

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

Criminal Appeal No. 153 of 1999

* Kalyan s/o Bansidharrao Renge,
Age 33 years,
Occupation : Agriculture,
R/o Parbhani,
Taluka & District Parbhani. **.. Appellant.**

Versus

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

Shri. V.D. Salunke, Advocate, for appellant.

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

With

Criminal Appeal No. 157 of 1999

* Rameshwar s/o Baburao Kanade,
Age 29 years,
Occupation : Agriculture,
R/o Parbhani,
Taluka & District Parbhani. **.. Appellant.**

Versus

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

Shri. Shirish Gupte, Senior Counsel, instructed by Shri.
M.P. Kale, Advocate, for appellant.

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

With**Criminal Appeal No. 281 of 1999**

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

Versus

- 1) Suryakant s/o Ganpatrao Dhage
Age 29 years,
Occupation: Business,
R/o Krantinagar, Parbhani,
Taluka & Dist Parbhani.
- 2) Arun s/o Shahurao Mapari,
Age 20 years, Occupation: Education,
R/o Parbhani,
Taluka & District Parbhani.

- 3) Suresh s/o Bapurao Kopre
Age 27 years,
Occupation: Labour
R/o Krantinagar Parbhani,
Taluka & District Parbhani.
- 4) Rameshwar s/o Baburao Kanade
Age 25 years,
Occupation: Agriculture
R/o Parsawat Nagar, Parbhani
Taluka & District Parbhani.
- 5) Tukaram s/o Ramji Kharat,
Age 25 years,
Occupation: Education,
R/o Mahodi, Taluka Jintur,
District Parbhani.
- 6) Nitin s/o Limbajirao Dudhgaonkar,
Age 29 years,
Occupation: Agriculture
R/o Khaja colony, Parbhani,
Taluka & District Parbhani.
- 7) Kalyan s/o Bansidhar Renge,
Age 33 years,
Occupation: Agriculture,
R/o Nawa Mondha, Parbhani,
Taluka and District Parbhani.
- 8) Dnyanoba s/o Namdeo Dharasurkar,
Age 34 years,
Occupation: Business,
R/o Komti Galli, Parbhani,
Taluka and District Parbhani.
- 9) Machinder s/o Vithalrao Ghadge,
Age 29 years,
Occupation Labour,
R/o Bhimnagar, Parbhani,
Taluka and District Parbhani.

10) Sangeeta d/o Rameshwar Agrawal (Mor)
Age Major, Occupation: Nil
R/o Partur, District Jalna.

11) Panchasheela @ Panchphula
D/o. Wamanrao Jayebhaye
Age Major, Occupation: Nil,
R/o Partur, Dist. Jalna.

.. Respondents.

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

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

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

Appeal abated as against respondent Nos.1,2,3,6,8 & 9.

**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 these three appeals are filed against the judgment and order of Sessions Case No.121/1994 which was pending in the Court of the learned Sessions Judge, Parbhani. The learned Sessions Judge Parbhani has convicted and sentenced the accused Nos. 1 to 4 and 6

and 7 for offence of gang rape punishable under section 376(2)(g) of Indian Penal Code. Accused Nos.1 to 4 are convicted and sentenced for offence punishable under section 366 read with section 34 of Indian Penal Code. The trial Court has acquitted accused Nos.5, accused No.8 and accused No.9. Criminal Appeal No.153/1999 is filed by the original accused No.7 Kalyan Renge. Criminal Appeal No.157/1999 is filed by Rameshwar Kanade, accused No.4. Criminal Appeal No. 281/1999 is filed by the State. The State has filed the appeal as the trial Court has given sentence of rigorous imprisonment of 10 years only and the State wants to see that the convicted accused are sentenced with life imprisonment. 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 other incidents, Sessions Case No.139/1994 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 mentioned in both these cases need to be considered for better appreciation of the facts and circumstances.

4) The two victim girls, PW-4 and PW-5 were friends. They were residents of Partur, District Jalna. At the relevant time they had not crossed age of 16 years. Mother of PW-4 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. Parents of PW-5, other prosecutrix, hail from Hiwarkheda, Tahsil Sindhkhed-Raja, District Buldhana. The parents of PW-5 are very poor and as they could not afford to maintain PW-5, they had kept PW-5 in the house of sister of mother of PW-5 in Partur. PW-5 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-5 had some dispute with her maternal aunt. As she was starving she met PW-4 and expressed that she wanted to work to earn for her livelihood. PW-4 has a relative by name Sham Agrawal and he was running a shop in Parbhani city, District Parbhani. PW-4 expressed that Sham Agrawal can help them in giving job in Parbhani. Due to these circumstances on 3-7-1994, PW-4 and PW-5 left Partur for Parbhani without informing anything to anybody from Partur.

6) PW-4 and PW-5 first walked up to Raipur where there is a field of relative of PW-4. Persons working in the field knew PW-4 and they gave food and shelter to PW-4 and PW-5. PW-4 and PW-5 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-4 and PW-5 met Raju and Abhay, the boys who were known to PW-5. These boys were also proceeding to Parbhani and they were doing some course in Parbhani. During talk, PW-4 and PW-5 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-4 and PW-5 and the two boys alighted at Parbhani from train. As the boys were advising the girls to return to 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 accused No.1-Suryakant Dhage, accused No.2-Arun Mapari and accused No.3-Suresh Kopre 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 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 in the theatre, the aforesaid two boys viz Raju and Abhay left the theatre.

9) Accused Nos.1 to 3 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 took the girls to a banana garden situated at the outskirts of Parbhani city. In the banana garden, accused No.1-Suryakant took PW-4 to one side and then he committed rape on her. Similarly, accused Nos.2 and 3 took PW-5 to other side and there they committed rape on PW-5. After that accused No.1 to 3 took PW-4 and PW-5 towards the 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-4 and PW-5. Here accused No.1 committed rape on PW-5 and accused Nos.2 and 3 committed rape on PW-4. PW-4 and PW-5 could not resist as threats were given to them.

10) From the side of the brook accused No.1 to 3 took PW-4 and PW-5 towards the side of road. There they met accused No.4 namely Rameshwar Kanade. From there, accused Nos.1 to 4 took PW-4 and PW-5 to a lodge of Parbhani by name Visawa Lodge. They reached there at about 10.00 p.m. There accused Nos.1 to 4 informed to PW-4 and PW-5 that two Sahibs, accused Nos.6 and 7 were to come to the lodge and they would help PW-4 and PW-5 for getting work. After some time accused Nos.6 and 7 namely Nitin Dudhgaonkar and Kalyan Renge came to the lodge. Under threat, accused No.6 committed rape on PW-5 and accused No.7 committed rape on PW-4. They gave threats not to disclose the incident to anybody. Accused Nos.8 and 9 were managing the lodge. They kept watch and saw to it that there was no interference, there was no help to the victim girls. When accused Nos.6 and 7 left the lodge, accused Nos.1 to 4 took PW-4 and PW-5 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 committed rape on PW-5 and accused Nos.3 and 4 committed rape on PW-4. 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 was present. Tukaram gave threats to PW-4 and PW-5 to facilitate rape which accused No.1 wanted to commit. Accused No.1 then committed rape on PW-5 and accused No.5 committed rape on PW-4.

12) From the last place accused No.1 took the two victim girls to Parbhani Railway Station and there he left their company. While leaving he again gave threats to them not to disclose the incidents 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 nine accused persons. 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 left PW-4 and PW-5 at Parbhani Railway Station in the

early hours of 5-7-1994.

14) In the early hours of 5-7-1994 when PW-4 and PW-5 were sitting on the stair case of the bridge situated near the platform of the railway station, accused No.1 - Abbas Baig of Sessions Case No.139/1994, who was working as coolie at the railway station, approached PW-4 and PW-5. Under the pretext that he would help PW-4 and PW-5 he took these two girls to retiring room situated on railway platform. Abbas Baig then called accused No.2 Ashok of Sessions Case No.139/1994, who was working as Police Head Constable and accused No.3 Tabuka of Sessions Case No.139/1994, 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 of Sessions Case No.139/1994 and the other person took PW-4 to one room and there they raped her. Accused No.1 Abbas and accused No.2 Ashok, both of Sessions Case No.139/1994, raped PW-5. 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 station and from there in search of water they went towards railway quarters situated by the side of the railway station. There, accused No.4 Bhansing Bunde of Sessions Case No.139/1994, who was occupying 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 of Sessions Case No.139/1994 was already present and one young boy aged about 12 years was also present. Accused No.4 of Sessions Case No.139/1994 supplied water to the victim girls and then he left the railway quarters by informing accused No.5 of Sessions Case No.139/1994 that he would return after some time. While leaving, he took care to see that the railway quarters was locked from outside and the key was given to accused No.5 of Sessions Case No.139 of 1994.

15) At about 2.30 p.m. of 5-7-1994 accused No.4 of Sessions Case No.139/1994 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 of Sessions Case No.139/1994 took PW-4 to one room and there he raped her. Accused No.4 of Sessions Case No.139/1994 raped PW-5. In this railway quarters, a lace of the *Salwar* which PW-5 was wearing got broken and so the lace of the shoe of accused No.4 of Sessions Case No.139/1994 was used for the *Salwar* by PW-5.

16) Accused Nos.4 and 5 of Sessions Case No.139/1994 virtually used PW-4 and PW-5 upto 4.00 p.m. of 5-7-1994 and then they called accused No.6 Munna @ Ravindra Singh and accused No.7 Mahesh of Sessions Case No.139/1994 to the railway quarters. They were friends of accused Nos.4 and 5. From the railway quarters PW-4 and PW-5 were taken by accused Nos.4 and 5 of Sessions Case No.139/1994 in an auto-rickshaw to other place, Shakti Bungalow from Parbhani. Accused No.6 and 7 had come to railway quarters on their motor-cycle and they followed to that place on their motor-cycle. In Shakti Bungalow accused No.6 Munna @ Ravindra Singh of Sessions Case No.139/1994 raped PW-5. After that accused No.4 of Sessions Case No.139/1994 raped PW-5.

After that accused No.7 Mahesh of Sessions Case No.139/1994 raped PW-5. Accused No.5 of Sessions Case No. 139/1994 also raped PW-5. This incident was going on upto early hours of 6-7-1994. PW-4 somehow saved herself 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-4 woke up from sleep, she noticed that PW-5 was not there. Accused No.5 Rameshwar from Sessions Case No.139/1994 was present in Shakti Bungalow and he informed that PW-5 had already left the building. PW-4 searched for some time to find PW-4 and then she went to Purna Railway Station by a bus as she intended to return to home by railway. At Purna, PW-4 met a lady police constable and the said lady constable took PW-4 by train to Parbhani Railway Station. At Parbhani Railway Station PW-4 pointed PW-5 to the lady constable and due to that the lady constable took PW-5 to Railway Police Chowki and PW-5 was asked to stay there.

18) The lady police constable Giribai reached PW-4 to Partur by train. After returning from Partur, Giribai took PW-5 to Purna Railway Police Station. There, the FIR of PW-5 came to be recorded and the crime at CR No.29/1994 came to be registered on 7-7-1994. PW-5 was taken to Parbhani for medical examination on 7-7-1994 and she was medically examined. During course of investigation her clothes (*Salwar* and *Kurta*) were taken over.

19) On 8-7-1994 PW-5 was taken to New Mondha Police Station Parbhani where another FIR came to be recorded and another crime came to be registered. On 7-7-1994 police from Kotwali Police Station Parbhani went to Partur and they brought PW-4 to Kotwali Police Station. There, the report given by PW-4 came to be recorded. PW-4 was then sent to New Mondha Police Station and in the crime registered there, her statement came to be recorded. PW-4 was also sent for medical examination and she was medically examined on 7-7-1994.

20) During course of investigation statements of PW-4 and PW-5 came to be recorded under section 164 of Criminal Procedure Code. The two victim girls 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 were sent to CA office along with blood samples of the victim girls and vaginal swabs collected by medical officer. Charge sheet came to be filed in Crime No.29/1994 registered in Purna Railway Police Station and Crime No.82/1994 registered in New Mondha Police station Parbhani and that case is Sessions Case No.139/1994.

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 charge sheet came to be filed and the case came to be registered as Sessions Case No.121/1994.

22) Charge was framed in respect of different incidents against different accused by the trial Court. Accused Nos.1 to 3 had taken the victim girls from Talreja Talkies to banana garden with the intention to rape them and so against accused Nos.1 to 3 charge was framed for offence punishable under section 366 read with 34 of the Indian Penal Code. Near banana garden and near the brook known as Pingad-Gad-Nala these youngsters raped the two victim girls and so in respect of those two incidents of rape there was a separate charge for offence of gang rape against these three accused. As they had taken the girls to Visawa Lodge for helping accused Nos.6 and 7 to have sexual intercourse with the victim girls there was charge for the offence punishable under section 366-A read with section 34 of Indian Penal Code against accused Nos.1 to 3. In Visawa Lodge accused Nos.6 and 7 raped the two victim girls and there was common intention as per the case of the prosecution and so there was charge against each of them for offence of gang rape. From Visawa Lodge accused Nos.1 to 4 had taken the two victim girls to the campus of Shanti Niketan school and there they had raped the two victim girls and so for that

incident there was a separate charge for offence of gang rape against accused Nos.1 to 4. Against accused No.1 separate charge was framed for offence of kidnapping, for taking the victim girls to Munde Wada and there committing offence of rape with the help of accused No.5 and as there was a case that accused No.5 Tukaram had also raped one victim girl there was a charge for offence of gang rape against these two accused. The trial Court has acquitted accused Nos.1 and 5 in respect of the incident which took place in Munde Wada and that acquittal is not challenged.

23) PW-4, the first victim girl, has given evidence that on 4-7-1994 when they boarded a train at Osmanpur Railway Station for going to Parbhani, they met some persons who were acquainted either to PW-4 or to PW-5, the other victim girl. Two boys, one of whom was known to PW-5 met them in this train as per the versions given by both PW-4 and PW-5. They have given evidence that they disclosed to these boys (Raju and Abhay) that they were proceeding to Parbhani in search of job. PW-4 has given evidence that these boys advised to return to their house

by saying that Parbhani is bad place, (it was not safe for them). PW-4 has deposed that these two boys told that at 3.00 p.m. there was a train for Partur and they should return to Partur by that train from Parbhani. She has deposed that as there was time of more than three hours, to kill the time, they decided to see a movie in a theatre, Talreja Talkies. These two boys gave tea to them in a hotel. She has given evidence that with these two boys they went to Talreja Talkies to see movie. These two boys sat on one side of these two victim girls in the theatre. The evidence given by PW-5 on this incident is similar to the evidence given by PW-4.

24) PW-4 has given evidence that after some time the three boys came to them and they sat on their left side and they opened talk by asking as to from where they had come. PW-4 has given evidence that she disclosed that they had come to Parbhani and they wanted to see Sham Agrawal as they were in search of job. PW-4 has given evidence that these three boys (accused Nos.1 to 3) said to them that they were knowing Sham Agrawal and they would take them to the house of Sham Agrawal. These

three boys, accused Nos.1 to 3, are identified by PW-4 in the Court as the same boys. PW-4 has given evidence that when these boys were having talk with them, the first two boys who had come with them from the train left the theatre. PW-4 has given evidence that accused No.1 to 3 then took them out of the theatre and after calling auto-rickshaw they asked to them to board the auto-rickshaw. She has given evidence that due to aforesaid representation made by accused Nos.1 to 3, they boarded the auto-rickshaw.

25) Evidence given by PW-5 shows that she could not hear the conversation which was going on in between PW-4 and accused Nos.1 to 3. She has given evidence that these 3 boys had some talk with PW-4. She has given evidence that after some talk, the three boys took them out of the theatre. PW-5 has correctly identified accused Nos.1 to 3 in the Court as the same three boys by taking their names. She has given evidence that in the auto-rickshaw they were taken to the house of a friend of accused Nos.1 to 3. PW-5 has given evidence that there, meal was provided to them by these three boys and then

by saying that they would take them to the house of Sham Agrawal they again took them in one auto-rickshaw and they took them by the auto-rickshaw upto banana garden. Similar evidence is given by PW-4.

26) PW-4 has given evidence that in banana garden there was no house and the soil had become wet and slippery due to rain. She has given evidence that accused Nos.1 to 3 took them inside of the banana garden and then accused No.1 Suryakant took her to one side of the garden and there by making her to fall on the soil he raped her by using force. She has given evidence that accused Nos.2 and 3 Arun and Suresh took PW-5 to other side of the garden. She has given evidence that after some time when the incident was over, she was taken to the place where PW-5 was present and then PW-5 informed that accused No.2 and 3 had raped her. She has given evidence that she also told PW-4 that she was raped by accused No.1. PW-5 has given evidence that in the banana garden accused No.5 pointed a knife and *wagh-nakh* to her for giving her threats and after that she was raped one by one. Evidence of PW-5 is similar to the evidence

given by PW-4. Their evidence shows that this incident took place at 3.00 p.m. of 4-7-1994.

27) PW-4 has given evidence that from banana garden they were taken towards the side of one brook, nala, for washing the clothes and the body as due to aforesaid incident their clothes had become muddy. PW-4 has deposed that at this place accused No.2 and 3 took her to one side and accused No.1 took PW-5 to other side of the brook. She has deposed that at that place she was raped by accused Nos.2 and 3. She has described the incident of rape. She has deposed that after that PW-5 met her and she disclosed when she was asked to wash clothes and body, she was raped by accused No.1 Suryakant by giving threats to her and after showing a knife to her. PW-5 has given evidence that near the brook she was raped by accused No.1 and she had not given consent and after this incident she met PW-4 and disclosed about the incident. She has deposed that PW-4 also disclosed that she was raped by accused Nos.2 and 3.

28) PW-4 has given evidence that from the brook when they went towards the road for going to Parbhani, on the road one friend met to accused Nos.1 to 3 and he was accused No.4. Similar evidence is given by PW-5 and both these victim girls have identified accused No.4 in the Court. PW-5 has given evidence that after arrival of accused No.4 again threat was given to them of life and then they were taken to Parbhani. PW-4 has given evidence that in auto-rickshaw they were taken to Visawa Lodge of Parbhani and there they were taken to room No.16 of the lodge and at that time it was around 10.00 p.m. She has given evidence that in room No.16 there was one ante room and there was a cot. Similar evidence is given by PW-5.

29) Evidence of PW-4 shows that after taking them to the ante room accused Nos.1 to 4 said to them that their *Sahebs* would come there. PW-5 has given evidence that it was told that these *Sahebs* help the poor and needy persons so they should wait for the *Sahebs*. Both of the them have given evidence that accused Nos.1 to 4 remained there in room No.16 till arrived of the two

Sahebs.

30) PW-4 has described the two Sahebs by giving description of their appearance and their clothes. Accused Nos.6 and 7 are identified by PW-4 in the Court. PW-5 has also described these two persons and she identified accused Nos.6 and 7 in the Court.

31) PW-4 has given evidence that these accused Nos.6 and 7 had talk with them and they said that the two victim girls should allow them to do what was done with them by other persons (accused Nos1 to 3). PW-4 has given evidence that she said that they should not do such things with them as they were having pains due to wrong done by those boys. Similar evidence is given by PW-5 against accused Nos.6 and 7.

32) PW-5 has given evidence that accused Nos.6 and 7 did not pay heed to their request and accused No.6 took PW-5 to one room and accused No.7 gave threats to her and raped her. PW-5 has given evidence that accused No. 6 took her to other room and there he raped her and

that she had not consented to sexual intercourse. PW-4 has given evidence that when the incident of rape in Visawa Lodge was over, PW-5 came to her, she was weeping and she narrated the incident in which she was raped by accused No.6. PW-4 has given evidence that both these accused gave threats not to disclose the incident to anybody as they were from high society (high family). PW-4 has given evidence that when accused Nos.6 and 7 were committing the offence, accused Nos.1 to 4 were present in Visawa Lodge though in other room and accused Nos.8 and 9 (the staff of the lodge who are acquitted accused) were present in the vicinity and by remaining there they had helped accused Nos.6 and 7 for committing the crime. Both PW-4 and PW-5 have given evidence that after the incident was over they were taken through backside door, outside of the lodge by accused Nos.1 to 4.

33) PW-4 and PW-5 have given evidence that from Visawa Lodge in one auto-rickshaw accused Nos.1 to 4 took them away from the lodge and on the way they stopped for purchasing liquor bottle and then they were taken to campus of one school. They have described the

school building in their evidence.

34) PW-4 and PW-5 have given evidence that they were taken to the school and they were again raped. PW-4 has given evidence that in the said school accused No.1 Suryakant and accused No.2 Arun took PW-5 to one room and remaining two boys took her to other room and they were Suresh and Rameshwar. In the Court she has identified all the four accused. Similar evidence is given by PW-5. She has given evidence that accused Nos.1 and 2 raped her in the building of the school. PW-4 has given evidence that accused Nos.3 and 4 raped her in the building of the school. PW-4 has deposed that after the incident PW-5 narrated the incident of rape on her. PW-5 has given evidence that PW-4 also narrated the incident to her about rape on her by accused Nos.3 and 4. Both the victim girls have given evidence that accused No.1 remained with them and the remaining three accused left them there. Both the victim girls have given evidence that accused No.1 took them to railway station where they were left after giving threat of life to them. The evidence of PW-5 in respect of rape committed by accused No.1 on

her in one Wada after the incident of rape in the school need not be discussed as no conviction is given to accused No.1 in respect of that incident. Similarly, the evidence given as against accused No.5 on this incident need not be discussed.

35) The evidence given on subsequent incidents of rape is considered in Sessions Case No.139/1994. Other evidence on conduct however needs to be considered in view of nature of challenge to the evidence of PW-4 and PW-5.

36) PW-4 has given evidence that till 3.00 a.m. of 6-7-1994 they were virtually used for satisfying sexual lust by different persons. The evidence of PW-4 and PW-5 shows that they were tired due to the aforesaid incidents and they slept in Shakti Building till morning. PW-4 has given evidence that when she woke up, she noticed that PW-5 was not there. She has deposed that on inquiry with the accused they informed that PW-5 had already left that building and so she went to bus stand. She has deposed that she boarded a bus for Purna Railway Station and she

went to Purna. She has deposed that on Purna Railway Station one lady constable accosted her and on inquiry she gave her address from Partur. Her evidence shows that she did not disclose the incidents of rape to the lady constable. Her evidence shows that the said lady constable felt it proper to reach this girl to her residential place, Partur and so she took PW-4 in train towards Parbhani. PW-4 has given evidence that when she reached Parbhani Railway Station, she saw PW-5 sitting on the platform and she pointed PW-5 to the lady constable. Her evidence shows that the lady countable took steps like taking PW-5 to Police Chowki of Railway Station Parbhani and then the lady constable reached PW-4 to Partur on 6-7-1994. She has given evidence that she was frightened, she was not able to talk and so in Partur she took meal and went to bed. Her evidence shows that she did not narrate the incident to anybody including her mother as she was afraid that her mother will beat her and mother will drive her out of the house.

37) The evidence of PW-5 shows that after the incident of rape was over in Shakti Building, she was

sleeping in the building till morning of 6-7-1994 and when she woke up she noticed that PW-4 was not there. She has deposed that one person present in the building informed her that PW-4 had already left the building. She has deposed that she searched for PW-4 and then went to railway station as she intended to return to Partur. She has deposed that when she was waiting for train proceeding towards Parbhani, she noticed that in the same train PW-4 was travelling. She has deposed that a lady constable got down from the train and the lady constable took her to Railway Station Police Chowki and she was asked to sit there and wait for her. She has deposed that the lady constable went with PW-4 and she returned to railway police Chowki in the night time. This evidence of PW-4 and PW-5 is consistent with each other and it also shows that they did not disclose about the incident till the night time of 6-7-1994.

38) PW-5 has given evidence that she was taken to Railway Police Station Purna and there PSI Khan made inquiry with her. She has deposed that she narrated all the incidents but PSI Khan said that he would write down

whatever he wanted to write and so all the incidents were not recorded and the incidents were not correctly recorded. She has given evidence that her signature was obtained on the complaint but the contents were not read over to her. On the record, there are some statements which are shown as supplementary statements and this point will be considered at proper place. Here only it can be observed that in view of the surrounding circumstances the reports given under section 154 or even statements recorded under section 164 of Cr.P.C. cannot be used in the present matter for corroborative purpose for some incidents.

39) The evidence of PW-5 shows that on 7-7-1994 she was taken to Parbhani for medical examination and there a lady medical officer examined her. She has given evidence that on 8-7-1994 PSI Khan took over the clothes, *Salwar, Kurta*, Punjabi dress and she was wearing those clothes, article Nos.9,10 and 11, *Salwar, Kurta* and *Odhani* at the relevant time. She has specifically stated in the evidence that in *Salwar*, articles 9 the lace is of a shoe.

40) PW-5 has given evidence that she was taken to Kotwali Police Station Parbhani and there PSI Yeshwant took over her nicker (nicker, underwear was not taken over by PSI Khan). She has identified the nicker as article No.6 produced in the Court and her signature appears on the panchanama dated 8-7-1994.

41) PW-5 has given evidence that on 8-7-1994 she showed various places where she and PW-4 were raped like banana garden, the brook, Visawa Lodge and school campus. She has given evidence that PSI Yeshwant prepared panchanama of this incident and her signature was obtained on the panchanama. PW-4 has given evidence that on 7-7-1994 PSI Yeshwant came to her house in the noon time and from Partur she was taken to Parbhani. She has deposed that there in the night time, her statement was recorded. Her report is proved at Exhibit 51 in her evidence.

42) The evidence of PW-4 shows that on 8-7-1994 PSI Yeshwant took over her clothes like, *Salwar, Kurta*. She has identified the articles as article Nos.4 and 5. She

has given evidence that these clothes were used by her at the relevant time and they were on her person right from 3-7-1994. She has given evidence that she had washed these clothes after returning home on 6-7-1994. The panchanama of seizure of the clothes is at Exhibit 52.

43) PW-4 has given evidence that on 8-7-1994 PSI Khan came to Kotwali Police Station and made inquiry with her and said that he would record the statement in the manner which he would think proper and correct. Thus, both PW-4 and PW-5 have grievance against PSI Khan that he did not record all the incidents narrated by them.

44) PW-4 has given evidence that on 8-7-1994 PSI Yeshwant took her with him and then she showed the places where they were raped. She has given evidence that PW-5 was also with police. Her evidence shows that the panchanama document is proved and PW-5 had signed it on 8-7-1994.

45) PW-4 has given evidence that on 8-7-1994 she was referred for medical examination and she was examined in Parbhani.

46) The aforesaid evidence shows that PW-5 disclosed the incident first to police i.e. on 7-7-1994 and the first disclosure was made by PW-4 on 7-7-1994 in the night time. This circumstance needs to be kept in kind in view of the nature of challenge to the prosecution evidence.

47) Ishteq Ahmed Khan (PW-17) is the investigating officer who has given evidence on the seizure of clothes of PW-5 on 8-7-1994. He has deposed that articles 9,10 and 11 were taken over by police under panchanama which is proved at Exhibit 155. On the label pasted on the articles there are signatures of the panch witnesses. This witness is cross-examined by learned Special Public Prosecutor due to the aforesaid grievance of PW-4 and PW-5 against him. He has denied that he did not record the information given by these two victim girls in respect of all the incidents of rape. He has, however, given evidence on

other part of the investigation made by him. Thus, there is no independent evidence on the seizure of the clothes of PW-5 by police officers and there is evidence only of PW-5 and this police officer.

48) PSI Yeshwant (PW-18) was attached to Kotwali Police Station, Parbhani. He has given evidence that when he learnt that PW-5 had given her report to Purna Railway Police Station and it was a case of gang rape, he supplied the information to the District Superintendent of Police Parbhani. He has deposed that he was directed to go to Partur and bring PW-4 to Parbhani and make the investigation. He has deposed that he brought PW-4 to Parbhani, he made inquiry with her on 8-7-1994. He has deposed that on the basis of this report of PW-4 he registered the crime at CR No.73/1994 at Kotwali Police Station in the night time i.e. on the night between 7 and 8 of July 1994. This report is proved at Exhibit 51.

49) Yeshwant (PW-18) has given evidence that he prepared separate teams for making investigation of the matter and his officers took accused No.1 Suryakant,

accused No.2 Arun, accused No.4 Rameshwar, accused No.8 Dnyanoba and accused No.9 Machindra in custody.

50) Yeshwant (PW-18) has given evidence that he took over the clothes of PW-4 under panchanama on 8-7-1994 in CR No.73/1994. In his evidence the panchanama is proved at Exhibit 52. He has identified the clothes of PW-4 as article Nos.4 and 5, *Salwar* and *Kurta*.

51) Yeshwant (PW-18) has given evidence that on 8-7-1994 he made inquiry with PW-5 about her clothes and he realised that her clothes like *Salwar*, *Kurta* were already taken over by Railway Police Station Purna. He has given evidence that as he realised that her underwear was not taken over, he took over the underwear under panchanama in CR No.73/1994 of Kotwali Police Station. The panchanama at Exhibit 65 is proved in his evidence and he has identified the underwear as Article No.6. On this panchanama there are signatures of panchas also. The evidence of Yeshwant (PW-18) also shows that there is no independent corroboration of the evidence of panch witness to the seizure of the clothes made by Yeshwant.

52) API Shaikh Mujib (PW-19) has given evidence on the two reports recorded by him of PW-4 and PW-5. Evidence of Yeshwant (PW-18) shows that he had sent the victim girls to New Mondha Police Station as there was no toilet facility in Kotwali Police Station. Evidence of Shaikh Mujib (PW-19) shows that he made inquiry with PW-5 and he created two separate reports on the basis of statement given by PW-5. He has deposed that he registered CR No. 81/1994 in respect of the incidents of rape which had taken place in banana garden, near brook, in the campus of the school, in Visawa Lodge and in Munde Wada. He has deposed that in the second report he recorded the incidents which had taken place in retiring room and in the railway quarters of accused No.4 of other case and Shakti Building. It appears that CR No.82/1994 was registered in New Mondha Police Station in respect of the subsequent incidents. In present matter the investigation was made in CR No.81/1994. In the cross-examination of PSI Khan (PW-17) it is suggested by the Special Public Prosecutor that in the report of PW-5, Exhibit 82, some incidents were not recorded. Similar suggestions are given in respect of statements of PW-4 recorded by Khan

(PW-17) on 8-7-1994 and 12-7-1994. It is also suggested that some portions from Exhibit 82 were not stated before him by PW-4 but he recored them. Defence has also brought on record some portions from the previous statements of the two victim girls and those portions are proved in his evidence at Exhibits 159, 160, 161 and 162. Some portions from the statement of PW-5 are proved at Exhibits 163, 164, 165 and 166. Some portions like portions at Exhibits 172, 173 and 174 from the previous statement of PW-4 are in respect of the other case. Some portions like portions at Exhibits 178, 179, 180, 181, 182 and 183 in respect of the present case cannot be called as contradictions as they are not inconsistent with the version given by PW-5. There are more such portions in respect of other statements and this point needs to be considered and decided as one objection or challenge of defence.

53) PSI Yeshwant (PW-18) has given evidence that on 8-7-1994 PW-4 and PW-5 showed him the places where the incidents of rape had taken place and they were banana garden of One Mr. Subhedar (Exhibit 87), near

brook (Exhibit 88), the school campus (Exhibit 89) and Munde Wada (Exhibit 90). His evidence shows that one other place, Visawa Lodge was also shown by the victim girls but this place was not within his local jurisdiction and so he did not prepare panchanama of that place. Yeshwant (PW-18) has given evidence that on 8-7-1994 he referred PW-4 for medical examination.

54) Chalak (PW-20), Circle Police Inspector (CPI - Parbhani Rural) took over investigation of CR No.81/1994 registered in New Mondha Police Station Parbhani, the present matter, from Sub Inspector of the said police station. The other Crime at CR No.73/1994 was registered in Kotwali Police Station which is also in respect of present matter. The evidence of Chalak shows that during investigation PW-5 showed to him room No.16 of Visawa Lodge where the offence of gang rape was committed. He has given evidence that in the presence of panch witnesses he took over two bed-sheets which were found in room No.16 and also one underwear. He has deposed that PW-4 identified the said underwear as her underwear. He has identified article Nos.1,2 and 3 which are shown to

be seized in CR No.81/1994 of New Mondha Police Station. Exhibit 122 is proved in his evidence and the evidence shows that there were labels bearing signatures of panchas on these articles.

55) The evidence of Sahebrao Vyavahare (PW-22), Police Inspector of CID Crime shows that he took over the investigation of the present matter viz. CR No.73/1994 registered in Kotwali Police Station and CR No.81/1994 registered in New Mondha Police Station from the previous investigating officers including from Chalak. His evidence shows that he again recorded supplementary statements of PW-4 and PW-5. Thus, the investigation was made by many police officers as mentioned above and that was due to the grievance expressed in social media and also by the two victim girls. The evidence of Vyavahare shows that the grievance was raised in State Legislative Assembly also.

56) Both PW-4 and PW-5 have identified in the Court all the appellants from the present appeals as the persons who committed rape on them. T.I. parade was

arranged for giving opportunity to PW-4 and PW-5 to identify these persons after their arrest. The evidence of PW-4 shows that in the first T.I. parade she was asked to identify the persons who had committed rape on her and 13 persons shown to her in the campus of jail, Parbhani. She has given evidence that in the said T.I. parade she identified accused No.1 Suryakant, accused No.2 Arun and accused No.3 Suresh. She has deposed that she also identified the two persons who were present in the lodge as managers and she identified accused No.8 Dnyanoba and accused No.9 Machindra in the T.I. parade. The evidence given as against accused Nos.8 and 9 need not be considered as they are acquitted and the acquittal is not challenged. PW-4 has given evidence that on 20-8-1994 in another test identification parade (T.I. parade) she identified one person who was an associate of the other accused who had committed rape on her. In the Court she has pointed accused No.6 Nitin as the person who was identified by her in the jail. PW-5 has also given evidence on the T.I. parades dated 2-8-1994 and 20-8-1994. She has given evidence that she identified accused Nos.1 to 4 in T.I. parade. She pointed these accused in the Court also by

saying that they were identified by her in the T.I. parade. She identified even accused Nos.8 and 9 in the T.I. parade and she pointed these persons also in the Court as the persons who were identified by her in the T.I. parade. PW-5 has given evidence that on 20-8-1994 she identified accused No.7 as the person who was associate of the persons who had raped her. She pointed accused No.7 in the Court as the said person.

57) The evidence of PW-4 and PW-5 on the T.I. parade shows that they identified accused No.6 and accused No.7 in the Court but by saying that they were the associates of the persons who had raped them. In any case it needs to be kept in mind that both accused Nos.6 and 7 came to be identified in T.I. parade dated 20-8-1994. Namdeo Jadhav (PW-16), the Tahsildar and Executive Magistrate, who conducted the T.I. parade has given evidence on these two T.I. parades. The correspondence made with him by police and the correspondence made by him with the jail is proved in his evidence. His evidence and the evidence of PW-4 and PW-5 shows that precaution was taken by him to see that the girls were separately

taken to the place where the T.I. parade was conducted. He has given evidence which is similar to the evidence of PW-4 on the first T.I. parade and the record is consistent with the oral evidence. Similar evidence is there showing that PW-5 identified accused Nos.1 to 4 and also accused Nos.8 and 9 in the first T.I. parade. Relevant record is proved as Exhibit 139.

58) Namdeo Jadhav (PW-16) has given evidence on the second T.I. parade dated 20-8-1994. He has given evidence that he first asked PW-4 to identify the accused and she identified accused No.6. He has given evidence that PW-5 identified accused No.7. The record of T.I. parade prepared by him is proved as Exhibit 142. The challenge of the defence to the evidence of T.I. parades is being considered at later stage. The evidence as a whole on the T.I. parade shows that accused Nos.1 to 4 and accused Nos.6 and 7 who are convicted by the trial Court were identified by PW-4 and PW-5. Thus, there is evidence of two victim girls given in the Court to the effect that they identified these accused in the Court and there is also evidence of T.I. parade showing that in the T.I. parade

they together identified the appellants and this evidence is available as corroborative piece of evidence.

59) There is medical evidence in corroboration to the versions given by the two victim girls on the incidents of rape. It is possible for the defence to say that as per the versions given by the two victim girls, they were raped in banana garden and also near book before the offence was committed by accused Nos.6 and 7 against them in Visawa Lodge and to that extent the medical evidence cannot be used as corroborative piece of evidence as against accused Nos.6 and 7. This point can be kept in mind and it can be ascertained as to whether the evidence given against accused Nos.6 and 7 is convincing and it can form base for conviction.

60) The evidence of Dr. Jaishri (PW-13) shows that she examined PW-5 on 7-7-1994 and she found following things.

"On local examination she found :

1. Matting of pubic hair was seen.

2. Blood stains on clothes & genital.
3. No evidence of external injuries over the genitals.
4. Hymen - Torn, congested + oozing through the tear present.
5. P.S. - Speculum could be passed with difficulty, tenderness i.e. severe tenderness.
6. Bleeding through cervical O.S. seen.

On P.V. Examination she found:

Vagina admits 1 finger with a pain i.e. severe tenderness.
Bleeding through cervical was present."

Evidence of Dr. Jaishri shows that she had taken vaginal swab and she had sent it to C.A. office. However, she did not find live or dead spermatozoa in the vaginal swab.

61) Dr. Jaishri (PW-13) has given evidence that she examined PW-4 on 8-7-1994. She found following things during the examination.

"On local examination she found :

1. Matting of pubic hair not seen;
2. Blood stain on clothes & genitals were seen.
3. Posterior fourchette congested and redness. Libia minor was slightly congested.
4. Hymen - torn (old tear) No oozing, Bleeding through vagina was present.

5. No evidence of injury over the external genitals.

Her other evidence is as follows :--

Per speculum examination I found :

Medium size speculum passed with the minimum tenderness means pains; Bleeding through cervical was seen; vaginal swab was taken and sent for chemical analysis and for microscopic examination. vaginal mucosa is congested. I have used the word congested - it means redness. Uterus - normal size extroverted; Bleeding through cervical seen; vaginal smear taken for microscopic examination which revealed - No living or dead spermatozoa. The living spermatozoa are seen within 2 to 3 hours after the sexual intercourse and dead spermatozoa are seen if examined within 24 hours from sexual intercourse."

Her evidence shows that she sent pubic hair and vaginal swab of PW-5 also to C.A. office. However, she did not notice live or dead spermatozoa in vaginal swab. She has given evidence that live spermatozoa can be seen within 2 to 3 hours after sexual intercourse and dead spermatozoa can be seen if examined within 24 hours from the sexual intercourse. The evidence already discussed shows that both PW-4 and PW-5 were examined after 24 hours of the last incident of rape. She has given specific evidence on the basis of examination done by her of PW-4 and PW-5 that against PW-4 and PW-5 sexual intercourse had

occurred. The certificates issued by her are proved as Exhibits 127 and 129. X-ray plates in respect of these two girls are at Exhibits 126 and 128 but that record is being discussed at later place for deciding the point of age of the victim girls. Here only one circumstance needs to be mentioned that Dr Jaishri has admitted in the cross-examination that bleeding from vagina of the victim girls was possible due to menses. However, this admission has no relevance as other symptoms mentioned by her in the evidence are in support of sexual intercourse, rape. She has given evidence in the cross-examination that tear of hymen in respect of PW-4 was old indicating that she was accustomed to intercourse but that circumstance need to be considered on the background of the age of this victim girl and also after considering the direct evidence given by PW-4. Thus, the medical evidence gives general corroboration to the versions given by the two victim girls.

62) The prosecution has examined Abhay Kulkarni (PW-2), a boy who had met PW-4 and PW-5 in the train when they were proceeding towards Parbhani on the first day. He has given evidence that he and his friend Raju had

met these girls and they had taken these two girls to Talreja Talkies Parbhani. He has given evidence that in the Talreja Talkies due to inquiry made by the manager of the theatre with them as they were in the company of the minor girls they became frightened and they left the theatre. He is cross-examined by learned Special Public Prosecutor as he did not identify accused Nos.1 to 3 as the same boys who had taken over the control of PW-4 and PW-5 in the theatre and no evidence is given by them. However, there is evidence on the circumstance that the two victim girls were taken to Talreja Talkies by them.

63) Bandu Raut (PW-3) is resident of Parbhani and he has given evidence that he knew accused No.1 Suryakant and accused No.2 Arun from prior to the date of incident. He has given evidence that in the year 1994 accused Nos.1 and 2 with their one male friend had brought two girls to his house. He has given evidence that he remembered the incident as this incident took place within one month of his own marriage. He has admitted that he had supplied food to the girls. He stood to the test of cross-examination and his version gives corroboration

to the versions of PW-4 and PW-5 which is given at least as against accused Nos.1 and 2.

64) Chalak (PW-20) has given evidence that after taking over the investigation of the present matter on 16-7-1994 he filed an application before the Judicial Magistrate, First Class to take action against accused Nos.6 and 7 as they were absconding. Action was proposed under sections 82 and 83 of the Criminal Procedure Code. He has given evidence that ultimately he could arrest accused Nos.6 and 7 on 5-8-1994. This evidence is on the circumstance that accused Nos.6 and 7 were absconding even when police had realised that they were involved in the offence of gang rape committed in Visawa Lodge.

65) Chalak (PW-20) has given evidence that on 6-8-1994 while in police custody accused No.6 Nitin gave statement in the presence of panch witnesses in respect of the incident and also the clothes which were on his person. Two memorandums of the statements are at Exhibits 98 and 99. The evidence on showing the lodge by

accused No.6 is of no use as this spot was known to police. Evidence is given by Chalak that after preparing second memorandum accused No.6 took police and the panchas to his house and from his house he produced his clothes like one Bush shirt, full pant, one banyan and underwear and a goggle of golden frame. Articles 5 to 8 and 14 are identified by Chalak as the same articles and they were shown as seized in CR No.81/1994 registered in New Mondha Police Station. His evidence shows that except article 7, underwear, there were labels bearing signatures of panchas on other articles. The seizure panchanama is proved as Exhibit 100. Shivaji panch witness on this incident has given evidence on the memorandum of the statement and also the seizure panchanama and there is no reason to disbelieve this part of the evidence.

66) Chalak (PW-20) has given evidence that on 6-8-1994 accused No.7 - Kalyan Renge gave statement in the presence of panch witness and the memorandum of the statement is at Exhibit 101. He has given evidence that after giving statement accused No.7 took police and the

panch witnesses to Jam Society area. He has given evidence that accused No.7 then produced from his house his clothes like white shirt, white pant, underwear, banian and one chain of beads. He has given evidence that he seized all these articles and they are article Nos.9,10,11, 12 and 15 in CR No.81/1994 registered in New Mondha Police Station under panchanama at Exhibit 102. He has identified these articles in the Court. His evidence shows that article 10 and 11, pant and underwear, were not having labels bearing signatures of panchas when he was examined in the Court. Panch witness Shivaji Gore (PW-7) has given similar evidence on this incident.

67) The evidence of Chalak (PW-20) shows that he had sent all these articles to CA office along with covering letter. This record is at Exhibits 221 and 222.

68) Yeshwant (PW-18), the Police Sub Inspector of Kotwali Police Station has given evidence that during investigation he arrested accused No.1 Suryakant and he took over his clothes like pant, shirt, underwear and banian (articles 7,8,9 and 10) in CR No.73/1994 registered

in Kotwali Police Station Parbhani. He has given evidence that the articles were kept in different cloth bags and they were sealed by him and the panchanama at Exhibit 85 was prepared accordingly by him.

69) Yeshwant (PW-18) has given evidence that after arrest of accused No.2, Arun he took over his clothes, article Nos.11,12,13 and 14 in CR No.73/1994 under panchanama at Exhibit 86. All these articles were having labels bearing signatures of the panchas and his signature. Similarly, on the articles which were taken over from accused No.1 there were labels even in the Court bearing signatures of the panchas.

70) Yeshwant (PW-18) recorded statement of Bandu Raut. He had referred accused Nos.1 to 4 arrested by him for medical examination and there is record of medical examination of these accused persons. Accused Nos.6 and 7 were referred by Chalak for medical examination.

71) Yeshwant (PW-18) has given evidence that on 11-7-1994 in the presence of panchas he seized the

clothes like pant, shirt, banian and underwear, articles 18,19,20 and 21 in CR No.73/1994 of Kotwali Police Station and they were on the person of accused No.3, Suresh. On these articles there were labels bearing signatures of panch witnesses when the clothes were shown to him. The panchanama of seizure of these clothes is at Exhibit 91.

72) Yeshwant (PW-18) has given evidence on the recovery of brass fighter on the basis of the statement given by accused No.2 Arun and that record is at Exhibits 92 and 93 and that record need not be considered in detail in view of the nature of evidence given by the two victim girls. Similar evidence is given on the recovery of *jambiya* on the basis of statement given by accused No.1, Suryakant and that record is at Exhibits 94 and 95.

73) Yeshwant (PW-18) had recorded statement of Abhay (PW-2) who turned hostile and the relevant portions from the police statement of this witness are proved at Exhibits 191 to 193.

74) Yeshwant (PW-18) has given evidence that he had sent the aforesaid articles seized by him to CA office and the relevant record is at Exhibits 194 and 195. He had referred both the victim girls to the Judicial Magistrate for recording their statements under section 164 Cr.P.C. The evidence of Yeshwant (PW-18) and the record show that panchas on the seizure of these articles made by Yeshwant were not examined and so the prosecution relied entirely on the evidence of Yeshwant (PW-18) on this piece of circumstantial evidence.

75) It is the specific case of the prosecution that both the victim girls viz PW-4 and PW-5 had not completed age of 16 years at the relevant time and so there was no question of giving of consent by them for sexual intercourse. The tenor of the cross-examination of the two victim girls by the defence counsels shows that they tried to create probability of consent. In view of these contentions of the two sides the evidence given by the prosecution for proving the age of the two girls needs to be considered separately. This evidence is being discussed while considering the other challenges of the defence to

that evidence and also the aforesaid evidence.

76) The challenges of the defence to the aforesaid evidence of the prosecution and other contentions made for the accused persons 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.

(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.

77) This Court is considering the aforesaid challenges one by one. Similar challenges are there in the other set of appeals. The challenge with regard to the age of the victim girls needs to be considered first as many things depend on the finding given on this point.

Age of the victim girls.

78) The evidence of the prosecution on the age of the victim girls is in the form of oral evidence of two victim girls. There is also defence evidence in the nature of evidence of mother of one victim girl. The prosecution has placed reliance on the record of date of birth in respect of PW-4 and the school record in respect of PW-5. The prosecution has also relied on the evidence of medical opinion on age of the two victim girls.

79) In the case reported as **2014(2) Mh.L.J. (Cri.) 353 (Mahesh vs. State of Maharashtra)**, the Single Judge of this Court (one of us) had an opportunity to consider various kinds of evidence which can be available for proving the date of birth or age and the importance of each piece of evidence and the precedence which needs to be given when the two pieces of evidence are inconsistent

with each other. This Court referred the case of the Apex Court reported as **AIR 1982 SC 1297, Jaya Mala vs. Home Secretary, Government of Jammu and Kashmir and others)** and made following observations:

"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 needs 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."

80) PW-4, the first victim girl, has given evidence that she was born at Amarawati on 12-3-1979 and she received education in Lal Bahadur Shastri School at Partur. She has given evidence that her surname is Agarwal and also Mor. She has given evidence that she received education only up to 5th Standard and then she left the school. Her father died in the year 1989 and she was living with her mother, brother and sister at Partur at the relevant time. In the cross-examination it is brought on record that in Amarawati there lives her uncle and the surname of the uncle is Mor though the family of PW-4 uses the surname as Agrawal. She has given evidence that in the school record her surname is shown as Agrawal. It is suggested to her that she was 13 years of age when she was studying in 6th Standard but she has denied that suggestion. She has admitted that she has three more sisters and her elder sister is married but

remaining two are unmarried. She has given age of her two younger sisters as 15 years (of Shital) and 13 years (of Shivkanya) as on 25-11-1997. It is brought on record in her cross-examination that to police she has given the age approximately. It is brought on record in the cross-examination that her elder sister was given in marriage when the sister was 18 years of age and her marriage had taken place 2 years prior to the date of the incident. She has given specific evidence in the cross-examination that she was 14 years old when she was working as maid-servant with some persons.

81) It appears that PW-4 had given different age in different statements which were recorded by investigating officers and the age given was more than 16 years. Her evidence shows that she was frightened and she did not want to inform the incident even to her mother. The circumstance that one lady constable picked up PW-4 at Purna and she reached PW-4 at Partur is also there to indicate that police felt that she was under age and her care needs to be taken. It can be said that she wanted to avoid further trouble and that is why she had tried to tell

the age which was not correct and she was giving age which was higher than her correct age. Even if the answers given by her with regard to the age of her sisters are considered as they are, they do not lead to an inference that she had crossed the age of 16 years at the relevant time. In such cases if there is record of date of birth which has presumptive value, that record needs to be given more weight than the information supplied to police even by victim, like PW-4.

82) For proving the date of birth of PW-4 the prosecution has examined one Krishnarao Choudhari (PW-14), who was working as clerk in Dhapibai Maternity Home, Amarawati. He has given evidence that as per the record of the hospital, one Kirandevi Ramgopal Mor was admitted in this hospital for delivery on 12-3-1979 and on the very day she delivered a female child at 1.30 p.m. He has given evidence that as per the register this was second female child to Kirandevi. Certificate was issued on the basis of entry made in this register and that is given Exhibit 133. Krishnarao Choudhari (PW-14) has given evidence that his hospital had informed about this

birth to Municipal Corporation Amarawati. It is suggested during his cross-examination that the entry cannot be read as for the second female child as there is no specific mention that whether it was a second female child or second male child. However, it was an entry of a female child. The oral evidence given by PW-4 and her mother can be considered in that regard. Some cross-examination is on the point that each entry was not signed by the person who had maintained the register but this circumstance cannot go to the root of the matter as it was the register regularly maintained by the hospital and the information was supplied on the basis of this entry to the local body.

83) Dr. Rajkumar Dehankar (PW 15) is examined to prove the entry of birth date made in the record of Municipal Corporation Amarawati. This witness was in charge of the birth and death register maintained under the Act of 1969. This witness had brought original register to the Court which includes the period 5-7-1979 to 14-6-1979. He has given evidence that the entry at Sr. No.2131 of this register is in respect of female child and the name

of the father of the female child was Ramgopal Mor and the name of the mother was Kiran. Date of birth was shown as 12-3-1979 and the daughter was born in Dhapibai Hospital, Amarawati. Extract of entry is proved at Exhibit 135.

84) In the cross-examination of PW-15 it is brought on record that in Column No.6 of the register initially the name of the hospital where the child was born was mentioned as "Ji.Stri.Ru." and the said name was mentioned even in columns 21 and 22. It is brought on record that subsequently this name was erased and the name of Dhapibai Hospital mentioned. His evidence shows that the entries from Sr. Nos.2116 to 2131 were in respect of the information supplied by Dhapibai Hospital and by mistake entries at Sr. Nos.2125 to 2131 were mentioned as the entries made on the basis of information supplied by "Ji.Stri.Ru". He has given evidence that subsequently correction was made to show that these entries were also made on the basis of information supplied by Dhapibai Hospital. These entries are very old and showing the same date of birth viz. 12-3-1979. This record is consistent with

the other record, of Dhapibai Hospital which is already mentioned. In the record of the hospital surname Agrawal is also shown when the surname Mor was shown. Much was argued on the circumstance that the entry was made mainly for Mor and in the record of local body also the surname is shown as Mor and there is possibility of interpolation and manipulation. This submission is not at all acceptable. It is very old record and in the evidence of PW-4 it is brought on record that her uncle's surname is Mor and her family is using the surname as Agrawal. It is not possible to hold that this entry does not pertain to the birth of PW-4. The aforesaid correction in the record of local body was made for many entries like Nos.2125 to 2131 and so it does not look probable that the correction was made only for the present matter. Thus, the record of date of birth shows that at the relevant time, in July 1994, the age of PW-4 was below 16 years.

85) Defence has examined Kirandevi (DW-1) mother of PW-4. She has stated in the evidence that she has four daughters and one son. She has given specific evidence that Rekha is elder issue and PW-4 was born to her after

Rekha. Though she had tried to say that PW-4 was aged 22 years on the date of deposition i.e. 13-10-1998, the particulars given by her about the age of her other issues show that she has falsely stated the age of PW-4 as 22 years. The son was not her second issue and he was 5th issue. Her younger daughter was aged about 13 years on the date of deposition. She has admitted in the cross-examination that her marriage with Ramgopal took place 24 to 25 years prior to the date of the deposition and the first issue Rekha was born after 4 to 5 years of the marriage. She has specifically admitted that PW-4 was born 3-4 years after the birth of her first issue Rekha. These admissions clearly show that in the examination-in-chief she has falsely stated that the age of PW-4 was 22 years. This evidence of the defence shows that the age of PW-4 as per the evidence of mother was also below 16 years at the relevant time. The circumstance that even the mother has given evidence in support of the case of the accused needs to be kept in mind as there are allegations against some accused and police officers that due to influence of the accused persons the investigating agency did not care to correctly record the versions given by the

two victim girls. This point will be again touched while considering the other challenge of the defence.

86) Dr. Jaishri (PW-13) has given opinion with regard to the age of PW-4. She examined PW-4 on 8-7-1994. The examination was both clinical and radiological. Her evidence shows that she had taken X-ray plates to collect the factual data (Exhibit-128). She has given evidence that as per radiological examination head of radius was found fused but the lower end of radius was not fused and the process of fusion had not started. She has deposed that the X-ray of ilia-crest showed that ilia-crest had appeared but it was not fused and the process of fusion had not started. This data, information used for ascertaining the age and the chart supplied by the Civil Surgeon in that regard was referred by her and on the basis of clinical and radiological examination she has given opinion that age of PW-4 was between 14 and 16 years and it was including margin of error. She has given specific opinion that the age of PW-4 was not more than 16 years on the date of examination.

87) PW-5 has given evidence that she was born at Hiwarkheda, Tahsil Shindkheda-Raja, District Buldhana on 10-7-1981. She has given evidence that her parents live at Hiwarkheda though she was living at Partur with her mother's sister. She has given evidence that she received education in Lal Bahadur Shastri High School Partur up to 6th Standard.

88) Arjun Kukde (PW-21) has given evidence that PW-5 was student of his school Lal Bahadur Shastri High School, Partur, District Jalna. The witness is headmaster of the school and he had brought the original register of the school. He had also brought admission application in respect of PW-5. He has given evidence that prior to giving admission to PW-5 in his school she was a student of Central Primary School Partur and along with the admission application she had produced transfer certificate issued by the previous school (C.P.S.). PW-21 has given evidence that PW-5 was admitted in his school on 25-6-1991. Original transfer certificate was also brought by this witness to the Court and the record is given Exhibits 229, 230, 231 and 232. The oral evidence

and the record show that the date of birth was informed as 10-7-1981. This witness is cross-examined extensively to ascertain as to who had admitted PW-5 in the school. Though from the signature appearing on the admission application the name of the person cannot be determined, there is evidence of PW-5 to the effect that at Partur sister of her mother and husband of the said sister of her mother were her guardians and they had admitted her in the school. This is also very old record and it is not possible that false record was created by this school only for the purpose of present matter.

89) The defence has examined Karbhari Nagre (DW-2) for proving the record of Pre-Secondary School of Hiwarkheda in respect of PW-5. He has given evidence as in charge Headmaster that PW-5 was admitted in first standard on 2-7-1985 and her date of birth was shown as 20-3-1979. Even if the date is accepted as it is, inference is not possible that at the relevant time, in July 1994, PW-5 had crossed the age of 16 years. The defence has examined one Pandurang Nagre (DW-3) who is the husband of the aunt on maternal side of PW-5. His

evidence is of no use as his evidence shows that PW-5 was living with his family for about 10 to 11 years from childhood. In the cross-examination made by the Special Public Prosecutor, he has given specific admission that PW-5 was living with him as the financial condition of her parents was not good. He has given evidence that date of birth of PW-5 is 10-7-1981 and she was admitted in Lal Bahadur Shastri High School at Partur.

90) Dr. Jaishri (PW-13) has given evidence that she examined PW-5 clinically and radiologically on 7-7-1994. She has given evidence that in radiological examination she found that fusion of lower end of radius had not started though on the head of radius there was fusion. She has given evidence that X-ray plate of PW-5 showed iliac crest but the process of fusion had not started. She has given evidence that she used this data and on the basis of clinical and radiological examination she has given opinion that age of PW-5 was between 14 and 16 years. She has given evidence that this opinion includes margin of error and in any case the age of PW-5 was not more than 16 years on the date of her examination.

91) 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, 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 oral and documentary evidence and no probability is created in this matter that age of PW-4 or PW-5 was more than 16 years at the relevant time.

92) 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 was 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-4 and PW-5 which is to the effect that both the victim girls 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.

93) 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.

94) 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 formed on the basis of clinical examination. In view of these circumstances, the Apex Court held that there was probability 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.

95) 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.

The Other challenges of defence to the evidence and consideration of the evidence on the offences :

96) The trial court has convicted accused Nos.1 to 3 for offence of kidnapping punishable under section 366 read with 34 of the IPC as they had taken PW-4 and PW-5 from Talreja Talkies to banana garden and then to the brook with common intention to commit offence of rape. They are convicted for offence of gang rape punishable under section 376(2)(b) of the IPC for committing offence of gang rape at banana garden and at Pingad-Gad-Nala. Accused Nos.1 to 3 are convicted for offence punishable under section 366-A read with 34 IPC for taking the victim girls from Pingad-Gad-Nala to Visawa Lodge as they were virtually supplying PW-4 and PW-5 for committing offence of rape to accused Nos.6 and 7. In Visawa Lodge, accused Nos.6 and 7 committed rape and they could do it due to the assistance and common intention of accused Nos.1 to 4 and so all of them are convicted for the offence of

commission of rape committed against PW-4 and PW-5 by accused Nos.6 and 7. Accused Nos. 1 to 4 are convicted for offence punishable under section 366/34 as they had taken PW-5 from Visawa Lodge to the school campus with the same intention. Accused Nos.1 to 4 did commit offence of gang rape in the campus of the school against PW-4 and PW-5 and so they are convicted for such offences committed in the campus of the school.

97) The evidence given by PW-4 and PW-5 as against accused Nos.1 to 3 is already quoted. The cross-examination of these two victim girls made by defence counsels shows that it was with the object to bring on the record that these two girls had taken initiative and there was consent of the victim girls to the acts done by accused Nos. 1 to 3. To the direct evidence there is corroboration of other circumstances which is already discussed and due to the act of these accused of taking the victim girls from the theatre to banana garden, they are liable for offence punishable under section 366 read with 34 of the IPC.

98) There is specific evidence as against accused Nos.1 to 3 that one after other, they committed rape on PW-4 and PW-5 first at banana garden and then at the aforesaid brook. The evidence given by the two victim girls and the tenor of the cross-examination show that there is ring of truth in the evidence given by the two victim girls as against accused Nos.1 to 3. On the basis of this evidence the trial Court has convicted accused Nos.1 to 3 for the offence of gang rape committed at the two places and in view of the circumstance that the two victim girls had not completed 16 years of age, the defence of consent taken by the accused cannot be considered.

99) PW-4 and PW-5 have given specific evidence as against accused Nos.6 and 7 on the incident of rape which took place in Visawa Lodge. The evidence and the record show that accused Nos.1 to 4 were very much present in the lodge to facilitate the offence committed by accused Nos.6 and 7 and only due to accused Nos.1 to 4, the accused Nos.6 and 7 could commit the offence.

100) PW-4 and PW-5 have given evidence that accused Nos.1 to 4 had taken them to the campus of the school and there they were again raped by accused Nos.1 to 4. The role played by each accused is described by PW-4 and PW-5. These four accused raped the two victim girls by dividing the two victim girls amongst themselves in the campus of the school and thus there was common intention of all the accused on that occasion also.

101) The previous statements of PW-4 and PW-5 were confronted to them by the defence counsels during their cross-examination. Some omissions are pointed out and some inconsistent statements, contradictions were also pointed out to these two victim girls. The submissions and the record show that the first statement of PW-5 was recorded on 7-7-1994 and in that statement, which was treated as F.I.R., the incidents of banana garden, the brook, the lodge and the school campus were not mentioned. The grievance against police officer Khan is already mentioned. However, in the F.I.R. of PW-4 which came to be recorded on 8-7-1994 (Exhibit-51) the incidents of banana garden, the brook, the lodge and the

school campus are mentioned by PW-4. It can be said that there is no corroboration of the so called F.I.R. (Exhibit 30) given by PW-5 to P.S.I. Khan of Railway Police Station. The evidence of Khan and even of Yeshwant shows that they were under misconception that these incidents had not taken place within their local jurisdiction, they were not entitle to record the reports and they were not entitled to make the investigation. They could have recorded the versions in respect of all the incidents of rape and they could have contacted their superior officers for taking further steps. It can be said that subsequently such steps were taken and Chalak, C.P.I., who had jurisdiction over all these spots was entrusted with the investigation of all the crimes. Subsequently, the investigation of both the matters was handed over to Vyavahare (PW-22) Police Inspector of CID Crimes and the same investigating officer filed charge sheets in both the matters.

102) Much was argued on the circumstance like absence of some incidents in the previous statements of the two victim girls and also some inconsistencies in the

previous statements in relation to the substantive evidence. In a case like present one it is necessary to keep in mind for Courts that when many police officers record the statements and there is some misconception as mentioned above, then it becomes the duty of the Court to find out the truth. Statements under section 164 of the Cr.P.C. were also recorded many times and those statements are also confronted to PW-4 and PW-5 during cross-examination.

103) The two victim girls were from very poor families, they were new in Parbhani and they had no support of anybody in Parbhani. It appears that when the social media took up the matter, the things took proper turn and the authority started to look into the matter. The evidence of last investigating officer shows that even question was raised in respect of these incidents in State Legislative Assembly. When substantive evidence is there, which is corroborated by circumstances and it is possible for the Court to draw inference about the guilt of the accused, in spite of existence of circumstances like omissions of aforesaid nature and some inconsistencies,

those omissions and inconsistencies cannot go to the root of the matter. Police officers acted as per their own notions in the present matter. Even the learned Judicial Magistrates did not record the statements in respect of all incidents. On the basis of the statements recorded by the learned Judicial Magistrates, it can be said that they had not taken care to go through the statements already given by the victim girls to police. When Judicial Magistrate records statements of such girls under section 164 Cr.P.C., it is the duty of the Judicial Magistrate to ascertain the nature of allegations, disclosures already made by the witnesses and then elicit information from such witnesses by putting questions if he feels that for any reason the witnesses are not disclosing few things which were already disclosed. Thus, most casual approach was adopted by the learned Judicial Magistrates and for the reasons already given not much can be made out due to the circumstance that even in the statements under section 164 Cr.P.C. some incidents were not mentioned by the two victim girls. What is important in the case like present one is the substantive evidence and when on the basis of the evidence available, inference of the guilt is

possible, the Court should not hesitate to base conviction on such evidence in spite of existence of the circumstances noticed in the present matter.

104) It is true that in the first disclosure PW-5 had not mentioned the incidents involved in the present matter but PW-4 did disclose the incidents when her report came to be recorded by other police officer.

105) 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 later stage of the judgment, clearly achieves the said objects."

106) 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 different 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 in 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 also get served.

107) 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.

108) 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.

109) If the evidence of the investigating officers is considered to ascertain as to whether the two victim girls had disclosed all the incidents of the present matter it can be said that in supplementary statement PW-5 did disclose the incidents of the present matter also. That is why many statements of the two victim girls came to be recorded by different officers. It can be said that first time Yeshwant made an attempt to see that two separate F.I.R.s are recorded. Then Chalak (PW-20) made more inquiry after considering the entire record and he also recorded supplementary statements of PW-4 and PW-5.

110) To the substantive evidence of PW-5 there is corroboration of medical officer, Dr. Jaishri (PW-13). She found recent tear of hymen in case of PW-5. This witness was extensively cross-examined by defence counsels but

she stood to the test of the cross-examination. PW-5 was examined on 7-7-1994 and PW-4 was medically examined by Dr. Jaishri (PW-13) on 8-7-1994. The last incident took place on the night between 5-7-1994 and 6-7-1994 but in that incident only PW-5 was involved. That incident is part of other sessions case.

111) Dr. Jaishri noticed bleeding from cervical OS. On PV examination speculum tenderness was noticed and vagina was admitting only one finger in the case of PW-5. Dr. Jaishri noticed that there was posterior fourchette congested and redness and she noticed that hymen was congested. She noticed vagina was admitting one finger with minimum pains but bleeding through cervical was present. The record prepared by this witness is consistent with her oral evidence. Though there is possibility that PW-4 was observing menstruation, evidence of Dr. Jaishri in respect of sexual intercourse cannot be ignored. During cross-examination, Dr. Jaishri has admitted that possibly there was menstruation of PW-5 also. In case of PW-5 the circumstances were strong and rupture of hymen was fresh. In the first incident of rape, accused Nos.1 to 3

were involved and other accused were involved in the subsequent incidents. That cannot give any benefit to accused Nos.4,6 and 7 as there is substantive evidence against them and there are other circumstances. This Court has no hesitation to hold that the medical evidence has given necessary corroboration to the versions of PW-4 and PW-5.

112) At Exhibit 204 there is CA report in respect of clothes of PW-5 (*Salwar, Kurta and Jangiya*). *Jangiya* was taken over on the next day. *Salwar* and *Kurta* were taken over on 7-7-1994. Blood was present on these clothes and it was of Group "A". PW-5 has the same blood group. It is not brought on record in her evidence that she was observing menstruation. In view of these circumstances and as the clothes were taken over immediately after making of the disclosure by PW-5 and that too by PSI Khan against whom there are allegations, this Court holds that there is no reason to disbelieve this circumstance. The hymen had fresh tear, it was congested and so this circumstance becomes more important.

113) There is evidence of seizure of clothes of accused Nos.1 to 4 who were arrested almost immediately i.e. on 8-7-1994. The clothes of accused Nos.6 and 7 were taken over after many days as they were absconding. It is already observed that in respect of the seizure of the clothes of accused Nos.1 to 4 there is only evidence of the police officer. Further, PW-4 was admittedly observing menstruation at the relevant time. In view of these circumstances, this Court holds that the evidence in respect of presence of blood stains on the clothes of some of these accused and also on the clothes of PW-4 cannot be of much importance in the present matter. Some bed-sheets were taken over from the lodge and the panchanama at Exhibit 234 shows that blood was found on the bed-sheets. Bed-sheets were also taken over after few days and as it is a lodge this circumstance cannot be treated as clinching circumstance.

114) In respect of the challenge to the evidence given on T.I. parade it can be said that there is substance in the contentions made by the learned counsel for the accused that there was no strict compliance of the

guidelines given in paragraph 16 of Chapter I of the Criminal Manual of this Court. It is true that on both the occasions the number of dummy persons used by Namdeo Jadhav (PW-16) was less than the number expected in the guidelines. There is no record to show that dummy persons had appearance which was similar to the accused persons. However, the evidence of Namdeo Jadhav (PW-16) shows that he was satisfied about the identification of the accused from the two victim girls in both the T.I. parades.

115) It is true that accused Nos.6 and 7 were identified as associates by the two victim girls but the fact remains that they have given substantive evidence against these accused that they had raped them in Visawa lodge. accused Nos.1 to 4 were arrested almost immediately. As accused Nos.1 to 4 were in the company of the two victim girls for about 12 hours there was no problem for PW-4 and PW-5 to identify them. It can be said that immediate arrest of these accused persons is also a circumstance showing that on the basis of information given by the two victim girls, police could easily trace out these accused.

Names of accused Nos.6 and 7 were also transpired and the evidence is given that they were absconding for the aforesaid period.

116) On the point of evidence given on T.I. parade, learned Senior Counsel for the appellants has placed reliance on some observations made by the Apex Court in the 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 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.

117) On the point of evidentiary value of the test identification parade, the learned APP has 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 observations 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 for longtime. In case of rape or gang rape, the victim girl always gets 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. Even if that evidence is ignored, other evidence, evidence of identification in court needs to be believed due to other circumstances of the case.

118) The discussions of the evidence and the reasoning given by the Judge of the trial Court show that the aforesaid objections were taken into consideration. The trial Court has observed that even if the evidence on T.I. parade is ignored, there is convincing and sufficient evidence of PW-4 and PW-5 on the identification of the accused persons by PW-4 and PW-5 in the Court and even if it is treated as the first time identification after the incident, that evidence needs to be believed. This Court holds that in the present matter, even the evidence on T.I. parade can be used as corroborative piece of evidence. The procedure is given as guidelines and non compliance of the procedure strictly as per the guidelines, cannot be a

ground for discarding the evidence on T.I. parade in each and case.

119) The prosecution has proved in the present matter that age of the two victim girls was below 16 years at the relevant time. As per the old provision of section 375, IPC for considering the defence of accused of possible consent from PW-4 and PW-5 it was necessary to show that both the victim girls had crossed age of 16 years. The learned counsel for the appellants-accused has placed reliance on some observations made in the landmark case of the Apex Court in **S. Varadrajan v. State of Madras**, reported as **AIR 1965 SC 942**. These observations were entirely on different point and there is interpretation of the term like "taking" used in section 361 of the IPC. This ratio cannot be considered when the Court is considering the case of gang rape. When there is case of rape, the Court is not expected to consider the case of defence of consent when the age of the victim girl was below 16 years. The accused cannot take defence that due to any reason he was under impression that the victim girl had crossed 16 years of age. Whenever such incident

takes place Court needs 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 consequences. In the present matter, the defence of consent was not available to any of the accused in view of the aforesaid record. Surprisingly, the tenor of the cross-examination made by the learned counsel for accused Nos.1 to 3 shows that the questions were put to the victim girls that the victim girls had taken the initiative in the matter and one accused had left the place when one victim girl took initiative and the boy felt that he was not in a position to do anything. Such suggestions given in the case like present one can be considered as they are with regard to the particulars of the incident and they were positive suggestions to elicit evidence on consent.

120) The accused persons from the present matter were not known to PW-4 and PW-5. There was no reason for both these girls to falsely implicate these accused persons. The aforesaid circumstances, the description given by the two victim girls of the accused and the

circumstance that they were traced immediately by police show that there is ring of truth in the versions given by PW-4 and PW-5.

121) Some argument was advanced by the learned counsel for the appellants that police did not try to trace Sham Agrawal, relative of PW-4 and his statement is not recorded. This lacunae cannot make much difference in the present matter. Even after tracing of Sham Agrawal, the things would not have changed. Even if it is presumed that the girls had left the shelter of their guardians on their own, they had no relative in Parbhani and they were wandering in Parbhani even for enjoying, that cannot make difference in the evidence, the case of the prosecution. The fact remains that all the accused persons exploited the situation in which PW-4 and PW-5 had put themselves in.

122) The learned Senior Counsel for the accused has 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.

123) 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 prosecutrix did not know the accused prior to the incident and she had no reason to enrope 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.

124) One learned counsel for the accused persons has 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 matter and this Court has formed opinion that the medical evidence needs to be accepted as a piece of corroborative evidence.

125) The facts of the aforesaid reported case were totally different. In each and every criminal case it is up to the Court to see 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 of the present matter and from all angles. This case can be of no help to the accused persons.

126) The learned Senior Counsel for the accused persons has 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 the propositions 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 is the case reported as **AIR 2017 SC 2161 (Mukesh v. State for NCT of Delhi)**. 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-4 and PW-5. 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.

127) The discussion of the evidence of the present matter and the position of law mentioned above shows that the trial Court has not committed any error in holding the appellants guilty of the offence of gang rape and also for the other offences as quoted above. This Court sees no reason to interfere in the findings given by the Sessions Court against the appellants.

128) The learned Additional Public Prosecutor argued for enhancement of sentence as appeal is filed by the State for enhancement. Relevant facts and circumstances of the present matter are already quoted. They show that there were symptoms of rape on the

private part but no injuries were found on other parts of the body of PW-4 and PW-5. Their evidence shows that they were supplied with food. This Court has already observed that the accused persons exploited the situation in which PW-4 and PW-5 had put themselves. The evidence does not show that there was much violence like assault on PW-4 and PW-5 though threats were given. Every time after committing rape the accused allowed the victim girls to leave the place showing that the accused wanted only to exploit the situation. The accused persons virtually used the two victim girls. The incidents are of the year 1994 and this circumstance also needs to be considered in the present matter. This Court holds that this is not a fit case where punishment of life imprisonment is warranted. Sentence of ten years rigorous imprisonment given by the trial Court is just and proper and interference in the decision of the trial Court on this 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.)
rsl

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

129) 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.)