the prosecutrix did not resist or did not raise hue and cry when the offence was taking place. It is already observed that the accused persons were not known to both PW-1 and PW-2 though by referring to previous statement of PW-2 the defence tried to show that

probably PW-1 had initial talk with accused No.4 before going to his railway quarters. The circumstance that PW-1 had disclosed that she had girl friend at that place or probability that she knew accused No.4 cannot make difference in the present matter. This is because the first disclosure about the incident was made by PW-2 and not by PW-1. Admittedly PW-2 was not acquainted with any of the accused and it is due to the information supplied by her the police traced accused persons. There was no reason for PW-1 and PW-2 to falsely implicate accused Nos.4 to 7. These circumstances show that there is ring of truth in the versions given by PW-1 and PW-2. Further, the evidence of the investigating officer does not show that at any time they treated PW-1 as an accused person. The evidence given by her is already discussed and it shows that she was also raped. Thus, there was no question of giving of consent by PW-1 and PW-2.

113) Some argument was advanced by the counsels for the accused on the circumstance that Sham Agrawal, a person from Parbhani who is relative of PW-1 was not

traced. This lacunae is not that material as tracing of said Agrawal would not have made difference in the present matter. Even if it is presumed that the girls had left the shelter of their guardians on their own, they had no such relative in Parbhani, that cannot make difference in the case of the prosecution. The fact remains that the accused persons exploited the situation in which PW-1 and PW-2 found themselves in Parbhani.

114) The learned Senior Counsel for the accused placed reliance on some observations made by Apex Court in the case reported as **(2003) 1 SCC 240 (Sarwan Singh v. State of Punjab)**. While discussing the provision of section 9 of the Evidence Act, the requirement of test identification in a case when the accused are not known to the witnesses, the Apex Court has laid down that identification of the accused in such a case first time in Court may not become admissible and in such case the Court may expect corroboration of evidence of T.I. parade. However, the Apex Court has not laid down a rule that in each and every case there should be corroborative

evidence of T.I. parade. In para 16 of this case the Apex Court has quoted some observations made by the Apex Court in the case of **Budhsen v. State of U.P. reported as (1970) 2 SCC 128** and the observations are as under :

"7. . . . The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bona fides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in court. Identification proceedings in their legal effect amount simply to this: that certain persons are brought to jail or some other place and make statements either express or implied that certain individuals whom they point out are persons whom they recognise as having been concerned in the crime. They do not constitute substantive evidence. These parades are essentially governed by Section 162 of the Criminal Procedure Code."

Thus the purpose of T.I. parade is given by the Apex Court. There is no rule of law showing that if the guidelines given for T.I. parade are not followed strictly, the evidence of T.I. parade is not admissible. This Court holds that in the present matter also the evidence of T.I. parade needs to be considered as a piece of corroborative evidence. Further it is a case of rape where the victim girls had opportunity to observe the accused closely and due to this circumstance what can be said in other cases like case of murder etc. cannot be said in a case of rape.

115) The learned Senior Counsel for the accused persons placed reliance on a case reported as **AIR 1957 SC 614(1) (Vadivelu Thevar v. The State of Madras)** on the point of appreciation of evidence. Some more cases were cited like **(2007) 2 SCC 170 (Ramdas v. State of Maharashtra)**. At para 13 of the first case following observations are made by the Hon'ble Apex Court :

"13. The first question which the court has to consider in a case like this, is whether the accused has been proved, to the satisfaction of the court, to have committed the crime. If the court is convinced about the truth of the prosecution story, conviction

has to follow. The question of sentence has to be determined, not with reference to the volume or character of the evidence adduced by the prosecution in support of the prosecution case. . . . "

In the second case the Apex Court has considered the defences like delay caused in filing F.I.R. and also the circumstance where there is the sole testimony of the prosecutrix. It is observed by the Apex Court that delay has to be considered in the background of the facts and circumstances of each case and it is a matter of appreciation of evidence by the Court. It is further laid down that conviction on the basis of sole testimony of the prosecutrix is sustainable where the Court is convinced about the truthfulness of the prosecutrix and where there is no circumstance which casts a shadow of doubt over her veracity. There cannot be dispute over these propositions. It is further laid down that, however, similar the circumstances, facts of one case cannot be used as a precedent to determine the conclusion on the facts in other. There cannot be dispute over this proposition also.

116) The learned Additional Public Prosecutor has placed reliance on the case reported as **2010 ALL MR (Cri) 3326 (S.C.) (Vijay @ Chinee vs. State of M.P.)**. In this case, the Apex Court has laid down that the evidence under section 3 of the Evidence Act of a witness needs to be appreciated after considering it as a whole. Minor discrepancies on trivial matters, which do not affect the core of the prosecution case, should not be taken into consideration and they cannot form grounds to reject the evidence as a whole. There cannot be dispute over this proposition also. The Apex Court has further laid down that the circumstance of non resistance on the part of the prosecutrix because of fear and conduct of the prosecutrix cannot be held to be unnatural and that conduct would not amount to consent. The circumstances that the prosecutrix did not know the accused prior to the incident and she had no reason to enrobe the accused falsely need to be kept in mind and the circumstances that the evidence on the places where the incidents occurred is convincing also needs to be kept in mind by the Court in such cases at the time of appreciation of the evidence of

the prosecutrix. This Court has considered the law laid down in the cases cited supra while appreciating the evidence of the two victim girls and this Court has come to the conclusion that there is no reason to disbelieve the two victim girls.

117) The learned Senior Counsel for the accused persons placed reliance on a landmark case reported as **AIR 1959 SC 1012 (Tahsildar Sing v. State of U.P.)**. The learned Senior Counsel submitted that due to variations in the versions given to the police from time to time and the omissions and contradictions proved by the defence in relation to the previous statements, the two victim girls could not have been believed. The Apex Court has made observations in this regard at paragraphs 11 and 12 and they are as under.

"**11.** It is, therefore, seen that the object of the legislature throughout has been to exclude the statement of a witness made before the police during the investigation from being made use of at the trial for any purpose, and the amendments made from time to time were only intended to make clear the said object and to dispel the cloud cast on such intention. The Act of 1898 for the first time introduced an exception enabling the said statement reduced to writing to be used for

impeaching the credit of the witness in the manner provided by the Evidence Act. As the phraseology of the exception lent scope to defeat the purpose of the legislature, by the Amendment Act of 1923, the section was redrafted defining the limits of the exception with precision so as to confine it only to contradict the witness in the manner provided under section 145 of the Evidence Act. If one could guess the intention of the legislature in framing the section in the manner it did in 1923, it would be apparent that it was to protect the accused against the user of the statements of witnesses made before the police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. Both the section and the proviso intended to serve primarily the same purpose i.e. the interest of the accused.

12. Braund J., in *Emperor v. Aftab Mohd. Khan*, AIR 1940 All 291, gave the purpose of S.162 thus at p.299:

"As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started. are prepared to tell untruths:.

A division Bench of the Nagpur High Court in *Baliram Tikaram v. Emperor*, AIR 1945 Nag 1, expressed a similar idea in regard to the object underlying the section, at p.5, thus :

"The object of the section is to protect the

accused both against over-zealous police officers and untruthful witnesses.:

The Judicial Committee in *Pakala Narayana Swami v. Emperor*, 66 Ind App. 66 : (AIR 1949 PC 47), found another object underlying the section when they said at p.78 (of 1st App) : (at p.51 of AIR):

"If one had to guess at the intention of the Legislature in framing a section in the words used, one would suppose that they had in mind to encourage the free disclosure of information or to protect the person making the statement from a supposed unreality of police testimony as to alleged statements or both."

Section 162 with its proviso, if construed in a manner which we will indicate at the late stage of the judgment, dearly achieves the said objects."

118) There is no dispute over the propositions made in the aforesaid case by the Apex Court. When the investigating agency does not act competently or there are other reasons and the Court finds that the substantive evidence given by the victim in a rape case, is in respect of many incidents and some of the incidents were not recorded in the first recorded disclosure which was either recorded under section 154 or section 162 of the Cr.P.C., it becomes the duty of the Court to consider all surrounding circumstances. The circumstance that the disclosures

were made many times to many police officers needs to be kept in mind. The circumstance that it is the case of gang rape and the prosecutrix must have been in shock needs to be kept in mind by the Court. The circumstance that in respect of every incident of rape separate registration of the crime is possible under section 154 of the Cr.P.C. needs to be kept in mind and crime can be registered in respect of every disclosure made in respect of cognizable offence. When two or more victim girls are involved in a case like the present one, this circumstance also needs to be kept in mind by the Court. It is practically not possible that two victim girls will give similar versions on all the incidents when their statements are recorded by different police officers. In view of the provision of Section 154 Cr.P.C., the so called omissions or contradictions need to be ascertained in relation to the first disclosure made in respect of that incident only by the Court. If the Court is satisfied that the incident which does not find place in the first disclosure, was disclosed in the subsequent statement and the Court is convinced that the other incident which was disclosed in the subsequent disclosure

did take place, the Court cannot hold that the omission of such incident in the first disclosure is fatal and the substantive evidence in respect of that incident needs to be discarded. What is said about Section 154 Cr.P.C. can be said in respect of Section 162 of the Cr.P.C. also and when the Court is satisfied that the incident disclosed in the subsequent statement recorded under section 162 of Cr.P.C. did take place, not much can be made out from the circumstance that the first disclosure which was recorded either under section 154 or 162 Cr.P.C., such incident was not disclosed. The procedure laid down for proving contradictions and omissions with reference to section 145 of the Evidence Act as given by the Hon'ble Apex Court in the case of Tahsildar Sing (cited supra) needs to be followed in respect of each incident and in relation to the disclosure made about that incident first time before the police or even under section 164 of the Cr.P.C. If that is not done the purpose behind the provisions of Sections 154 and 164 of Cr.P.C. will be defeated. If that is done, the purpose of provision of section 162 of the Cr.P.C. mentioned above will get served.

119) In the case reported as **(1999)2 SCC 126 (Paras Yadav v. State of Bihar)** the Apex Court has discussed the effect of such omissions in the F.I.R. due to investigating agency and the procedure which is required to be followed by the Court. The Apex Court used the observations made by it in the past in the case of *Ram Bihari Yadav v. State of Bihar* reported as **(1998) 4 SCC 517**. The observations are as under:

"In such cases, the story of the prosecution will have to be examined *dehors* such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice."

The law laid down by the Apex Court in this reported case is considered by this Court while making the aforesaid observations.

120) The learned Senior Counsel for the accused persons placed reliance on another case reported as **AIR 1960 SC 490(1) (State of Delhi v. Shri Ram Lohia)**. This

case is on the point of use of statement recorded under section 164 of the Cr.P.C. It is laid down that the contents of such statement cannot be used as substantive evidence. There is no dispute over this proposition. In the case reported as **AIR 2013 SC 651 (R. Shaji v. State of Kerala)** the Apex Court has made following observations with regard to duty of the Magistrate who is recording statement under section 164 of the Cr.P.C. and the observations are as under :-

"In a case where the Magistrate has to perform the duty of recording a statement under S.164 Cr.P.C., he is under an obligation to elicit all informations which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under S.164 Cr.P.C. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

So far as the statement of witnesses recorded under S.164 is concerned, the object is twofold; in the first place, to deter the witness from changing his stand by denying the contents of the his previously recorded statement, and secondly, to tide over immunity from prosecution by the witness under S.164. Statement recorded under S.164 Cr.P.C., can be relied upon for the purpose of corroboration of statements made by witnesses in the Committal Court or even to contradict the same."

In view of the aforesaid observations and the object behind provision of section 164 Cr.P.C. the circumstance that some incidents were not mentioned by the victim girl in the statement recorded under section 164 Cr.P.C. cannot make much difference and that circumstance cannot give benefit to the accused if the Court is satisfied that the other incidents which were not mentioned in the statement under section 164 Cr.P.C. did take place.

121) The learned Senior Counsel for the accused placed reliance on another case reported as **(2007) 3 SCC 755 (State of Goa v. Sanjay Thakran)** and it is on the point of evidentiary value of the test identification parade. The procedure which needs to be followed for conducting test identification parade is also discussed. In that case, the Courts below had declined to place reliance on the evidence of test identification parade due to the circumstances of that case. The Apex Court has held that the Courts below had not committed error in rejecting that evidence. That was done in view of the facts and circumstances of that case. Husband and wife were

involved as offenders and they were placed in the same test identification parade with six dummy for each. The Court had held that this was contrary to the provision of paragraph 16(2)(h) of the Criminal Manual of Bombay High Court and the Courts below had rightly rejected this evidence. It was held that the officers who conducted the test identification parade did not act fairly. It was held that it was necessary in that case to hold two separate test identification parades by using different persons for each parade. It was case filed for offences punishable under sections 302, 392, 120-B, 34 etc. of Indian Penal Code.

122) On the point of evidentiary value of the test identification parade, the learned APP had placed reliance on the observations made by the Apex Court in the case reported as **(2000) 1 SCC 471 (State of Maharashtra v. Suresh)**. The Apex Court has made observation as under :

"Identification parades are not primarily meant for the court. They are meant for investigation purposes. the object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection

with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. So the officer conducting the test identification parade should ensure that the said object of the parade is achieved. If he permits dilution of the modality to be followed in a parade, he should see to it that such relaxation would not impair the purpose for which the parade is held. The safeguards adopted in this case by the Executive Magistrate were quite sufficient for ensuring that the parade was conducted in a reasonably foolproof manner."

The observations made by the Apex Court in the case cited supra show that facts and circumstances of each and every criminal case are always different and in one case in view of the facts of that case the Court may be inclined to hold that the evidence is reliable and it can be used as a corroborative piece of evidence but in other case the Court may not come to that conclusion. Further, peculiar circumstances in the case of rape or gang rape need to be kept in mind by the Court at the time of appreciation of such evidence. In murder case the witnesses may not have that opportunity to see the assailants from close distance or for longtime. When there is rape or gang rape, the victim girl had always the opportunity to see the accused from close distance and it is very difficult for

such victim girl to forget such person. In view of the object behind the test identification parade the satisfaction of the officer who conducted test identification parade about capacity of the witness to identify the offender is important. Further at the end, on the basis of the substantive evidence of such witness and other evidence which can be used as check and counter check the Court decides the matter. Thus, not much can be made out of the irregularity pointed out in the procedure followed in the present matter for conducting the test identification parades.

123) The learned counsel for the accused persons placed reliance on two reported cases viz. **(2006) 10 SCC 92 (Sadashiv Ramrao Hadbe v. State of Maharashtra)** and **1970 (3) SCC 21 (Ram Murti v. State of Haryana)**. On the basis of the observations made in these two cases it was submitted that the medical evidence does not corroborate the versions of the victim girls and so the evidence of the victim girls needs to be rejected. The proposition in respect of *ratio decidendi* in criminal case made by the Apex Court is already quoted. In each and every case it is

upto the Court to decide as to whether the medical evidence gives corroboration or it is inconsistent with the ocular versions of the victim girls. This Court has considered all the aspects in respect of the medical evidence in relation to the facts of the present mater and this Court has formed opinion that the medical evidence needs to be accepted as the piece of corroborative evidence.

124) The learned Senior counsel for the accused placed reliance on some observations made by this Court in the case reported as **1998(2) Mh.L.J. 64 (Milind Ambadas v. State of Maharashtra)**. This Court had occasion to discuss the provision of section 376(2)(g) of Indian Penal Code. This Court has mentioned the necessary ingredients for proving this offence like common intention, concerted meeting of mind of more than one person. There is no dispute over this proposition made by this Court in this case also. The provision of section 376(2)(g) which was applicable at the relevant time is as under:

"376(2) Whoever,

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.-- Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.-- "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3.-- "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation."

On this point the latest case of the Apex Court decided in the case reported as **AIR 2017 SC 2161 (Mukesh v. State for NCT of Delhi)** can be quoted. The Apex Court has laid down that if there is evidence that more than one accused were involved in the offence and they were together having common intention as mentioned in the aforesaid provision, all the accused can be held guilty even if only

one or more of them had committed the rape. This ingredient is considered by the trial Court also. In view of this position of law, not much can be made out due to so called omissions in the previous disclosure of PW 1 in relation to the incidents of railway quarters of accused No.4. In this landmark case the Apex Court has laid down that dock identification by the prosecutrix can be accepted as reliable identification in the case of gang rape.

125) The discussion of the facts and circumstances of the present matter and the position of law discussed above, show that the trial Court has not committed any error in holding the present accused person guilty of the offence of gang rape and also of the other offences. This Court sees no reason to interfere in the findings of the trial Court.

126) The learned Additional Public Prosecutor argued for enhancement of the sentence. Relevant provision is already quoted. Relevant facts and

circumstances of the present matter are quoted and they show that there symptoms of rape on the private part but no other injuries were found on the person of PW-1 and PW-2. They have given evidence that they were supplied with food. This Court has already observed that the accused persons exploited the situations in which the PW-1 and PW-2 had put themselves. The evidence does not show that much violence was done like assaulting the PW-1 and PW-2. On the other hand, PW-1 admitted that in Shakti Bungalow when she disclosed that she was observing menstruation accused Nos.4 to 7 did not rape her. Due to these circumstances this Court holds that it not a case where penalty of life imprisonment is warranted. This Court holds that the penalty given by the trial Court is just and proper and interference on that point is also not possible. In the result, all the appeals stand dismissed. The appellants-accused to surrender to bail bonds for undergoing sentence.

Sd/-
(S.M. GAVHANE, J.)

Sd/-
(T.V. NALAWADE, J.)

127) Learned Advocate Shri. H.F. Pawar was appointed for the appellant in Criminal Appeal No.216 of 1999. His fees is quantified at Rs.5000/- (Rupees Five Thousand only).

128) Learned Senior Counsel requests for giving time to surrender. This being appellate Court, giving time to surrender would amount to give stay to the substantive sentence. So, the prayer is rejected.

Sd/-
(S.M. GAVHANE, J.)

Sd/-
(T.V. NALAWADE, J.)