

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL CONFIRMATION CASE NO.3 OF 2016

The State of Maharashtra

...APPELLANT

VERSUS

- 1) Krushna s/o Ramrao Ridde
- 2) Achyut @ Bappa
@ Babu s/o Kachru Chunche

...RESPONDENTS

...

Mr. M.M. Nerlikar, A.P.P. for Appellant-State.
Mr. S.G. Ladda Advocate for Respondent No.1.
Mr. R.G. Hange Advocate for Respondent No.2.

...

WITH

CRIMINAL APPEAL NO.527 OF 2016

Krishna s/o Ramrao Ridde,
Age-22 years, Occu:Business,
R/o-Choramba, Tq-Dharur,
Dist-Beed.

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. S.G. Ladda Advocate for Appellant.
Mr. M.M. Nerlikar, A.P.P. for Respondent-State.
...

WITH

CRIMINAL APPEAL NO.507 OF 2016

Achyut @ Bappa @ Babu
s/o Kachru Chunche,
Age-23 years, Occu:Agril.,
R/o-Choramba, Tq-Dharur,
Dist-Beed.

...APPELLANT

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr. R.G. Hange Advocate for Appellant.
Mr. M.M. Nerlikar, A.P.P. for Respondent-State.
...

**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 4TH APRIL, 2017.

DATE OF PRONOUNCING JUDGMENT: 14TH AUGUST, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. In Special Child Case No.11 of 2015,
learned Special Judge, Majalgaon has awarded death

sentence to both the accused therein, the proceedings in the said case, have been therefore forwarded to this Court for confirmation under Section 366 of the Code of Criminal Procedure.

2. Pursuant to Production Warrant issued during the course of hearing of the Appeals and Confirmation Case, both the accused were produced by the prosecution on each date of hearing, and throughout the hearing they were present in the Court Hall.

3. Both the accused have also preferred separate Appeals, which were admitted by this Court, and registered as Criminal Appeal No.527 of 2016 and Criminal Appeal No.507 of 2016. Criminal Appeal No.527 of 2016 is filed by Accused No.1 - Krishna s/o Ramrao Ridde, and Criminal Appeal No.507 of 2016 is filed by Accused No.2 - Achyut @ Bappa @ Babu s/o Kachru Chunche challenging the Judgment and order dated 17th August, 2016, passed

by learned Special Judge, Majalgaon in Special Child Case No.11 of 2015. The Special Judge, Majalgaon convicted Accused No.1 Krishna s/o Ramrao Ridde and Accused No.2 Achyut @ Bappa @ Babu s/o Kachru for the offence punishable under Section 449 read with Section 34 of the Indian Penal Code (for short "I.P. Code") and sentenced them to suffer rigorous imprisonment for a period of seven years and also to pay a fine of Rs.1000/- each, in default to suffer simple imprisonment of two months. Accused No.1 and Accused No.2 are further convicted for the offence punishable under Section 354(B) read with Section 34 of the I.P. Code and sentenced to suffer rigorous imprisonment for a period of three years and also to pay fine. Accused Nos.1 and 2 are further convicted for the offence punishable under Section 376(2)(i) read with Section 34 of the I.P. Code and sentenced them to suffer rigorous imprisonment for life and also to pay fine. Accused Nos.1 and 2 are further convicted for the offence punishable under

Section 4 of the Protection of Children from Sexual Offences (POCSO) Act and sentenced them to suffer rigorous imprisonment for a period of ten years and also to pay fine. Accused No.1 - Krishna s/o Ramrao Ridde and accused No.2 - Achyut @ Bappa @ Babu s/o Kachru are further convicted for the offence punishable under Section 302 read with 34 of the I.P. Code and they are sentenced to death. The above all sentences of imprisonment are directed to be run concurrently.

4. As all the matters are arising out of one and the same Judgment, the arguments in all the matters are simultaneously heard and we find it expedient to decide all the three matters by common reasoning. However, since the very conviction has been challenged by the convicts, the only proper course would be to first decide the Criminal Appeals so filed by Accused Nos.1 and 2, for the reason that, only if the order of conviction is maintained by this Court, the

further question will arise whether or not the death sentence awarded by the trial Court is sustainable and is to be confirmed or otherwise.

5. Heard the learned A.P.P. for the State and the learned counsel appearing for both the accused.

6. The factual matrix of the prosecution case is as under:

A) The informant Gulab s/o Ismail Shaikh aged about 65 years resides at village Choramba, Tq-Dharur, Dist-Beed. He has two real brothers namely Chand aged about 80 years and Hasan aged about 50 years as well as he has three step brothers namely Rasool aged about 45 years, Husain aged about 41 years and Papa aged about 38 years. Thus they are in all six brothers and they are residing separately. His real brother Chand has in all three wives. The name of first wife of his

brother Chand is Ratanbai and said Ratanbai has one son namely Bashir. The name of second wife of Chand is Mansab and said Mansab has one son namely Rashed and two daughters namely Vajira and Shakira. The name of third wife of Chand is Noorjaha and the said Noorjaha has one daughter namely Parveen aged about 14 years. The third wife of Chand, brother of informant, namely Noorjaha was residing with her husband Chand and daughter Parveen in the field adjacent Chardari road near village Choramba and she was doing illegal business of selling liquor. About seven days back Chand had gone to his sister at village Koregaon as his leg was fractured.

B) It is further the case of prosecution that, on 28th May, 2015, at about 5.30 p.m. the informant and one Gangabhishan Gade were taking round in the field in which the house of his brother Chand is situate. At that time they noticed that the door of house of Chand was closed

from outside latches. At that time Gangabhishan said the informant that he is thirsty. Then informant Gulab told Gangabhishan that, as the house of Chand is closed by outside latches, he can open the door of the house and drink the water. Then Gangabhishan opened the door of the house of Chand and noticed that the wife of Chand namely Noorjaha aged about 55 years and daughter Parveen aged about 14 years were lying in dead condition. Then said Gangabhishan closed the door by outside latches and he told the informant in that regard. Thereafter the informant and Gangabhishan again opened the door and entered in the house and they inspected the house. At that time the informant also noticed that the wife of Chand namely Noorjaha and daughter Parveen lying in dead condition and the clothes on their person were torn. After minute inspection, they noticed that the blood was coming out from the nose of Parveen, and her mouth was not in shape. Thereafter they closed the door by outside

latches, and they informed in that regard to other persons in their village. Thereafter on next day i.e. on 29th May, 2015, the informant had been to police station Dharur, and lodged report to API Shri R.S. Sanap. Accordingly, on the basis of his report, API Sanap registered a Crime No.45 of 2015 under Section 302 of I.P. Code and investigation of said crime was handed over to P.I. Panpatte.

C) It is further the case of the prosecution that before filing the complaint by informant Gulab Ismail Shaikh on 28th May, 2015, A.D. No.16 of 2015 under Section 174 of the Code of Criminal Procedure was registered by P.S.O. PHC B. No.398 of police station Dharur on the basis of report lodged by one Shaikh Amin s/o Shaikh Rasool, the nephew of deceased Noorjaha and cousin of deceased Parveen, and inquiry of said A.D. was handed over to P.I. Panpatte. In his inquiry on the same day, P.I. Panpatte send the corpse of Noorjaha and Parveen along with letter to the Head of the

Department of Forensic Science of SRTR Hospital at Ambajogai through PHC B.No.79 namely Rathod for keeping it in corpse room. After registering the Crime No.45 of 2015 on 29th May, 2015, the Investigating Officer P.I. Panpatte went to postmortem room of SRTR Hospital and prepared inquest panchnamas of Noorjaha and Parveen, in presence of panchas in the said room.

D) After preparing inquest panchnamas of Noorjaha and Parveen on the same day, P.I. Panpatte referred the dead bodies of Noorjaha and Parveen along with letter and inquest papers to Head of Department of Forensic Science of Swami Ramanand Teerth Rural (SRTR) Hospital, Ambajogai for postmortem examination. Accordingly, on the same day Dr. V.G. Pawar and Dr. V.B. Gholve of the Department of Forensics Science of SRTR Hospital, Ambajogai conducted postmortem examination of the corpse of Noorjaha and Parveen and issued their provisional postmortem reports - cum- death

certificates with provisional opinion as to cause of death. At the time of postmortem examination of Noorjaha, they preserved viscera and blood sample for sending it to chemical analysis, as well as at the time of postmortem examination of Parveen they preserved her viscera with blood, blood for grouping, pubic hairs and vaginal swab for chemical analysis. After completion of postmortem examination, on the same day P.I. Panpatte handed over the dead bodies of Noorjaha and Parveen to Usman alias Papamiya Ismail Shaikh for burial and obtained acknowledgement in that regard. Thereafter on the same day P.I. Panpatte sent special report to Sub-Divisional Police Officer, Kaij.

E) On 29th May, 2015, Additional Superintendent of Police, Beed issued one letter regarding the investigation of crime No.45 of 2015 of police station, Dharur, be handed over to Shri Ganesh Gawade, Sub Divisional Police Officer,

Beed. Accordingly, on the same day Shri Gawade took the investigation of crime No.45 of 2015. In his investigation on the same day the investigating officer Gawade issued one order to P.I. of police station Dharur to hand over police station office seal to him for sealing the muddemal on the place of occurrence. On the same day, he visited the spot and prepared spot panchnama in presence of panchas on the spot. At the time of preparing spot panchnama, he had taken in all twelve photos of the place of occurrence through photographer Amol Chavan Chorambekar. At the time of preparing spot panchnama, he seized blood mixed soil on the place of occurrence and sealed the same in bottle. He also seized the simple soil on the place of occurrence and sealed the same in one plastic bottle, he seized one ladies nicker having red colour as well as having number of stains of semen and hairs on the place of occurrence. On the place of occurrence, the investigating officer Mr. Gawade also seized the

hairs on nicker, he seized black hairs, one small tiny box of lime of Rajesh company having parrot-green colour, one intact button of Fashion company having white colour and one half button, he also seized in all small and big pieces of bangles having faint brown colour on the place of occurrence, in presence of panchas.

F) On the same day the investigating officer Mr. Gawade seized the clothes on the person of deceased Noorjaha at the time of postmortem examination i.e. one Saree, one Petticoat and blouse which were produced by PHC B.No.859 namely Jadhavar under seizure panchnama in presence of panchas. On the same day he seized the clothes on the person of deceased Parveen at the time of postmortem examination i.e. one punjabi top and one punjabi pant which were produced by PHC B. No.859 Jadhavar under seizure panchnama in presence of panchas. On the same day, he issued one letter to the Court of Special Judge,

Majalgaon informing that Section 376(2)(1)(M), 354, 354(B) of I.P. Code, and Sections 3, 4, 5(i) and 6 of POCSO Act are added in Crime No.45 of 2015, initially registered under Section 302 of I.P. Code, at police station, Dharur. On the same day, he recorded the statement of witnesses namely Mehrun Usman alias Papa Shaikh, Jaitulbi Husain Shaikh, Anis Husain Shaikh, Gangabhishan Dagduba Gadekar, Dharma Bapurao Gandhle and Kunjan Ashruba Giri.

G) On 1st June, 2015, the investigating officer Gawade recorded statement of witness namely Haribhau Shrirang Sakhrudkar. On the same day, he directed to PHC B.No.859 Jadhavar to carry seized Articles in Crime to Chemical Analyzer, Aurangabad. On 2nd June, 2015, he issued letter to Gramsevak of Grampanchayat Office, Choramba, Tq. Dharur for obtaining birth certificate of deceased minor girl Parveen. On the same day, he recorded statement of witness namely Baliram

Mahadeo Irmale. On the same day, he recorded the supplementary statement of witnesses namely Mehrun Usman alias Papa Shaikh, Jaitulbee Husain Shaikh, Anis Husain Shaikh, Gangabhishan Dagduba Gadekar, Dharma Bapurao Gandhle and Kunjan Asruba Giri. On the same day, he recorded statement of witnesses namely Gulab Ismail Shaikh, Ramchandra Pandurang Sakhrudkar and Vachisht Bhanudas Mule.

H) On 2nd June, 2015, the investigating officer Mr. Gawade arrested both the accused. On the same day, he sent seized Articles i.e. the clothes on the person of both the deceased and seized Articles on the place of occurrence to C.A., Aurangabad through PHC B.No.859 Ganpat Jadhavar along with his two letters dated 1st June, 2015. Accordingly, on the same day PHC Jadhavar carried the said Articles to C.A., Aurangabad and submitted it in the said office and obtained acknowledgement in that regard on the copies of letters issued by the investigating

officer Mr. Gawade. On the same day, the investigating officer Mr. Gawade referred accused No.1 along with requisition letter for medical examination to medical officer of Government Hospital at Dharur. Accordingly, on the same day, medical officer Dr. Balasaheb Solanke examined Accused No.1 as per requisition letter. At the time of medical examination of Accused No.1, he had taken the sample of pubic hairs, sample of scalp hairs, nail cutting and sample of blood of Accused No.1 and the same were sealed and handed over to police for sending to chemical analysis. Accordingly, he issued medical examination report of Accused No.1.

I) On 2nd June, 2015, the investigating officer Mr. Gawade referred Accused No.2 along with requisition letter for medical examination to medical officer of Government Hospital at Dharur. Accordingly, on the same day medical officer Dr. Balasaheb Solanke examined Accused No.2. At the

time of medical examination of Accused No.2, he has taken the sample of pubic hairs, sample of scalp hairs, nail cutting and blood sample of Accused No.2 and same were sealed and handed over to police for sending to chemical analysis. Accordingly, he issued medical examination report of Accused No.2.

J) On 3rd June, 2015, Investigating Officer issued letter to the Court of Special Judge, Majalgaon regarding insertion of Section 376(D), 452 of I.P. Code in Crime No.45 of 2015 under Section 302, 376(2)(1)(M), 354, 354(B) of the I.P. Code and Sections 3, 4, 5(i), 6 of POCSO Act of police station, Dharur. On the same day, he obtained birth certificate of deceased minor girl Parveen from the Anganwadi Sevika, Choramba. On 4th June, 2015, he issued letter to Tahsildar, Dharur for preparing the map of the place of occurrence through Revenue Circle Inspector, and to submit the same before him. On 5th June, 2015,

he issued one letter to Tahsildar Dharur for obtaining two Government panch witnesses for conducting panchnama. On the same day, he issued one order to P.I. of police station, Dharur for providing police station office seal for sealing the clothes on the person of Accused Nos.1 and 2 at the time of incident.

K) On 5th June, 2015, the investigating officer Mr. Gawade recorded memorandum statement of Accused No.1 Krishna in presence of two Government panch witnesses regarding his readiness to produce the clothes i.e. shirt and pant, on his person allegedly wore at the time of incident, and thereafter the same have been concealed by him in his house. After recording memorandum statement of Accused No.1, on the same day the investigating officer Mr. Gawade recorded the memorandum statement of Accused No.2 Achyut in presence of two Government panch witnesses, regarding his readiness to produce the clothes i.e. shirt and

pant, on his person allegedly wore at the time of incident, and thereafter the same have been concealed by him in his house.

L) After recording the memorandum statements of both the Accused on the same day, as per the say of both the Accused, Police staff and two panchas along with both the Accused, the investigating officer Mr. Gawade went to village Choramba by Government Jeep No.MH-23/AF-0094 and Government Jeep No.MH-23/AF-0085. After they reached at village Choramba, firstly they went to the house of Accused No.1. Then they entered in the house of Accused No.1 along with him and then Accused No.1 produced the clothes which were on his person at the time of incident i.e. pant and shirt, and the same were seized by the investigating officer Mr. Gawade under seizure panchnama in presence of panchas and same were also sealed in presence of panchas. Thereafter as per the directions of Accused No.2, along with

him, they entered in the house of Accused No.2, and then he produced one pant and shirt which were on his person at the time of incident, and the same were seized by the investigating officer Mr. Gawade under the seizure panchnama, in presence of panchas.

M) On 6th June, 2015, the investigating officer Mr. Gawade, directed to witness namely Baliram Mahadeo Irmale to remain present before Judicial Magistrate First Class Court at Dharur, for recording his statement under Section 164 of the Code of Criminal Procedure. On the same day he has also issued request letter to J.M.F.C. Dharur for recording statement of witness Baliram Irmale under Section 164 of the Code of Criminal Procedure. Accordingly, on the same day J.M.F.C. Dharur recorded statement of witness Baliram Mahadeo Irmale, and same was sealed and handed over to police. On the same day the investigating officer Mr. Gawade directed to Ganpat Jadhavar

(PHC B.No.859), to carry the seized Articles to C.A., Aurangabad and accordingly, he carried seized Articles on 8th June, 2015, and submitted the same in the office of C.A., Aurangabad. On the same day investigating officer Mr. Gawade recorded the statement of carrier of seized Articles to C.A. namely PHC Ganpat Jadhavar.

N) On 16th June, 2015, the investigating officer Mr. Gawade collected the map of the place of occurrence from the Revenue Circle Inspector, Dharur. On 19th June, 2015 he collected the copy of P.T.R. extract of the G.P. House No.438 of village Choramba. On 30th June, 2015, he issued one request letter to the Court of Special Judge, Dharur to hand over both the Accused to Probationary PSI, R.S. Gadve for taking their blood sample for DNA Test. The said application was allowed and accordingly on 1st July, 2015, the Probationary P.S.I. Shri Gadve obtained the custody of both the Accused from the District

Prison Officer, Beed. Then on the same day, the investigating officer Mr. Gawade referred both the Accused to medical officer of Government Hospital, Beed, for taking blood samples for DNA Test along with letter. Accordingly, on the same day medical officer had taken blood samples of both the Accused for DNA Test and same were sealed and handed over to police. On 2nd July, 2015 the investigating officer sent the sealed blood samples of both the Accused to Director, Forensic Science Laboratory, Kalina, Santacruz, Mumbai.

O) After collecting postmortem notes of both the deceased, medical examination reports of both the Accused, C.A. Reports and after completion of investigation, the investigating officer Mr. Gawade found sufficient incriminating evidence against both the Accused and therefore he submitted charge-sheet in the Court of Special Judge, Majalgaon alleging that both the Accused have committed an offences punishable under

Sections 302, 376(d), 376(2)(1)(M), 354, 354-B, 449, 34 of the I.P. Code and under Section 3, 4, 5(i) of POCSO Act.

P) The learned Judge framed the charge. The contents of the charge were read over and explained to the Accused. They denied the charge and claimed to be tried. The defence of the Accused as disclosed from the cross-examination of the witnesses and, from their own statements under Section 313 of the Code of Criminal Procedure is that of total denial and false implication.

7. After recording the evidence and conducting full fledged Trial, the Special Court, Majalgaon convicted and sentenced both the Accused in a manner stated in Para 3 herein above.

8. Learned Additional Public Prosecutor appearing for the State invites our attention to the evidence of the prosecution witnesses and

submits that the findings recorded by the trial Court are in consonance with the evidence brought on record by the prosecution. Learned Additional Public Prosecutor urged that, the prosecution has established beyond reasonable doubt that the Accused No.1 - Krushna s/o Ramrao Ridde, and Accused No.2 - Achyut @ Bappa @ Babu s/o Kachru Chunche, have committed serious offences punishable under Sections 376 and 302 of the I.P. Code, along with other offences. It is submitted that prosecution case is entirely based on circumstantial evidence. The prosecution has brought on record all relevant and incriminating circumstances which conclusively prove that all links in the chain are so complete and conclusively lead to the conclusion that, Accused Nos.1 and 2 committed house trespass by entering in the house of deceased Noorjaha, used criminal force with intent to disrobing her, sexually assaulted on deceased Parveen, forcibly committed sexual intercourse on deceased Parveen and caused

death of minor girl Parveen and her mother Noorjaha. It is submitted that PW-7 Ramchandra deposed in his evidence that on the day of incident at about mid-night when he woke up for answering nature's call and came out from his house, at that time he noticed that Accused No.1 was hurriedly going towards his field. It is submitted that the prosecution has proved chain of evidence so complete and not left any reasonable ground for the conclusion with the innocence of Accused Nos.1 and 2, and accordingly prosecution has proved that in all human probability the act must have been done by Accused Nos.1 and 2. He invites our attention to the medical evidence and submits that prosecution has convincingly proved that death of Noorjaha and Parveen was homicidal. He invites our attention to Para 193 of the Judgment of the trial Court and submits that the trial Court upon appreciation of the entire evidence on record found that Accused Nos.1 and 2 committed heinous crime of rape and murder in a

brutal and barbaric manner. They committed the offence in order to satisfy their lust and forcibly raped 14 years old defence-less girl. He submits that the modus operandi to commit the crime by resorting to diabolical method exhibit depravity, degradation and un-commonality of the crime which had shocked the collective conscience of the community. He further submits that, considering the nature of offence, manner in which it is committed and upon evaluating the aggravating and mitigating circumstances, the trial Court thought it fit to award death sentence to Accused Nos.1 and 2. Therefore the learned Additional Public Prosecutor submits that, the reference deserves to be answered in the affirmative and the Appeals filed by Accused Nos.1 and 2 deserve to be dismissed.

9. Learned A.P.P. appearing for the State in support of his submissions made during the course of hearing placed reliance on the following

reported Judgments, in the cases of Dharam Deo Yadav V. State of U.P.¹, Anil alias Anthony Arikswamy Joseph V. State of Maharashtra², Bhagwan Das and another V. State of Rajasthan³, State [through C.B.I.] V. Santosh Kumar Singh⁴, Munna Kumar Upadhyaya alias Munna Upadhyaya V. State of A.P.⁵, Hanuman Govind, Nargundkar and another V. State of M.P.⁶, Darga Ram alias Gunga V. State of Rajasthan⁷, Narendra V. State of Karnataka⁸, Kanda Padayachi V. State of T.N.⁹, Shivaji alias Dadya Shankar Alhat V. State of Maharashtra¹⁰, Dhananjay Chatterjee alias Dhana V. State of W.B.¹¹, Laxman Naik V. State of Orissa¹² and Dasu and others V. State of Maharashtra¹³.

1 2014 Cri.L.J. 2371

2 AIR 2014 SC [Supp] 1160

3 AIR 1957 SC 589

4 2007 Cri.L.J. 964

5 AIR 2012 SC 2470

6 AIR 1952 SC 343

7 AIR 2015 SC 1016

8 2009 [6] SCC 61

9 AIR 1972 SC 66

10 [2008] 15 SCC 269

11 [1994] 2 SCC 220

12 [1994] 3 SCC 381

13 1985 Cri.L.J. 1933

10. On the other hand, Mr. S.G. Ladda, learned counsel appearing for Appellant in Criminal Appeal No.527 of 2016 i.e. filed by accused No.1 Krishna Ramrao Ridde, submitted that, the entire prosecution case rests upon circumstantial evidence and unless there is complete chain of circumstances, which firmly establishes each of the circumstance separately and all collectively, no conviction can be maintained. It is submitted that, the prosecution is required to prove each circumstance in the chain of the circumstances firmly and there should not be any room for suspicion or doubt. It is submitted that, the evidence of last seen together in the present case is lacking. It is submitted that, even if the evidence of PW-7 Ramchandra is taken as it is, at the most, it can be said that, he noticed that Accused No.1, on the day of incident at about mid-night, was hurriedly going towards his field. However, the same is not sufficient evidence to connect Accused No.1 or to

blame him and hold responsible for death of deceased persons. He submits that after carefully perusing postmortem reports of both the deceased, it is clear that there was no evidence to suggest that the deaths occurred due to strangulation and therefore it was wrong on the part of the learned trial Court to hold that deaths were homicidal. He submits that there were no marks or injury which could suggest conclusive aspect of any violence on the dead bodies. Admittedly, no rope or any other string or cloth was found either at the spot or otherwise collected during investigation. The deaths did not occur due to throttling or smothering or due to impact, injuring vital organs of any of the deceased.

11. It is further submitted that the deceased Noorjaha and her daughter Parveen were residing in a tenement in agricultural land alongwith one Shaikh Chand who is the husband of deceased Noorjaha and father of deceased Parveen. There

was none except their family resided adjacent or nearby to the said tenement. Even according to prosecution, Noorjaha was indulged in illegal activities. She was selling spurious liquor illegally. As such, it is clear that except both the deceased and Shaikh Chand no other persons were residing in the said tenement. It is submitted that there is absolutely no evidence to connect accused No.1 or to blame him to be responsible for the death of the deceased persons.

12. It is submitted that according to the prosecution the bodies in question had undergone a long process of decomposition. The postmortem report Exhibit-63 of deceased Noorjaha as well as that of Parveen Exhibit-64, both would show that their bodies had greenish, discoloration all over the body with marbling of skin. In both the bodies PM lividity were absent. The eyes thereof were closed. There was no biting of the tongue. There were no marks of strangulation. There was no

fracture to the thyroid cartilages. There were no marks of any ligature. Their bodies were black. There was no mark of any contusion resembling to have covered the circumference of their necks. No marks of any knots were found either on the nape or at any part of the neck. As such there was no evidence to suggest that the deaths occurred due to strangulation. The testimony of the autopsy surgeon PW-12 does not disclose any base on the basis of which he formed opinion that both the deceased died due to manual strangulation. Therefore, it was wrong on the part of the Judge of the trial Court to say that deaths were homicidal. Since the dead body parts were swollen therefore an endeavor was necessary to be made to rule out possibility of bite by any reptile or insect. Not only this but the samples of blood from the bodies had to be specifically sent for the purposes of ascertaining if it exhibits any traces of reptile or insect poison. Because due to swelling and petrification and decomposition

the bite marks were possible to be missed. Therefore, the Judge of the trial Court ought to have been circumspective before accepting and ultimately relying upon the opinion of the doctor PW-12, as regards the manner of death. It is submitted that there were no marks or injury which could suggest conclusive aspect of any violence on the dead bodies. Admittedly, no rope or any other string or cloth was found either at the spot or otherwise collected during the investigation. So also, it should not have been forgotten that the deaths did not occur due to throttling or smothering or due to impact, injuring vital organs of any of the deceased. Not only this but the important aspect which is prominent in cases of death occurring due to hanging or strangulation, there is compression of wind pipe, injury to epiglottis always occurs. In the present case, there was no such evidence. The Doctor did not whisper in any manner that he found injuries to the internal parts of neck. There was no injury

to hyoid bone. The trial Court therefore ought not to have forgotten that in all cases medical opinion has to be tested on the basis of the other evidence. That is the reason as to why various High Courts and the Supreme Court time and again reminded that the medical opinion should not be accepted as a gospel truth and further that the medical evidence shall not be taken to be prevailing if the other evidence tendered in a given case does not corroborate the medical evidence. Therefore, in a trial the Judge has to form his independent finding on the basis of the entire evidence. Barring the so called autopsy reports, there is no other material to term the deaths to be homicidal.

13. It is further submitted that a bare glance at both the postmortem reports would show that most of the contents of both these reports are verbatim as regards maximum aspects except injury Nos.7 and 8 in Exhibit-64 the PM reports

concerning deceased Parveen. The opinion as regards the deceased Parveen as spelt in Exhibit-64, about the sexual intercourse was not to be accepted at all for variety of reasons. There was no semen or smegma traces or blood found in the vaginal cavity / canal of deceased Parveen. There is no finding that rupture to the hymen was fresh or that on touch the ruptured edges of such torn hymen shown any active bleeding or the edges were seen to be showing infiltration staining of blood. Admittedly, the Doctor did not spell or say that the edges were inverted. There was no dissection carried to the labial folds. Swelling over labial folds always occurs essentially in each case of petrification. Therefore, the Doctor must dissect such parts to find traces of any injury to the underneath tissues. There is no evidence to such an effect in the present case. It is submitted that since the body shown marbling appearance and it was swollen due to decomposition and had become blackish all over, it was unsafe to

accept the contention of the Doctor that there were contusions over the thighs and more particularly in absence of examining underneath tissue of such parts. The C.A. reports concerning the pubic hairs, vaginal swabs would show that no semen was detected. Even no blood is detected. None of the clothes which were found on the person of Parveen had any semen. No blood was found on any of the clothes of the accused No.1 matching to be that of with of blood Group-B. There was no injury to the labia minora or clitoris or fourchet or the junction abridging the labial part and the anal part. In view of this, and all above said the opinion expressed by the autopsy surgeon that there was forceful intercourse with Parveen had no base at all. Thus the Judge of the trial Court fallen in error.

14. It is further submitted that the spot panchnama Exhibit-38 would falsify and contradict the column No.7 of P.M. reports Exhibit-63 and 64.

If these documents are minutely examined, remembering the text of spot panchnama Exhibit-38, it would appear that there was no pant / Salwar on the body of said Parveen. There is no evidence that police or anyone put the said pant and tied its string any time after the spot panchnama. Neither any panch nor the Investigation Officer PW-13 speaks to this effect. In the spot panchnama the Salwar is found lying at some distance from door however it is not that it was found to be torn at the genital region. The question therefore is whether any answer is given about this mystery by the prosecution through evidence. The answer is in negative. Yet the Doctor finds a Salwar on the dead body and spells its condition that it was torn at the genital region. Thus a serious doubt arises not only about the conduct of investigation Officer and also about the autopsy surgeon. Yet another mystery is there. In the spot panchnama Exhibit-38 a nicker was found lying in the room of the spot. Initially, when this nicker was sent to

C.A., the prosecution claimed the same to be of the deceased Noorjaha. Admittedly, the prosecution does not say that Noorjaha was subjected to sexual intercourse. However, without there being any other contrary evidence, the Judge of the trial Court took it to be that of Parveen. In the spot panchnama Exhibit-38, at the place of occurrence which is only of one room no any other nicker was found. The real question in view of all above said, would be that if according to the Doctor the deceased Parveen wore a Salwar and it was on her person then how unless the Salwar is removed the nicker could be taken away from the body. The another compartment of the mystery and it is if the nicker and the Salwar were removed and thrown away in the room, in that eventuality there could be no traces of semen on the nicker. This nicker as per C.A. report had stain of semen. The fourth compartment of mystery is still there. If the Salwar was made to tear and through that torn part rape is committed, then there must be stain of

semen on such Salwar. However, no semen is detected.

15. It is further submitted that no injuries were found on the person of the accused or their genital parts. No injury to their foreskin or glans penis was found. In view of all above, it was clear that there was no satisfactory evidence to establish rape. No articles in the room were found to have been scattered suggesting that any altercation or defensive / forcible act committed there. There is no evidence of acceptable quality as regards to collection of blood or semen samples of the accused. There is no evidence of drawing or sealing the samples. The prosecution had not led any evidence to assure that the articles were sealed at the spot or that those were given and preserved in the custody of Muddemal Mohrir / clerk of the police station. There is no paper on the entire file of the record showing any seal or stamp of such Muddemal clerk. Exhibit-38 does not

disclose the manner and mode of the alleged seizure and sealing. It does not bear any seals specimen. If as per Exhibit-38 the yellow Salwar was seized and sealed at the spot and taken in custody by the police and if ultimately given to the custody of Muddemal Mohrir / clerk, in that event the Doctor could not find Salwar on the person. Admittedly, there is no any second Salwar in this case. Considering this, it should have been held that the prosecution was absolutely unfair and rather played game of hide and seek.

16. It is further submitted that the prosecution deliberately omitted to examine the initial Investigation Officer PSI Panpatte who visited the spot first from the police department. PW-1 is a panch of inquest panchnama Exhibit-25 of deceased Noorjaha the claim of this witness is absolutely false and is controverted inter-se by the PM report. Similar is the case as regards PW-2 Vitthal, who is panch of inquest of deceased

Parveen Exhibit-27. PW-3 is a panch to the memo Exhibit-30 of the appellant/ accused No.1 and alleged another memo of Article-2 at Exhibit-31. The same panchas were of recovery panchnamas Exhibit-32 and 33 regarding seizure of clothes. The alleged memorandums under Section 27 of the Evidence Act are unbelievable for variety of reasons. That apart there are no traces of blood on the clothes of the appellant/ accused No.1. Except only one semen stain of 0.5 c.m. in diameter on his full pant near the zip. It would be interesting to see that no blood on his pant is found, no other clothes viz. under-pant of an accused was collected and / or sent for C.A. examination. Therefore it is submitted that unless the underwear is removed no intercourse would be possible. Even if it is presumed that it was committed after unzipping the pant in that event there must be blood stains, in case the victim Parveen sustained genital injuries due to the alleged act. Admittedly, no semen samples of

any of the accused is collected. There is no evidence of this either tendered by PW-3 or even on Exhibit-32 and 33 about sealing of the articles clothes. There is no seal specimen on the said Exhibits. A careful perusal of Exhibit-32 and 33 would show that writing about sealing is subsequently inserted in the document and the same is in different hand-writing. Thus there is no reliable evidence about sealing.

17. It is further submitted that the copies of muddemal registers show that none of the alleged seized articles were deposited with the Muddemal clerk. The said copies do not bear signature of Muddemal clerk of the Police Station. Therefore, where the articles were lying till the same were sent, remained in mystery. It is unconceivable that the accused would make the alleged disclosures to the persons who were not known to them or were not of acquaintance. The clothes allegedly seized from the house as claimed

by the prosecution, the said houses were open when police reached. It means that there were other persons residing in the said houses. No inquiry during investigation was made with any of the inmates of the said houses as to exactly whom the clothes belonged. Therefore, there is no link between the seized clothes and the accused. Not only this, but whether the clothes comfortably fit on the text of the body of any of the accused is not ascertained either by the Investigation Officer or even by the trial Court before relying on the evidence. The accused have stated that the clothes do not belong to any of them. PW-4 is seizure panch to the panchnamas Exhibit-35 and 36, the panchnamas of seizure of clothes of deceased Noorjaha and Parveen. Again there is no evidence of seizure and / or sealing of any of these clothse. Both panchnamas even according to prosecution were prepared in Police Station. The panch PW-4 is a puppet and habitual panch. There is no evidence as to whom which cloth belongs.

There is no evidence as to who, how, when, and in what manner and why for produced said clothes before Police. Again there is no evidence that any of the clothes belonged to the deceased. The person from whom the clothes are either received or produced to the police is not examined. Thus vital link is missing. As such, no reliance ought to have been placed by the trial Court over the seizure.

18. It is further submitted that PW-5 Shaikh Amin is close relative of husband of deceased Noorjaha. He is a panch to spot panchnama. His evidence would show that the police were politically influenced. This panch has resorted to several contradictory versions. The nicker before the Court is of red colour. It is at Article-3. The spot panchnama Exhibit-38 does not show that any of the seized articles were sealed. The other clothes also did not bear any chit bearing signature of the witness or any other one.

No evidence of sealing is also adduced. None of these seized articles were delivered to the custody of Muddemal clerk of Police Station. No evidence where these articles were lying till they were dispatched for C.A. Reports. There is no blood found on Exhibit-6. Again having regard to the fact that if really the nicker belonged to deceased Parveen, in that eventuality there ought to have been blood thereon. Rest of the other articles and particularly clothes of bodies did not bear any semen. As such there is no evidence to accept that nicker belonged to deceased Parveen is there. As per the spot panchnama Exhibit-38, a red colour nicker is seized and since then it was in custody of police. The prosecution claimed this nicker to be that of Parveen as is appearing from Exhibit-49. The PM report Exhibit-64 would show that there were clothes on the dead body of deceased Parveen and there was yellow under-wear on the person of deceased Parveen. Said clothes are produced before the Court. PW-5 spot panch

disclosed that he is totally unaware of such clothes. If this is curiously looked further, it would appear that the prosecution has painted Article no.3 red nicker foisting it to be belonged to deceased Parveen. This Article no.3 according to prosecution was lying away from the dead body and it has semen stains. This is the Article no.3 about which the DNA report is there. The legitimate question therefore would arise if there was nicker on the person of Parveen till she was subjected to autopsy, then the Article no.3 cannot be of her. According to prosecution, there were no blood or semen stains on this yellow nicker which was on the person of Parveen, where this yellow nicker had gone is in mystery. Thus it is clear that the trial Court did not consider this valid submission of defence about vital aspect, which goes to the root of the matter. Barring the DNA report of nicker Article-3, there is no other material of whatsoever nature. Thus the conviction is absolutely illegal.

19. It is further submitted that PW-6 Gulab Shaikh is a real brother of Shaikh Chand, the husband of deceased Noorjaha and father of deceased Parveen. PW-6 claimed that he had noticed the dead bodies on 28th May, 2015 at about 5.00 p.m. He did not lodge any report, nor whisper about the same to anyone. He lodged the FIR on the next day i.e. on 29th May, 2015. The record would show that A.D. report Exhibit-39 was lodged by PW-5 Shaikh Amin, who is a nephew. This A.D. report bearing No.16/2015 was lodged at about 10.15 p.m. In the said report, there is no allegation against anybody, although PW-5 had visited the place of occurrence before lodging the report. In the report, there is no mention about any injuries or clothes, more particularly nicker at the place of occurrence. After registration of A.D., no inquest was conducted at the spot but Exhibit-25 and 27 both were conducted at the Government Hospital. Perusal of these inquest

reports would show that those were conducted during 6.30 a.m. upto 8.50 a.m. The spot panchnama Exhibit-38 was conducted on 29th May, 2015 between 8.15 a.m. to 9.45 a.m. This shows that when the spot panchnama was conducted no dead bodies were lying there. Therefore, who, how and when shifted the dead bodies, has remained in dilemma and no evidence is adduced. The Investigation Officer Mr.Panpatte who was conducting inquiry in the A.D. is not at all examined by the prosecution. It is submitted that right from 5.00 p.m. of 28th May, 2015 till the morning of 8.15 a.m. of 29th May, 2015 several persons had access to the spot even before arrival of police and also subsequent to it prior to conducting spot panchnama. Admittedly, there is no evidence of deputing any police guard. In view of this and also the fact of belated FIR, it is clear that a story was cooked up and plantation of the things cannot be ruled out.

20. It is further submitted that the testimony of PW-6 Gulab Shaikh is not at all helpful to the prosecution. The statement of Shaikh Chand, the husband and father of deceased persons, was not recorded. He was not interrogated and examined. Even according to the prosecution, he had decamped from the village close to the date of incident. According to PW-6, Shaikh Chand had gone to Koregaon at the house of his sister. No investigation in that direction was made to ascertain the correctness or otherwise of this aspect. There is also no record on the file of Court that the said Shaikh Chand had suffered or not any injury or ailment. The answer to the query given by PW-13 on this issue is totally non satisfactory, rather flirting. This has all been resorted to malignantly prosecuting the accused. The testimony of PW-6 would show that on 28th May, 2015 Shaikh Chand had come to village Choramba in the afternoon. The legitimate question arises as to what was the conduct of this Shaikh Chand?

What was his reaction? Why he did not visit the place of occurrence? Why he did not go to the place? All these questions remained unanswered. According to PW-6, Shaikh Chand and deceased women were residing together in the field i.e. the place of occurrence. The testimony of PW-6 thus carries the case of prosecution beneath dark clouds of suspicion. Therefore, the present case being based on circumstantial material, the prosecution has to rule out all other hypothesis and possibilities. Unfortunately, the trial Court did not look for the same and proceeded to pass the impugned Judgment of conviction. No blood or semen samples of Shaikh Chand were obtained. His clothes were not seized. He was never referred to medical examination. Therefore, possibility of his semen on the alleged nicker also cannot be ruled out. Had this all been done probably the result would have been different. No investigation was ever directed to ascertain about the nature of relations and the passion between said Shaikh

Chand with the deceased women. Admittedly, there were no neighbors surrounding the place of occurrence and that apart Noorjaha, even according to prosecution itself indulged in illegal activities.

21. It is further submitted that the evidence of PW-7 Ramchandra is useless for variety of reasons. It is in respect of his noticing the appellant/ accused No.1 going towards field. The distance between house of the witness and of the appellant/ accused No.1 is 300/400 meters. Except this there is nothing. Thus witness PW-7 is friend of Papa Shaikh, the brother of Shaikh Chand and resided opposite to his house. Except allegedly seeing the appellant/ accused No.1 there is no other incriminating material. His statement was recorded after 6 days of the incident. His evidence does not show that there was either street light or moonlight. He does not give any timing. There is no data as to whether the

appellant/ accused No.1 proceeded to his field or otherwise. As such, his testimony does not take the case at any point. He does not describe clothes on the alleged person of appellant/ accused No.1. The evidence of PW-8 Ganpat Jadhwar is regarding carrying articles to C.A. PW-9 Baliram and PW-10 Vachisht, both were declared hostile by the prosecution. As such, it does not take the case at any point at least against the accused. PW-11 Dr.Balasaheb examined the accused. His evidence about the alleged history is inadmissible because it was made while the appellant/accused No.1 was in the custody of police. He does not say that he collected semen sample. He did not find any nail scratch marks. The abrasions were old and healed abrasions. The appellant/ accused No.1 being an agriculturist, the tiny abrasions as were found over his back, right arm and right forearm were bound to occur in routine course. The age of those abrasions according to Doctor were 6 to 8 days old. The

Doctor did not say that the said abrasions had any cricentic shape. Perusal of the alleged history would show that even according to prosecution the alleged intercourse was 10 days prior to the incident. Therefore, the semen found to be on the nicker loses the significance. Admittedly, age of semen is not ascertained. Thus the testimony of the Doctor does not, in any way help the prosecution. During cross-examination, the Doctor admitted that his opinion about the injuries has no base.

22. It is further submitted that the testimony of Investigation Officer is fit to be rejected for variety of reasons. Rather it would show his biased attitude and unfairness apart from unfruitful investigation. His evidence is contrary to evidence of PW-5 Gulab. He gave lame excuses when pointed questions were put to him. He has suppressed vital documents and statements from the Court. He withheld statements of various persons

namely Dhanraj Mundhe, Lakhan Bhalerao, Balu Ghadge, etc. He has chosen selected panchas, who happened to be relatives of deceased, although the village has dense population. There was no evidence to show that deceased Parveen was not major, but was either a minor or child. The age was not determined by conducting an inquiry. No compliance with Section 34[2] of the POSCO Act was done. There was even otherwise no proof laid by the prosecution to establish that Parveen was a minor. No ossification test was done and / or proved. No document or evidence concerning her date of birth was produced. The entire evidence whatsoever on record adduced by the prosecution was hopelessly insufficient to hold that Parveen was a minor. In view of this convicting the appellant/ accused No.1 under POSCO Act is absolutely illegal. The presumption under the POSCO Act in the circumstances of the case is unavailable for the prosecution. The A.P.P. who conducted the prosecution before the trial Court,

was not appointed under the POSCO Act to conduct the trial. There is no gazette notification approving his appointment. Thus the entire trial vitiates. The case laws cited by the defence have not at all been considered in proper perspectives. The trial Judge allowed the passion to creep in and the same has resulted in serious miscarriage of justice.

23. It is further submitted that the entire Judgment and sentence is not merely harsh but is unsustainable. The case is not rare of the rarest one to impose capital punishment. The observations and findings on the issue recorded by Judge of the Court below are incorrect, injudicious and therefore fit to be disturbed and set aside. There were several other possibilities which all have not been ruled out and as such there being no evidence to show that the accused were the only perpetrator of the crime has not been established. In view of this, they both ought to have been

acquitted. It was clear on the face of record that the prosecution case suffered with plenty of laches and has failed to adduce clinching and satisfactory evidence. The Court below apparently forgotten the basic rule envisaged by the criminal jurisprudence that graver the charge stricter should be the degree of proof. Thus the questioned Judgment of conviction being perverse is fit to be quashed and set aside by acquitting the appellant/accused No.1 and the confirmation case deserves to be rejected. There is no admissible evidence as regards alleged rape and alleged murders.

24. In support of his submissions, Mr. S.G. Ladda, learned counsel appearing for the accused No.1 placed reliance on the reported Judgments in the cases of *Goutam Kundu V. State of W.B. and another*¹⁴, *The State V. Motia and other*¹⁵, *Jarnail Singh V. State of Haryana*¹⁶, *Sharad Biridhichand*

¹⁴ AIR 1993 SC 2295

¹⁵ AIR 1955 Raj.82

¹⁶ 2013 Cri.L.J. 3976

*Sarda V. State of Maharashtra*¹⁷, *Shankarlal Gyarasilal Dixit V. State of Maharashtra*¹⁸, *Behram Sheriar Irani V. Emperor*¹⁹, *Satbir Singh V. State of Haryana*²⁰, *Kishore Chand V. State of H.P.*²¹, *Paramhansa Jadab and another V. The State*²², *Mohan V. The State of Rajasthan*²³, *Hanuman Govind, Nargundkar [supra], Pratap Misra and others V. State of Orissa*²⁴, *Shaikh Farid Hussinsab V. State of Maharashtra*²⁵ and *Premjibhai Bachubai Khasiya V. State of Gujarat & another*²⁶.

25. Mr. Hange, learned counsel appearing for accused No.2 Achyut @ Bappa @ Babu s/o Kachru Chunche adopted the arguments advanced by learned counsel Mr. Ladda. In addition to that, it is submitted that accused No.2 Achyut has been falsely implicated in this case. There is no iota

17 AIR 1984 SC 1622

18 1981 Cri.L.J. 325

19 AIR 1944 Bom. 321

20 1995 Cri.L.J. 739

21 AIR 1990 SC 2140

22 AIR 1964 Orissa 144

23 1985 Cr.L.R. [Raj.] 657

24 AIR 1977 SC 1307

25 1981 Mh.L.J. 345

26 2009 Cri.L.J. 2888

of evidence against accused No.2 Achyut. There is no substantive evidence against accused No.2 and alleged memorandum statement before the police and pursuant to said memorandum and alleged disclosure, no conviction can be based, since statement given before the police is not admissible.

26. We have heard the learned A.P.P. appearing for the State, learned counsel appearing for accused at greater length. Now we would like to discuss the evidence of prosecution witnesses in detail. Vishwajeet Govindrao Pawar (PW-12), was serving as Associate Professor of Forensic Medicine in STRT Hospital and Medical College at Ambajogai. During his evidence, he has stated that on the same day i.e. on 29th May, 2015, along with Dr.Vishal Gholve firstly he conducted the postmortem examination of Shaikh Noorjaha and found face cyanosed and swollen conjunctival heamorrhage present. Tongue outside the mouth and

tongue tie present. Mouth partially opened. No salivary stains seen, reddish-blackish colored blood like fluid oozing from mouth, nostrils, ears. Nail beds and lips cyanosed. The above external examination have been shown by them in column Nos.13 and 14 in postmortem notes. At the time of postmortem examination, they found no evidence of any injury to the external genitals. Evidence of purging of stool present and found external injuries over the body. The above external examination have shown by them in column No.15 in postmortem notes. At the time of postmortem examination of Shaikh Noorjaha, they found following external injuries on her person:

"1] Contusion present over the right side of the neck 3 x 2 cm in size, horizontal in direction 3 cm above to Manubrium sterni Brownish-black in colour.

2] Contusion present over the right side of the neck 2 cm X 1 cm in size, vertical in direction 4 cm above to Manubrium

sterni brownish black in colour 1 cm above to injury No.1.

3] Contusion present over the right side of the neck 1 cm X 1 cm in size, vertical in direction 5 cm above to the Manubrium sterni brownish black in colour 1 cm above to the injury No.2.

4] Contusion present over the right side of the chin 1 X 1 cm in size, horizontal in direction 3 cm above to Manubrium sterni brownish black in colour parrel to injury No.3.

5] Contusion present over left side of the eye 2 X 1 cm in size, horizontal in direction 3 cm parrel to right mastoid process brownish black in colour.

6] Contusion present over the left side of the neck laterally 2 X 1 cm in size, horizontal in direction 4 cm above to midpoint of clavicle brownish black in colour.

7] Multiple contusions present over the left arm medially varying in direction and size, Brownish black in colour.

8] Multiple contusions present over the right arm varying in direction and size, brownish black in colour.

9] Multiple contusions present over the right and left knee joint varying in direction and size, brownish black in colour.

10] Contusion present over the left buttock 5 X 3 cm in size, horizontal in direction 3 cm from pubic symphysis brownish black in colour.

11] Contusion present over the right buttock 4 X 2.5 cm in size, horizontal in direction 3 cm from pubic symphysis brownish black in colour."

. The above all injuries were ante-mortem in nature and shown by them in column No.17 in postmortem notes.

. On internal examination, they found evidence of petechial hemorrhags seen in white matter of brain and the above injury shown by them in column No.19 (III) in postmortem notes. They

also found in column No.20 D and E right and left lung shows reddish frothy fluid oozes out on cut section with evidence of petechial hemorrhages seen over interlobar surface. The above all injuries were shown by them in column No.20E and D in postmortem notes.

. On external and internal examination, it was opined that the probable cause of death of deceased Noorjaha due to Asphyxia due to manual strangulation. There is no evidence of forceful sexual intercourse however viscera and blood for C.A. preserved.

. During his examination-in-chief, he admitted that he along with Medical Officer Dr.Vishal Gholve prepared postmortem notes.

27. PW-12 along with Dr. Vishal Gholve also conducted postmortem examination of Parveen D/o. Shaikh Chand. He stated that at the time of her

postmortem examination, firstly on her external examination, they found that face cyanosed and swollen, tongue outside the mouth and tongue tie present. Mouth partially opened. No salivary stains seen. Reddish blackish coloured blood fluid oozing from nose, mouth and ears. The above external examination shown by them in column No.13 in postmortem notes. They also found on external examination lips cyanosed. The above external examination shown by them in column No.14 in postmortem notes. At the time of her postmortem examination, they found following external injuries on the person of deceased Parveen:

"1] Contusion present over the Right side of the neck 4 x 3 cm in size, vertical in direction 4 cm above to Manubrium sterni brownish black in colour.

2] Contusion present over the Right side of the neck 4 X 2 cm in size, vertical in direction 6 cm above to Manubrium sterni brownish black in colour 1 cm above to injury No.1.

3] Contusion present over the Right side of the chin 2 X 1.5 cm in size, vertical in direction 4 cm above Manubrium sterni brownish black in colour parrel to injury No.3.

4] Contusion present over the right side of the eye 1 X 1 cm in size, horizontal in direction 3 cm parrel to right mastoid process Brownish black in colour.

5] Contusion present over left side of the neck laterally 2.5 x 2 cm in size, horizontal in direction 4 cm above to midpoint of clavicle brownish black in colour.

6] Multiple contusions present over the right and left knee joint varying in direction and size, brownish black in colour.

7] Contusion present over the left buttock 4 x 3.5 cm in size, horizontal in direction 3 cm from pubic symphysis brownish black in colour.

8] Contusion present over the right buttock 4.5 x 3 cm in size, horizontal in

direction 3 cm from pubic symphysis brownish black in colour. The above all injuries were ante-mortem in nature and shown by them in column No.17 in postmortem notes."

28. On internal examination, they found evidence of petechial hemorrhages seen in white matter of brain, the above injuries are mentioned by them in column No.19 (III). The right and left lung shows reddish frothy fluid with evidence of petechial hemorrhages on interlobar surface. The above injuries are mentioned in column no.20 D and E. Then external examination of genitals, they found following injuries:

"1] External injuries like contusion present over right labial fold 2 x 1 cm in size vertical in direction brownish black in colour.

2] Contusion present over the left labial fold 1.5 x 1.5 cm in size, oblique downward in direction brownish black in colour.

3] Multiple contusion present over the right and left side of the thigh varying in direction and size brownish black in colour.

4] Swelling present over the right and left labial fold.

5] Hymen rupture at 3 O'clock and 7 o'clock position.

6] Foul smelling discharge coming out from the cervix.

7] Internally contusion present over the cervix 1 x 0.5 cm in size on left of the wall brownish in colour with bleeding present black in colour. The above all injuries were ante-mortem in nature and shown by them in column No.21 of postmortem notes."

29. They expressed opinion that the probable cause of death of deceased Parveen is Asphyxia due to Manual Strangulation. There is evidence of forceful sexual intercourse however viscera with blood, blood for grouping, pubic hairs and vaginal

swabs preserved for C.A.

30. During his cross examination, he fairly stated that the age of injuries are not mentioned in column No.17. However, they mentioned additional remarks in postmortem notes of Noorjaha and Parveen that the death was occurred within 36 to 48 hours before doing the postmortem. It is specifically denied by him that they have falsely mentioned the nature of injuries as ante-mortem in column No.17. He voluntarily stated that the examination of stomach content is not relevant to ascertain the time of death. He reiterated that the death of both the deceased was occurred within 36 to 48 hours prior to their postmortem examination and denied suggestion that due to the bacterial infection the decomposition and autolysis started in the body, they could not give correct opinion. He specifically stated that it is not necessary that hyoid bone should be fractured in strangulation process. He further stated that

the findings of strangulation and snake bite are not identical.

. Upon careful perusal of his evidence, it appears that PW-12 along with Dr.Vishal Gholve conducted postmortem of Noorjaha and Parveen and expressed their opinion that the death of both deceased is homicidal in nature. It is specifically stated by PW-12 that, when the dead body of Parveen was brought for postmortem examination at that time torn yellow colour underwear, red colour payjama as well as yellow colour Salwar were on her person. He specifically stated that on the basis of pubic hairs, they have mentioned the age of Parveen as 14 years in her postmortem notes. However, he fairly stated that it is not mentioned in the postmortem notes of Parveen that on the basis of her pubic hairs, they have ascertained her age as 14 years. He also admitted that they did not follow the ossification test. He specifically denied suggestion that the

opinion given by them about the probable cause of death of Noorjaha and Parveen as well as rape on Parveen are not true and correct.

. In conclusion, the evidence of PW-12 makes it clear that the death of Noorjaha and Parveen was homicidal and there are signs of intercourse with Parveen, and further on the basis of pubic hairs, the age of Parveen was 14 years at the relevant time.

31. PW-11, Balasaheb Shahajirao Solanke, is serving as a Medical Officer in Rural Hospital Dharur. He stated in his evidence that he examined accused no.2 Achyut @ Bapu Kachru Chunchu. After medical examination of accused no.2, as per his opinion the accused no.2 is capable to perform sexual act. At the time of his medical examination, he had taken sample of pubic hair, sample of scalp hair, nail cutting and sample of blood. The said samples sealed by him and handed

over to Police for sending to C.A. Accordingly, he issued medical examination report of accused no.2. He further stated that on the same day he examined accused no.1 as per requisition letter of police. At the time of medical examination of accused no.1, he narrated the history about 'peno vaginal intercourse with Parimala Chand Shaikh since 10 days before incident and performed peno vaginal intercourse on same date of incident, but she was not killed by him'. After medical examination of accused no.1, as per his opinion accused no.1 is capable to perform sexual act. At the time of medical examination of accused no.1, he had taken sample from pubic hair, sample of scalp hair, nail cutting and blood sample. The said samples were sealed by him and handed over to police for sending it to C.A. At the time of medical examination of accused no.1, PW-11 found in all three injuries on his person. Injury no.1 abrasion size 1/2 cm over back. 2] Abrasion size 2x2 cm over right arm on middle 1/3rd. 3] Abrasion size

1/2 cm over right forearm. The age of above three injuries was within 6 to 8 days. Accordingly, he prepared medical examination report of accused no.1 in his own handwriting. He also identified both the accused persons, who were present in the Court.

32. So far as accused no.1 is concerned, he narrated the history about 'peno vaginal intercourse with Parimala Chand Shaikh since 10 days before incident and performed peno vaginal intercourse on same date of incident, but she was not killed by him'. Upon careful perusal of the evidence of PW-11, he has clearly mentioned that accused no.1 is capable to perform sexual act. At the time of medical examination of accused no.1, he had taken sample from pubic hair, sample of scalp hair, nail cutting and blood sample. The said samples sealed by him and handed over to police for sending to C.A. He has also mentioned three injuries noticed by him on the person of

accused no.1. The age of injuries also stated in between 6 to 8 days prior to his examination. He also identified the accused persons who were present before the Court.

. So far as accused no.2 is concerned, PW-11 has stated that, during medical examination of accused no.2, he took sample of pubic hair, sample of scalp hair, nail cutting and sample of blood of accused no.2. The said samples sealed by him and handed over to Police for sending to C.A. Accordingly, he issued medical examination report of accused no.2. On the said medical report, there is signature of PW-11 as well as signature and thumb marks of accused no.1 and also signature of one witness Angad Nakhate. Even on the medical report of accused no.1, there is signature of PW-11 as well as the signature and thumb mark of accused no.1 and the signature of witness Angad Nakhate. He denied suggestion that he did not medically examine the accused on 2nd June, 2015.

He has specifically stated even during his cross examination that the requisite samples were taken and same were sealed by him for sending to C.A. Upon careful perusal of his cross examination, nothing useful was elicited by the defence.

33. The prosecution examined in all 13 witnesses. PW-1 Samina Amin Shaikh and PW-2 Ramesh Vitthal Chavan were examined to prove the inquest panchnama. PW-1 Samina Shaikh in her evidence has stated that on 29th May, 2015, she went to the SRTR Hospital at Ambajogai to act as Panch of inquest panchnama of Noorjaha. She found strangulation marks as well as injuries on her both cheeks, chin as well as on chest. When she noticed the dead body of Noorjaha in P.M. room at that time one chain of black beads was in her neck. She has signed the inquest panchnama. The strangulation marks and injuries on cheek and chin on the person of Noorjaha were mentioned in the said panchnama. When she noticed the dead body of

Noorjaha in all five injuries i.e. strangulation, two on her both cheeks, one on her chin and one on her chest. According to her, the said injuries were swelling injuries and not bleeding.

34. PW-2 Ramesh Vitthal Chavan was Panch to the inquest panchnama of Parveen at Exhibit-27. He noticed that Parveen has sustained injury on her right cheek and the blood was oozing from her nose and he also found mark on her neck. He noticed that her private part was also swollen. He has signed on the said inquest panchnama.

. During cross examination of PW-1 and PW-2 nothing useful to the defence has been elicited from them.

35. Therefore, if the evidence of PW-11, PW-12, PW-1 and PW-2, postmortem report and the inquest panchnamas would lead to a conclusion that the death of Noorjaha and Parveen was homicidal,

and there was intercourse with Parveen.

36. The prosecution examined PW-3 Lahu Bhimrao Kedar, at the relevant time he was working as In-charge Talathi at Choramba, Sajja Dharur. On 5th June, 2015, he himself along with Revenue Circle Inspector Munde went to the Police Station Dharur. The Police brought accused no.1 from police custody before them. Accused no.1 made memorandum statement before them and police that he committed rape on Parveen and then he committed her murder as well as he also stated the another accused no.2 committed murder of Noorjaha. He further stated before them and police the cloths on his person at the time of incident are kept by him in his house and he is ready to produce the said clothes and handed over it to the police. Accordingly, the Police prepared memorandum statement of accused no.1. The statement was signed by PW-3 and also Revenue Circle Inspector Munde.

. Lahu (PW-3) further deposed that thereafter, the Police brought accused no.2 Achyut Chunche from the police custody before them. Accused no.2 made memorandum statement before them. He has stated that he committed murder of Noorjaha and the clothes wore by him at the time of incident has been kept in his house and he is ready to produce the said clothes and handed over it to the police. Accordingly, the police prepared memorandum statement of accused no.2 before them. The said memorandum statement was signed by PW-3 and also the accused.

37. Lahu (PW-3) has stated that the Dy.S.P.Gawade with Police Staff, accused nos.1 and 2, he himself as well as another Panch Mundhe went to village Choramba by police jeep. Accused no.1 produced his one shirt and pant from his house and the said clothes were seized by the Police under seizure panchnama in their presence.

The said panchnama was signed by PW-3 as well as by another Panch. It was also signed by the Deputy S.P. Gawade. He identified the clothes of accused no.1 when those were shown to him. He stated that the label affixed on seized pant pocket is shown to him and he noticed his signature and signature of another Panch Munde on the said seizure panchnama. He also stated that after that along with police, he himself and Mr.Munde went to the house of accused no.2. Accused no.2 produced his shirt and pant from his house. The said seizure panchnama was prepared and all of them have signed.

. During the cross examination of PW-3, nothing useful to the defence has been elicited from this witness.

38. Mahendrasingh Mahavirsingh Rahekwai (PW-4), deposed that he received phone call from Police Station Dharur. He went to the Police

Station, Dharur. It appears that the clothes on the person of deceased Noorjaha i.e. one sari, one petti-coat stained by blood and one blouse were shown to PW-4, and thereafter the Police prepared seizure panchnama of the clothes on the person of deceased Noorjaha in his presence and in the presence of another Panch. The Police also seized the clothes on the person of deceased Parveen at the time of postmortem in presence of PW-4. The Police prepared seizure panchnama. PW-4 identified his signature on the said panchnama. It is true that during his cross examination, he stated that he did not remember the seized petti-coat of deceased Noorjaha was having lace (thread) or not. He cannot tell how many buttons were on seized blouse of Noorjaha. However, he reiterated that in his presence the seizure panchnama of the clothes was there and he reiterated his statement of witnessing such seizure panchnama and signing it during his cross examination. He denied suggestion that the Police did not seize the clothes of

deceased Noorjaha and deceased Parveen in his presence.

39. The prosecution examined Shaikh Amin Rasul as PW-5. He stated in his deposition that on 29th May, 2015, he was present in his village Choramba. He was called by the Police Officer Gawade on the place of occurrence to act as Panch. He has stated minute details about articles seized from the spot. He stated that at the time of preparing spot panchnama, the police also seized blood mixed soil on the place of occurrence, simple soil on the place of occurrence, one nicker having red colour stained with semen and black hair attached with the said nicker. The Police also seized the black hair on the place of occurrence, one parrot colour lime Dabi of Rajesh company, one button of fashion company having white colour, one full and one half buttons of fashion company, having white colour and six pieces of broken bangles having faint red pink

colour on the spot in their presence. He can identify the seized article if shown to him. He identified all those articles when he was shown those articles during recording of his evidence. He also identified his signature. He specifically stated that the seized full button and one half button of fashion company having white colour are the same, which were seized and the label on it are the same. He put his signature on it. He also identified other seized articles and his signature on the seizure panchnama. He stated details about his relation with the deceased Noorjaha and her husband Shaikh Chand. He has also stated about the habits of Shaikh Chand. He stated that the distance between house of Noorjaha and village Choramba is 300 meter. He has also stated topography of the adjoining area of house of the Noorjaha. He specifically stated that on 27th May, 2015, there was a function of jagran-Gondhal in the house of Haribhau Sakrudkar. To go to the house of the said Haribhau Sakrudkar, there was a

way in front of the house of Noorjaha. He stated that on the day of incident Shaikh Chand was not at his house.

40. The prosecution examined PW-6 - Gulab Ismail Shaikh. He is an informant. He deposed that his brother Shaikh Chand, his wife Noorjaha and their daughter Parveen were residing in his field on Chardari road at village Choramba. But eight days prior to the incident his brother Shaikh Chand went to the house of their sister at Koregaon. On 29th May, 2015, he was in his village. On that day he went to police Station Dharur for filing report before police about the death of Noorjaha and Parveen. He deposed that one day prior to lodging report, he went to his field in which his brother Shaikh Chand was residing with his wife and daughter, and on that day when he was in the field, one Gadekar came there. Gadekar made demand of drinking water. Then he told Gadekar to go in the house of Chand

and to drink water. Accordingly, said Gadekar went to the house of Chand and opened the door and entered in the house and Gadekar noticed that Noorjaha and Praveen were lying in dead condition. PW-6 further deposed that immediately said Gadekar rushed to him and narrated him about the death of Noorjaha and Parveen. Thereafter he himself and Gadekar went in the house of Shaikh Chand and noticed that Noorjaha and Parveen were dead and the blood from nostril of Parveen was oozing as well as the clothes were also disordered on their person. Thereafter he returned back to his house and narrated about the death of Noorjaha and Parveen to his brothers and their wives. Thereafter on next day he went to police Station Dharur and lodged report Exhibit-43.

. During the course of his cross-examination, PW-6 Gulab further stated that as mother of Parveen was saying that Parveen was aged about 14 years, therefore he had mentioned age of

Parveen as 14 years in report.

41. The prosecution examined PW-7 Ramchandra Sakrudkar. He deposed that on the day of incident at about mid-night when he woke up for urine, at that time he noticed that accused No.1 was hurriedly going towards his field.

42. The prosecution examined PW-8 Ganpat Bhimrao Jadhavar. He deposed that on 2nd June, 2015, and again on 8th June, 2015 he carried the seized articles and submitted the same in the office of C.A., Aurangabad.

43. The prosecution examined PW-9 Baliram Mahadeo Ermale. But he turned hostile and did not support the prosecution case. The prosecution also examined PW-10 Vachisht Bhanudas Mule on the point of 'last seen together'. However this witness turned hostile and did not support the prosecution case.

44. The prosecution examined PW-13 Ganesh Namdeo Gawade. He is Investigating Officer in this crime. He deposed about the manner in which he has carried out the investigation of the crime.

45. Pursuant to the order passed by this Court on 2nd February, 2017, one Sandeep Ganpat Pawar was examined as PW-14 by the Special Judge, Majalgaon. Pursuant to the order passed by this Court, further evidence of PW-13 Ganesh s/o Namdeo Gawade, Dy.S.P. Beed was also recorded by the Special Judge, Majalgaon.

46. We have discussed the evidence of medical officers PW-11 Balasaheb Solanke and PW-12 Dr. Vishwajeet Pawar, and PW-1 Samina and PW-2 Ramesh who were panch witnesses to the inquest panchnamas of deceased Noorjaha and Parveen. The medical officer PW-12 Vishwajeet Pawar expressed opinion that death of Noorjaha and Parveen was

homicidal and there was forceful intercourse with Parveen and further on the basis of pubic hairs, it is mentioned in the postmortem notes that age of Parveen was 14 years. It appears that only on the basis of pubic hairs the conclusion is reached by the medical officer that age of Parveen was 14 years. It is admitted by the medical officer PW-12 Pawar in his cross-examination that they did not follow the ossification test. PW-12 Pawar fairly stated in his cross-examination that it is not mentioned in the postmortem report that on the basis of pubic hairs they have ascertained the age of Parveen as 14 years. Importantly, in the present case the provisions of the POCSO Act, are invoked. We find considerable force in the argument of counsel appearing for the accused that the trial Court ought to have invoked the provisions of Section 34(2) of the POCSO Act, to determine the age of Parveen so as to lend support to the opinion expressed by PW-12 Pawar that he has determined her age as 14 years, on the basis

of pubic hairs. PW-12 Pawar has also given an important admission in his evidence that he has not mentioned the age of the injuries in Column No.17 of the postmortem reports. However, in the postmortem report it is stated that death of Parveen was within 36 to 48 hours preceding conducting the postmortem report.

47. Admittedly, in the present case there is no eye witness to the prosecutions case and the prosecution case is entirely based upon the circumstantial evidence. So far as the appreciation of the circumstantial evidence is concerned, the law is well settled. The Supreme Court in the case of Hanuman Govind Nargundkar and another Vs. State of M.P.²⁷, held thus:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully

27 AIR 1952 SC 343

established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

48. The Supreme Court in the case of Nathiya vs. State Represented by Inspector of Police, Bagayam Police Station, Vellore²⁸, in Para-27 of the Judgment held thus:

"27. As recently as in Sujit Biswas vs. State of Assam²⁹ and Raja vs. State of Haryana³⁰, it has been propounded that in scrutinising the circumstantial evidence, a court is required to evaluate it to ensure

28 (2016) 10 S.C.C. 298

29 (2013) 12 S.C.C. 406

30 (2015) 11 S.C.C. 43

that the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. It was underlined that whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted. That in judging the culpability of the accused, the circumstances adduced when collectively considered, must lead only to the irresistible conclusion that the accused alone is the perpetrator of the crime alleged. That the circumstances established must be of a conclusive nature consistent only with the hypothesis of the guilt of the accused, was emphatically propounded."

49. Since the case is based upon the circumstantial evidence, the motive assumes importance. According to the prosecution case, so as to fulfill the sexual lust, the accused committed forceful intercourse with Parveen and thereafter they killed Noorjaha and Parveen. In the light of discussion of the prosecution evidence and also keeping in view the evidence of

PW-7 Ramchandra Sakrudkar, who is alleged to have seen accused No.1 Krushna going hurriedly in the intervening night of Wednesday and Thursday within the proximate time of the incident, following incriminating circumstances would emerge for consideration in the present case.

i) PW-12 Pawar in his evidence stated that death of Noorjaha and Parveen was homicidal and there was sexual intercourse with Parveen.

ii) Secondly, PW-11 Solanke in his evidence stated that, at the time of medical examination accused No.1 Krushna narrated the history about 'peno vaginal intercourse with Parimala Chand Shaikh since 10 days prior to incident and performed peno vaginal intercourse on same date of incident, but she was not killed by him'. PW-11 Solanke also expressed opinion that accused No.1 is capable to perform sexual act and he noticed three injuries on the person of accused No.1 and the age of said three injuries was within 6 to 8 days preceding the conducting of examination by him.

iii) The prosecution claims that PW-7 Ramchandra Sakrudkar who saw accused No.1 Krushna in the intervening night between Wednesday and Thursday, is the witness on 'last seen together'. Subsequent conduct of accused is relevant under Section 8 of the Evidence Act.

iv) Fourthly, Chemical Analyzer (for short "C.A.") PW-14 Sandeep Ganpat Pawar stated in his evidence that, the DNA profile of Exhibit-6 semen stain's cutting from Jangiya of deceased and DNA profile of accused No.1 Krushna are identical and from one and same source of male origin and the DNA profile match the maternal and paternal alleles present in the source.

v) The prosecution claims that memorandum statement of accused Nos.1 and 2 were recorded wherein they stated that they were ready to produce the clothes which were on their person at the time of incident which have been concealed by him in the house, and at the instance of accused No.1 one pant and one shirt and at the instance of accused No.2 one pant and one shirt

were seized, and button of said cloth matched with buttons recovered from the spot which were of Fashion Company.

50. In order to find out whether aforementioned circumstances brought on record by the prosecution have been proved or otherwise, we would like to discuss the evidence brought on record by the prosecution in relation to each of circumstance mentioned herein above.

51. It is true that death of Noorjaha and Parveen appears to be homicidal, as stated by PW-12 Pawar and injuries noticed on the person of the deceased and described by PW-1 Samina and PW-2 Ramesh, who were panch witnesses to the inquest panchnamas of deceased Noorjaha and Parveen. There appears to be sign of intercourse with Parveen. As already observed, PW-12 Pawar has expressed the opinion that death was within 36 to 48 hours preceding conducting the post-mortem.

It appears that as per the prosecution case the alleged incident had taken place within 36 to 48 hours preceding of the conducting of post-mortem, it means that incident had taken place in between the period on 27th May, 2015, and 28th May, 2015, since the post-mortem was conducted on 29th May, 2015.

52. The husband of Noorjaha i.e. Chand Shaikh, is not examined by the prosecution. Gangabhishan Gadekar was the first person who opened the door of the house where deceased were residing and noticed dead bodies in injured condition, is also not examined by the prosecution. The police officer Panpatte, who carried out the initial investigation, is also not examined by the prosecution. It has come on record that the spot of incident i.e. house of the deceased and Shaikh Chand, is situate in a place where there are no adjoining houses and appears to be at isolated place. Though the prosecution has

brought on record PTR record of Gram panchayat houses of village Choramba, nevertheless there is no satisfactory evidence brought on record showing exact location of the house or the spot of incident, the houses of the accused or any other important evidence so as to connect the accused with the alleged commission of offence.

53. It is true that medical officer PW-12 Pawar has expressed opinion that there was forceful sexual intercourse with Parveen. However, the real question is, who committed such sexual intercourse? In order to connect the accused with such commission of crime, which according to the prosecution, was done with a motive to first ravish the victim, and then so as to cause the disappearance of evidence, kill them, reliance has been placed on 'medical history'.

54. When history was given to the medical officer by accused No.1, admittedly, he was in

police custody. Therefore, such statement given by accused No.1, when he was in police custody, is not admissible. And secondly, even if we consider said history given by the accused to the medical officer at the time of treatment, while he was in police custody, the same cannot form basis for conviction. The Supreme Court in the case of Munna Kumar Upadhyaya alias Munna Upadhyaya V. State of A.P., supra, in Para-34 of the Judgment held that, the history given to the doctor at the time of treatment would not be strictly an extra-judicial confession, but would be a relevant piece of evidence, as the document had been prepared in the normal course of business. However, upon careful perusal of other evidence brought on record by the prosecution, there is no any corroboration to such statement given by accused No.1 before he was examined by the medical officer. Therefore, it cannot form the basis for conviction.

55. Regarding the third circumstance, the

prosecution has placed reliance on the evidence of PW-7 Ramchandra Sakrudkar. In his deposition, he stated before the Court that he is residing with the family in his field on Chardari road at village Choramba. The land of one Papa Shaikh is towards eastern side of his land. On the day of incident i.e. on Wednesday he went to house of his brother Haribhau for attending the function of "Jagran Gondhal". On that day at about 10.30 p.m., he had taken meal and returned back to his house in the field and slept in the house. Thereafter at about mid-night he woke up for urine and came out from his house. At that time he noticed that accused No.1 was hurriedly going towards his field. After urine, he returned back and slept in the house. On the next day afternoon he came to know that incident of murder of wife and daughter of Shaikh Chand took place.

. During the course of cross-examination by the Advocate for accused No.1, he stated that Papa

Shaikh is the brother of Shaikh Chand. The house of Papa Shaikh is opposite to his house, therefore, they used to go the houses of each others. Towards Southern side of his house, there is house of Subhash Sarudkar. The distance between his house and house of accused No.1 is 300 to 400 meters. The land of Accused No.1 is towards Western side of his land and way for passing towards land of accused No.1 is passing from his land Survey No.46. Except the way in his land Survey No.46, there is no other way for passing the land of accused No.1.

. In his further cross-examination by the Advocate for accused No.2 he stated that he has cordial relations with Papa Shaikh. He denied that he was deposing falsely on the say of Papa Shaikh. He denied that he was deposing falsely that on the concerned day at midnight he woke up for urine and he noticed that Accused No.1 was hurriedly going towards his field. He denied that he was

deposing falsely on the say of Papa Shaikh.

56. Upon careful perusal of evidence of PW-7 Ramchandra Sakrudkar, nowhere he has stated that he saw accused No.1 Krushna in the relevant night in the company of the deceased. His statement nowhere even remotely suggest that he saw accused No.1 Krushna in the company of deceased either nearby his house or nearby the spot or at any other place. At the most, the said statement can be considered to view the conduct of accused No.1 Krushna under Section-8 of the Evidence Act. But certainly PW-7 cannot be considered as a witness to accept the case of the prosecution that he is the witness on 'last seen together'. He only stated that he woke up at midnight for urine and he came out from his house and at that time he noticed that accused No.1 Krushna was hurriedly going towards his field. By no stretch of imagination his aforementioned version can be construed as the evidence on 'last seen together'.

Though PW-7 stated in his evidence that on the next day afternoon he came to know about the incident of murder of wife and daughter of Shaikh Chand, nevertheless for the reasons best known to the prosecution, statement of PW-7 came to be recorded belatedly i.e. on 2nd June, 2015, after six days. Since defence did not bring on record omissions, contradictions or improvements by confronting him the statement made before the police, we refrain ourselves from commenting upon the said aspect. However, his deposition before the Court is quite different than what he has stated before the police. An important admission given by PW-7 in cross-examination is that he has cordial relations with Papa Shaikh who is brother of Shaikh Chand, husband of deceased Noorjaha. He admitted that house of Papa Shaikh is opposite to his house and therefore they used to go to the house of each others. He has stated that distance between his house and house of accused No.1 Krushna is 300 to 400 meters. The land of accused

No.1 is towards western side of his land and way for passing land of accused No.1 is passing from his land Survey No.46. Except the way in his land Survey No.46, there is no other way for passing the land of accused No.1. The prosecution has not brought on record the evidence showing that there was sufficient light or moon light so as to conclude that PW-7 had proper opportunity to see accused No.1 Krushna and there was no mistaken identity. PW-7 has candidly admitted that no discussion or any exchange of words took place between him and accused No.1 and he did not ask accused No.1 where he was hurriedly proceeding. An admission given by him that there is a land of accused No.1 towards western side of his land and there is no other way except from land Survey No.46 owned by him to go to the land of accused No.1 makes it abundantly clear that being a farmer accused No.1 might have gone to his field, and as already observed, evidence of PW-7 cannot be construed as evidence on 'last seen together'

i.e., deceased were last seen in the company of the accused and thereafter nobody saw them. It is also relevant to observe that, there is no corroboration from evidence of any other prosecution witness to the claim of PW-7 that, he saw accused No.1 on said night.

57. It appears that prosecution examined PW-9 Baliram Ermale and PW-10 Vachisht Mule on 'last seen together'. However, they turned hostile and their evidence is of no use to the prosecution. While discussing the evidence of PW-7 Ramchandra, the trial Court has observed that PW-10 Vachisht corroborated to the version of PW-7 Ramchandra. But this is incorrect appreciation of evidence, as PW-10 Vachisht turned hostile and did not support to the prosecution case, it was not proper on the part of the trial Court to rely on his version. Therefore, the position which clearly emerges on record is that the prosecution failed to establish that deceased were last seen in the company of the

accused. There are even no remote circumstances brought on record by the prosecution that within proximity of death of Noorjaha and Parveen the witnesses saw the accused even nearby the house i.e., spot of the incident, where both the deceased were residing.

58. The fourth and most important circumstance according to the prosecution is the result of DNA Test. The report received from C.A. was submitted before the trial Court on the day fixed for recording of the statements of accused under Section 313 of the Cr.P.C. The say of the defence was called before taking on record the report received from C.A. The defence sought an opportunity to contest the C.A. report, however the trial Court rejected the said prayer and proceeded to record statements of accused under Section 313 of Cr.P.C. During the course of hearing of this Confirmation Case and Appeals filed by both the accused, the counsel for the

accused raised the objection that the trial Court committed error in admitting the vital documents of DNA reports Exhibit-95 and 96 directly in the evidence, without giving sufficient opportunity to the accused. The counsel submitted that these documents were produced at the far end of the trial, after filing the "Evidence Close Pursuit" on behalf of the prosecution and the date was fixed for recording statement of both the accused under Section 313 of Cr.P.C. when prosecution produced the documents of DNA report on record and though the accused raised objection for production of these documents at belated stage, the trial Court did not accede to the objection and directly allowed production of these documents. Therefore, this Court passed detailed order on 2nd February, 2017. After considering the rival contentions made by the counsel appearing for the parties, and referring to the provisions of Section 391 of Cr.P.C., this Court observed in Para-7 of the order as under:

"7. Undoubtedly, the Court trying the criminal trial has a heavy responsibility and duty to see that fair trial is conducted within the purview of established practice and procedure prescribed under the law. In such circumstances, we are of the view that it would be appropriate to send the matter to the trial Court only for the purpose of recording the evidence of the Assistant Chemical Analyzer Shri S.G. Pawar, who had issued the DNA reports at Exh.95 and 96. After examination of the Chemical Analyzer to Government Forensic Laboratory, Mumbai, the trial Court is directed to record evidence of I.O. restricted only to the extent of evidence of the Chemical Analyzer - Shri Pawar. Moreover, the statement of accused prescribed under Section 313(1)(b) of Cr.P.C. be recorded in regard to the additional evidence of Shri Pawar, Assistant Chemical Analyzer

and I.O. in this case. The opportunity to the prosecution and accused be given to put questions to these witnesses, as prescribed under law. This endeavour is only to afford an opportunity to the accused to traverse the genuineness and veracity of the vital piece of evidence in the form of DNA Reports (Exh.95 and 96) produced on record. The trial Judge should take care that cross-examination of Shri Pawar, Assistant Chemical Analyzer and the concerned I.O. be restricted to the documents of DNA (Exh.95 and 96)."

59. Thus, by order dated 2nd February, 2017, this Court transmitted the matter back to the concerned Court of Special Judge, Majalgaon, Dist-Beed, for recording evidence of Assistant Chemical Analyzer and additional evidence of the concerned Investigating Officer. Thereafter, the matter was received from the trial Court after recording evidence of Chemical Analyzer, additional evidence

of the Investigating Officer and statement of accused under Section 313 of Cr.P.C.

60. In the light of above, the fourth circumstance on which heavy reliance is placed by the prosecution is the C.A. report which shows that semen found on said Jangiya (nicker) is of blood group "A" i.e. blood group of accused No.1 Krushna. In order to appreciate the said circumstance, we propose to discuss the evidence of PW-5 Shaikh Amin Rasul, who was the panch witness to the spot panchnama. We have already discussed his evidence in earlier part of the Judgment. PW-5 Shaikh Amin stated that on 29th May, 2015, he was present in his village Choramba. He was called by the Police Officer Gawade on the place of occurrence to act as Panch. He has stated minute details about articles seized from the spot. He stated that at the time of preparing spot panchnama, the police also seized blood mixed soil on the place of occurrence, simple soil on the

place of occurrence, one nicker having red colour stained with semen and black hair attached with the said nicker. The Police also seized the black hair on the place of occurrence, one parrot colour lime Dabi of Rajesh company, one button of fashion company having white colour, one full and one half buttons of fashion company, having white colour and six pieces of broken bangles having faint red pink colour on the spot in their presence.

61. Therefore, from the deposition of PW-5 Shaikh Amin Rasul it is clear that one nicker having red colour stained with semen and black hair attached with the said nicker, was recovered from the spot. Ganesh Gawade (PW-13) who investigated the case, at the relevant time working as Police Sub-Divisional Officer, Beed, stated that he prepared the spot panchnama by visiting the spot. At the time of preparing spot panchnama, he seized blood mixed soil, simple soil, one ladies nicker of red colour, hair which

were attached to nicker and also hairs on place of occurrence. He also seized one Lime Box of Rajesh company of parrot colour, one button of white colour of Fashion Company as well as one button and one half button of Fashion company and the pieces of broken bangles on the place of occurrence. Then he obtained signature of the panchas on the spot panchnama. He further deposed that on the same day he seized the clothes on the person of both the deceased at the time of post-mortem examination which were produced by police person namely Jadhavar. He stated that on the same day he seized the clothes on the person of deceased Parveen which were sent by doctor in one pocket. The said clothes are one Punjabi Shirt and Paijama. He has stated further details about seizure of clothes. However, he has given certain admissions in his evidence that nicker handed over by the doctor is not found in Muddemal. He further stated that as per the pocket sent by doctor he seized all the articles under panchnama.

62. The prosecution case in the wake of evidence of prosecution witnesses and in particular PW-5 Shaikh Amin and PW-13 Ganesh Gawade is that red colour nicker seized from the spot at the time of preparing spot panchnama was sent to C.A., and at one breath PW-13 Gawade has stated that the nicker handed over by the doctor is not found in the Muddemal. However, at another breath PW-13 Gawade stated that as per the pocket sent by the doctor, he seized all the articles under the panchnama. It is clear from the evidence of PW-5 Shaikh Amin and PW-13 Ganesh Gawade that the nicker which was seized at the time of spot panchnama was of red colour. At this stage, it would be appropriate to make reference to the evidence of medical officer PW-12 Vishwajeet Pawar. He stated in his deposition before the Court that when the dead body of Parveen was brought for post-mortem examination, at that time torn yellow colour underwear, red colour payjama

as well as yellow colour Salwar were on her person. In the aforesaid background, therefore, the question arises, the red colour nicker which was recovered from the spot belongs to whom? when the medical officer has stated in his evidence that, when Parveen was brought for post-mortem examination, at that time torn yellow colour underwear was on her person. Therefore, reasonable inference can be drawn that the red colour nicker which was seized from the spot at the time of spot panchnama, belonged to Noorjaha. We have carefully perused Exhibit-47, a letter dated 1st June, 2015, written by PW-13 Ganesh Gawade to the Deputy Director, Regional Forensic Science Laboratory, Aurangabad, wherein it is shown that the seized articles were sent for C.A. examination. From the said letter, it would be relevant to make reference to Exhibit C-1 i.e. nicker seized at the time of preparing spot panchnama. Upon careful perusal of description of Exhibit C-1, the typed portion shows that the nicker recovered from the

spot was on the person of Noorjaha Chand Shaikh at the time of incident which was kept in sealed envelope. However, subsequently, the name "Noorjaha" is scored and in handwriting it is written as "Parveen". PW-13 Ganesh Gawade stated in his cross-examination that he did not authorize PW-8 Ganpat Jadhavar to change the contents of said letter. Thus, it also create serious doubts about the prosecution case, that really which nicker was sent to C.A. In his deposition, PW-13 Ganesh Gawade has stated that the seized ladies nicker of red colour which was shown to him was the same, which is Article-3. Therefore, the red nicker which was sent to C.A., was different and not the same which was on the person of Parveen when her dead body was taken to the hospital for post-mortem examination to medical officer PW-12 Vishwajeet Pawar. As already observed, medical officer PW-12 Vishwajeet Pawar stated that when dead body of Parveen was brought for post-mortem examination, at that time torn yellow colour

underwear was on her person. Therefore, reasonable inference can be drawn that the torn yellow colour underwear on the person of Parveen at the time of post-mortem examination, was not sent to the C.A. The medical officer PW-12 Vishwajeet Pawar did not notice any sign of forceful sexual intercourse on Noorjaha, nor it is the case of the prosecution that there was any forceful intercourse with Noorjaha. Therefore, the red colour Jangiya (nicker) which was recovered from the spot appears to be that of Noorjaha, which was sent to C.A.

63. Now, we proceed to discuss in detail, the evidence of C.A. which was recorded pursuant to order passed by this Court on 2nd February, 2017. Sandeep Ganpat Pawar was examined as PW-14 by the Special Judge, Majalgaon. In his deposition he stated that since 11th January, 2013, he is serving as Assistant Chemical Analyzer in Forensic Science Laboratory, Kalina, Santacruz, Mumbai. He had completed training in DNA, Finger Printing in

DNA Division, Mumbai. In his service tenure, till today, he has examined in all 500 DNA cases. He further stated that on 26th June, 2015, he was on duty in his office. On that day, he received one sealed envelope with a letter signed by the Deputy Director, Regional Forensic Laboratory, Aurangabad by hand Shri Gaisamudre. Then he analyzed the said Exhibit and get the DNA profile from the said Exhibit. Then he received blood samples of accused on 3rd July, 2015. He analyzed the same Exhibits and generated the DNA profile of the said Exhibits. The first blood sample was of accused no.1 Krushna and second was of accused no.2 Achyut. They match the DNA profile of accused no.1 blood sample with semen stains detected on Jangiya. Then He gives the interpretation that the DNA profile of Exhibit-6 semen stain's cutting from Jangiya of deceased and DNA profile of accused Krushna are identical and from one and the same source of male origin and the DNA profile match the maternal and paternal alleles present in

the source. He also give the interpretation that DNA profile of Exhibit-6 semen stains cutting from Jangiya of deceased and Exhibit-2 blood sample of accused Achyut are not identical and not from one and same source of male origin. The DNA profiles did not match with maternal and paternal alleles present in the source. Then he prepared report. Reports at Exhibits-95 and 96 shown to him, are the same. He put his signature on it. For the test of DNA, he used PCR Amplification Technique.

. During the course of his cross-examination, PW-14 Sandeep Ganpat Pawar stated that he has not received the consent letter for DNA test of accused from any office. He has not studied about the legal provisions of DNA Test. For DNA test consent is must. He read the scientific literature about DNA test. He did not read the scientific literature about the fake results of DNA test can be made. He has no knowledge about preparation of fake results of DNA

test. As per the report Exhibit-96, he has started analysis from 2nd July, 2015. As per the said date, it appears that analysis started before receipt of the sample. He has perused the letter of Investigating Officer at Exhibit-80. On the said letter there was no seal specimen. When a question was put to him that, is there any letter in the papers which he has brought with him to show that his office had ever supplied DNA kit to the investigating officer of this case, he denied the said question. He further stated that report Exhibit-95 did not show how and from whom and on which date Exhibit-6 received. Similarly, it did not show in what manner it was received. Exhibit-6 did not show whether it is received from FSL Aurangabad. Similarly, it did not show, it was received in sealed condition. While preparing document Exhibit-95, he was diligent and not at all lethargic. Column No.5 in Exhibit-95 is an important column. When a question was put to him that, had the parcel been received as described in

Exhibit-95 he has hesitated to write in Exhibit-95 that it was received in sealed condition. He replied that in refer case they are not mentioning the same thing. He further stated that sample Exhibit-6 was received in sealed envelope but he has not mentioned the same in report Exhibit-95. On the day of recording his evidence, he has not brought the said envelope. For the first time he stated in examination in chief that sample Exhibit-6 received in sealed envelope. The papers which he has brought did not show that sample was received in sealed condition. The whole Jangiya of deceased was not received. He was unable to tell size of said sample of Jangiya. Till the day of recording his evidence the said sample was preserved in their laboratory. He did not verify whether sample received was from Jangiya or not. He was unable to tell that if the said sample of Jangiya was of male or female. Prior he received Exhibit-6 said sample was subjected to chemical analysis. He did not find any traces on sample

Exhibit-6 in respect of its earlier chemical analysis. He denied that the said sample was handled by another person prior to him. On the said sample it was written "Exhibit-6 semen stain" by pen. For writing said words, the said sample was handled. He admits that if sample is contaminated, its results will not be accurate. When the question was put to him that the control sample can be contaminated with the crime scene sample, he was unable to tell the same. He further stated that there is no document to show how there were white blood cells shown in report Exhibit-96. He did not know whether the WBC were separated from blood. He did not know whether the WBC can be separated from blood by centrifuging it. Red blood cell does not contain DNA. He does not know after removing WBC from blood sample the DNA of a targeted person, can be intermixed. DNA can be obtained from saliva, uprooted hair, semen, biological fluid and cup touched by lips. If anything which carries DNA of a person comes in a

contact with the crime scene sample then DNA of the control sample and crime scene sample will match, if the sufficient amount of source will transfer. In sample Exhibit-6, quantity of source is not mentioned in report Exhibit-95. Therefore, training is given for handling the sample properly.

. During the course of his cross-examination, PW-14 Sandeep Ganpat Pawar further stated that it is not mentioned that blood sample Exhibit-96 received from doctor. It is mentioned that sample received from police. Blood samples should be collected by medical officer. In the sample, it is not mentioned whether it was collected by medical officer. The RFSL Aurangabad did not send any blood sample to them. There was no data that how many people handled the sample and in what temperature it was kept. The stages of DNA extraction not mentioned in the report i.e. protocol of analysis is not mentioned in the

report. He has adopted 15-STR LOci and gender specific Amelogenin Locus using PCR amplification Technique. In that technique they did not detect the Methylation. He agreed with the proposition contained in Para (iv) under heading "FABRICATED DNA EVIDENCE AND COUNTER-MEASURES" on page No.202, in Chapter-5, Synopsis 5 from book DNA TEST in Criminal Paternity Disputes (Scientific Investigation and Trial) by Dr. Gupta and Agrawal, Edition-2016, which runs as under:

"(iv) The Nucleix Countermeasure.- Fortunately the same investigators that exposed this weakness have suggested a countermeasure in the form of detection of DNA methylation. In vivo, nuclear DN becomes methylated at cytosine bases by the addition of a methyle group to the pyrimidine ring (Nelson and Cox 2004). This is a naturally occurring process that, in the living organism, is involved in gene expression and regulation, as well as DNA replication (Nelson and Cox 2004) DNA amplified by PCR isn't subject to this sort of regulation and as a result is not

methyated. Lab assays to detect methylation are available, but as yet, the procedure is not well-automated, is time-consuming and laborious, and is not frequently included as part of a forensic analyst's training (Cottrell 2004). Further, since "faked" DNA evidence gives every appearance of being legitimate (aside from its lack of methylation), and it may not be obvious in which cases a life sciences graduate may be involved, methylation assay must be performed on every forensic DNA sample if we are to retain our confidence- legal and moral - in DNA profiling as a criminal justice tool. Fortunately the wide publicity of the Nucleix article is having an effect. Several life science companies have announced development of more repid and automated assays. Nucleix among them (Cottrell 2004, Eada 2000)."

. PW-14 Sandeep Ganpat Pawar stated that he did not perform the said test, therefore, he is not confirm with above proposition. He was unable to tell that if Methylation is found in DNA it will be a sure sign that the sample which were

received for analysis were not contaminated because he never performed the same test. Till the day of recording his evidence he never performed Methylation test and he has no knowledge about the said test. He denied that he is imperfect in scientific test or DNA test. He has no data to show that whether the samples were contaminated or not contaminated. He did not provide any sequencing photographs to police. He did not perform the test for detection of blood in sample Exhibit-6. Therefore, he was not able to tell whether the sample Exhibit-6 contained blood or not. If the blood will transfer to any object, the DNA profile can be obtained, but it depends upon amount of source and environmental condition. He did not examine quantity of semen on sample Exhibit-6. The colour of said sample Exhibit-6 is not mentioned in reports Exhibits-95 and 96. He did not perform any test for detection of spermatozoa. In letter Exhibit-80, the sample Y-2 and Z-2 were of what, is not mentioned. The said

samples were received by them in Thermos is not mentioned in it. It is not mentioned that he performed analysis of the sample received in Thermos. He did not ask clarification from the person under whose signature, the letter was forwarded to his office. In his report Exhibit-96, he has not mentioned about Exhibits-Y-2 and Z-2, he did not know who had given marking Exhibits-Y-2 and Z-2, as referred to in Exhibit-80. He has no any document to show that the samples were received as Y-2 and Z-2 as referred in the letter Exhibit-80. Quantity of blood is not mentioned in the report. His seniors are Assistant Director, Joint Director, Deputy Director and Director. His next promotion will be as a Assistant Director. He is Sub-ordinate to Assistant Director. The documents Exhibit-95 and 96 does not bear signature of Assistant Director. He did not remember sample of Exhibit-6 was crusty in nature. He did not remember whether it was puckered. He did not remember same was plain. He did not

remember the condition of sample Exhibit-6. The said condition is not mentioned in reports Exhibits-95 and 96. He had not checked the properties of sample Exhibit-6. He did not analyze motility of stain on sample Exhibit-6. He performed the test for detection of semen. In reports Exhibit-95 and 96 he has not mentioned that the sample Exhibit-6 was having semen.

. During the course of his cross-examination, PW-14 Sandeep Ganpat Pawar further stated that he did not perform the test for EDTA, therefore, it remained in dark. He did not know the words "isonins" and "isogens". He has not submitted the calibration certificate of equipments with reports Exhibits-95 and 96. He admits that the sample sent to the Lab should be kept in requisite temperature. He has not mentioned in reports Exhibits-95 and 96 that samples were kept in requisite temperature in his Lab. Sample Exhibit-6 was not received from

Police Officer. The Police has not requested for DNA test of sample Exhibit-6 to his office as well as in letter Exhibit-80. It is not mentioned in reports about colour and colourless of sample Exhibit-6. He was unable to tell whether the DNA of one person can be planted at the crime scene article. After analysis of sample Exhibit-6, his office did not return the same to Police. The number shown in report Exhibit-96 in the chart of Genotype, are the numbers of DNA LOCUS. The data of number shown in Genotype column was not already stored in their lab. That numbers have some significance. The said numbers were not created on his own view. Their lab uses standard DNA for reference. Their Lab has no data base. He did not know their data Lab is connected with Maharashtra Police Website. The police persons used to come to their office. There is no restriction to police on his part. He did not know if his office restricts police persons. He did not know word "Dog Tail". The sample taken on tags or slides are preserved

by their office. They did not create images of said tags or slides. There is no mention in reports Exhibits-95 and 96 about preparation of any tags or slides for the purpose of analysis. He has not brought the tags or slides. He has not brought electronic data about images with him. He did not supply images with report Exhibit-96 to police. The date of dispatch of report Exhibit-96 is 7th January, 2016. He was unable to tell on which date the said report was accepted by police. His office dispatched reports Exhibits-95 and 96 by post. Those were not received back to him as unserved. He denied that DNA reports Exhibits-95 and 96 are totally false and prepared without analysis, and therefore, the so-called Amplified images were not supplied with reports Exhibits-95 and 96. He denied that to suppress the above fact, they prepared false documents and attempted to produce in the Court. He denied that sample Exhibit-6 was not received by their office. He denied that the blood sample which he said to have

matched of accused No.1, as per report Exhibit-96, is not blood sample of accused No.1. He did not remember whether there is any signature on Vial. He do not remember except names, other details were given on vials or not. It is not their practice to write in detail on Vials. He has not mentioned in report that Vials were sealed. He denied that he only put his signature on reports Exhibits-95 and 96 and data in said reports is false. He has not mentioned in reports Exhibits-95 and 96 that he rechecked the data before signing them. He denied that entries of findings of data are taken in concerned register by their office. He denied that their office taken entries of data on loose papers. Their office also did not take entries of said data in compute. The number is given to case and not Code. He has not given Code in this case. In reports Exhibits-95 and 96, he has not mentioned that it was of "human". He has not mentioned in reports Exhibits-95 and 96 that the stains are of human stains. He denied that he

is deposing falsely. During interval time he went with Dy.S.P. Gawade in his Jeep and within one hour he returned back to Court. Dy.S.P. Gawade is not his friend. He admits that Dy.S.P. Gawade offered food to him. He denied that since childhood, Dy.S.P. Gawade is his friend. He denied that on the say of Dy.S.P. Gawade he is deposing falsely.

64. Thus, the evidence of Chemical Analyzer makes it abundantly clear that he did not recognize the colour of Jangiya (nicker) wherein he noticed the semen which he found matched with blood of accused No.1. It is also important to note that Sandeep Ganpat Pawar (PW-14) in his cross-examination stated that, report Exhibit-95 did not show how and from whom and on which date Exhibit-6 received. Similarly it did not show in what manner it was received. Similarly it did not show that it was received in sealed condition. He further stated that the whole Jangiya of deceased

was not received. He was unable to tell size of said sample Jangiya. He did not verify whether sample received was from Jangiya or not. He was not able to tell if the said sample of Jangiya was of male or female. Blood samples should be collected by medical officer. In the sample it is not mentioned whether it was collected by medical officer. There was no data that how many people handled the sample and in what temperature it was kept. He also admitted that he never performed Methylation test and he has no knowledge about it. He did not examine quantity of semen on sample Exhibit-6. The colour of said sample Exhibit-6 is not mentioned in reports Exhibits-95 and 96. In letter Exhibit-80, the sample Y-2 and Z-2 were of what, is not mentioned. He has not mentioned that the sample Exhibit-6 was having semen. He has not mentioned in reports Exhibits-95 and 96 that samples were kept in requisite temperature on their Lab. Sample Exhibit-6 was not received from police officer. The police has not requested for

DNA test of sample Exhibit-6 to their office, as well as in letter Exhibit-80. He did not remember whether there is any signature on Vial. He did not remember except names, other details were given on Vials or not. He has not mentioned in reports Exhibits-95 and 96 that the stains are of human stains.

65. Just to ascertain whether the articles seized at the time of preparation of spot panchnama by the Investigating Officer were sent in a proper sealed condition to C.A., it would be apt to discuss the evidence of PW-8 Ganpat Bhimrao Jadhavar. During his cross-examination, he stated that on 1st June, 2015, and again on 6th June, 2015, when Dy.S.P. Gawade directed him to carry seized articles to C.A., Aurangabad on that day the above seized articles were in custody of in-charge of Malkhana namely Rajgire. Both times Dy.S.P. Gawade directed him orally to carry the articles to C.A., Aurangabad. When he went to

C.A., Aurangabad for submitting seized articles on that day the PSO had taken entry in that regard in Station Diary. The seized articles were sealed but the pockets of said articles do not bear the signature of Rajgire. Admittedly, the prosecution has not examined said Rajgire who was in-charge of the Malkhana. Conjoint reading of evidence of PW-8 Jadhavar, PW-13 Gawade and PW-14 Sandeep Pawar, C.A., reasonable inference can be drawn that the seized articles were not immediately sent to C.A. and those were not sent in proper sealed condition as per the procedure. The Supreme Court in the case of The State vs. Motia and others³¹, held that:

"Similarly it is necessary that the officer recovering the articles should immediately take steps to seal them and evidence should be produced that the seals were not tampered with till the identification is over, or till the articles are sent to the Chemical Examiner for analysis. In the absence of such precautions it would always be open to the accused to say that the

31 A.I.R. 1955 RAJASTHAN 82 (Vol.42 C.N.27)

police later put human blood on the articles in order to implicate the accused. If evidence as to such sealing is not produced, court cannot place the same reliance on the discovery of blood stains on various articles as the Court would have done if necessary precautions had been taken."

66. Even if we take the case of the prosecution at the highest that the prosecution has brought on record DNA report, in that case also that itself will not form basis for the conviction of accused No.1. At the most said report can be used as corroborative evidence i.e. the evidence to substantiate other evidence. In the case of Premjibhai Bachubhai Khasiya vs. State of Gujarat and another³², placing reliance upon the exposition of law in the case of Kamti Devi vs. Poshi Ram³³ and in the case of Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and another³⁴, in Para-14 of the Judgment, it is held

³² 2009 Cri.L.J. 2888

³³ 2001(5) S.C.C. 311

³⁴ 2005(5) S.C.C. 294

that:

"14. It is thus clear that positive D.N.A. report can be of great significance, where there is supporting evidence, depending of course on the strength and quality of that evidence. If the D.N.A. report is the sole piece of evidence, even if it is positive, it cannot conclusively fix the identity of the miscreant, but, if the report is negative, it would conclusively exonerate the accused from the involvement or charge."

67. So far as the fifth circumstance recording memorandum statements of accused Nos.1 and 2 and seizure of the clothes at their instance is concerned, firstly, the memorandum statements were recorded when the accused were in police custody and secondly, the clothes were recovered at the instance of the accused from their houses, where other family members were also residing. The prosecution has not brought on record cogent and clinching evidence showing that really the said clothes belonged to accused Nos.1 and 2. The claim

of the prosecution that the clothes which were allegedly recovered from the houses of the accused at their instance, button of said cloth matched with buttons recovered from the spot which are of Fashion Company, cannot be accepted since such type of buttons are normally available in market, and during investigation, no enquiry was made with any of the inmates of the said houses as to exactly whom the clothes belonged.

68. We find considerable force in the argument of the counsel appearing for the Appellants that the investigation in the present case to some extent was motivated, due to the following admissions given by the Investigating Officer in his cross-examination. In his cross-examination Investigating Officer PW-13 Ganesh Gawade admitted that after incident in present case the political leaders namely President of N.C.P. Shri Sharad Pawar, Parliamentary Member of Beed namely Smt. Preetam Munde and Parliamentary

Member Ramdas Athwale visited village Choramba. M.L.A. Shri Jaidatt Kshirsagar also visited Choramba. When the above political leaders came to Choramba, he met them and at that time the said political leaders had asked him about arrest of accused. The S.P. Beed told him to investigate the matter as early as possible.

69. Considering the manner in which investigation is carried out in the present case, we find considerable force in the submissions made by the counsel appearing for the Appellants that the Investigating Officer was determined to book the present Appellants by hook or crook, and to ensure their conviction so as to save the investigating machinery from not really tracing out the real culprits. In this respect the counsel appearing for the Appellants has referred to the statement of accused No.1 Krushna, recorded under Section 313 of the Cr.P.C. on 9th March, 2017. In reply to Question No.23, as to whether he want to

say anything else, he replied thus:

"When I was in lock-up the Dy.S.P. Gawade has taken my semen on cloth and he has used the same semen."

70. We also find considerable force in the submission of the counsel for the Appellants that in the present case, the prosecution has not examined material witnesses. As observed earlier, Gangabhishan, who first saw the dead bodies of Noorjaha and Parveen lying in the house, is not examined by the prosecution. Rajgire, in-charge of Malkhana, from whose custody PW-8 Jadhavar claims that he has taken the seized articles to carry the same to the C.A., Aurangabad, is also not examined. According to Investigating Officer Ganesh Gawade (PW-13), the police constable Wanjare carried blood sample of accused for DNA Test to the Forensic Science Laboratory, Mumbai. Said Wanjare is also not examined by the prosecution. Mr. Panpatte, who carried out the

initial investigation, is also not examined by the prosecution.

71. The Supreme Court in the case of Shankaralal Gyarsilal Dixit Vs. State of Maharashtra³⁵ in para 13 held thus :

"13. Since this is a case of circumstantial evidence, it is necessary to find whether the circumstances on which the prosecution relies are established by satisfactory evidence, often described as 'clear and cogent' and secondly, whether the circumstances are of such a nature as to exclude every other hypothesis save the one that the appellant is guilty of the offences of which he is charged. In other words, the circumstances have to be of such a nature as to be consistent with the sole hypothesis that the accused is guilty of the crime imputed to him."

35 AIR 1981 SC 765

. After discussing the circumstances brought on record and the evidence available therein, in the case of Shankaralal Gyarasilal Dixit (supra), the Supreme Court observed that though 12 circumstances have been relied upon by the prosecution, the important circumstance is that the appellant therein was present in the house, was not proved by the prosecution. Therefore, in the facts of that case, Supreme Court held in Para-26 of the Judgment that the crucial link in the chain of circumstances is the presence of the appellant in his house at the time when the dead body of Sunita was discovered. Once that link snaps, the entire case would have to rest on slender tit-bits here and there. This discussion disposes of the second part of the 4th circumstance, part of 5th circumstance and circumstances (6) and (7). The Supreme Court acquitted the appellant therein.

72. In the present case also, in the light of

discussion in foregoing paragraphs, it will have to be held that the chain of circumstances on which reliance has been placed by the prosecution has not been established beyond reasonable doubt by the prosecution. Therefore, benefit of doubt in favour of the Appellant deserves to be extended.

73. The Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra³⁶ has held that, the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court. It is also to be borne in mind that the case in hand is a case of circumstantial evidence and if two views are possible on the evidence on record, one pointing to the guilt of the accused and other his

36 (1984) 4 SCC 166

innocence, the accused is entitled to have the benefit of one which is favourable to him.

74. In the light of discussion in foregoing paragraphs, we are of the considered view that the entire prosecution case rests upon the circumstantial evidence and the evidence brought on record by the prosecution is not cogent, sufficient, convincing and do not inspire confidence so as to prove the offence against the Appellants beyond reasonable doubt. Therefore, an inevitable conclusion is that the Appellants are entitled for the benefit of doubt. Hence we pass the following order:

O R D E R

(I) Criminal Appeal No.527 of 2016
filed by accused No.1 - Krishna s/o
Ramrao Ridde, and Criminal Appeal
No.507 of 2016 filed by accused No.2 -

Achyut @ Bappa @ Babu s/o Kachru Chunche, are allowed.

(II) The conviction and sentence imposed on accused No.1 - Krishna s/o Ramrao Ridde and accused No.2 - Achyut @ Bappa @ Babu s/o Kachru Chunche, is quashed and set aside.

(III) The confirmation sought by the trial Court of the conviction and sentence is declined.

(IV) Accused No.1 - Krishna s/o Ramrao Ridde and accused No.2 - Achyut @ Bappa @ Babu s/o Kachru Chunche are acquitted of the offence punishable under Section 449, 354(B), 376(2)(i), 302 read with 34 of the Indian Penal Code, 1860, and under Section 4 of the Protection of Children from Sexual Offences Act,

2012.

(V) accused No.1 - Krishna s/o Ramrao Ridde and accused No.2 - Achyut @ Bappa @ Babu s/o Kachru Chunche shall be set at liberty forthwith, unless their presence is required in any other offence.

(VI) accused No.1 - Krishna s/o Ramrao Ridde and accused No.2 - Achyut @ Bappa @ Babu s/o Kachru Chunche shall furnish the bail bonds of Rs.15,000/- each and surety of like amount each under Section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Majalgaon.

[K.K. SONAWANE, J.]

[S.S. SHINDE, J.]

asb/AUG17