

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.185 OF 2012

Aslam Jamdar Ansari
Age-38 years, presently in jail
Kolhapur Central Prison,
Village Patna, Tahsil Salempur,
Dist. Hevria, Uttar Pradesh.

...APPELLANT

VERSUS

- 1) The State of Maharashtra,
(Through Shantinagar PS, Bhiwandi)
- 2) Asmohammed Moharali Ansari
Adult, Occ- Buisness,
R/o Gousia Masjid, Near Altaf Hotel,
Samdani Pahadi, New Azad Nagar,
Shantinagar, Bhiwandi, Dist. Thane.

...RESPONDENTS

WITH

**CRIMINAL APPLICATION NO.718 OF 2016
(For Early hearing)**

IN

CRIMINAL APPEAL NO.185 OF 2012

Aslam Jamdar Ansari

...APPELLANT

(Orig. Accused)

VERSUS

- 1) The State of Maharashtra,
- 2) Asmohammed Moharali Ansari

...RESPONDENTS

...

Mrs. Farhana Shah, Advocate for Appellant
(appointed).
Mr.J.P. Yagnik, A.P.P. for Respondent-State.

...

**CORAM: S.S. SHINDE AND
A.S. GADKARI, JJ.**

DATE: 31ST OCTOBER, 2018.

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

1. This Appeal is directed against the Judgment and order dated 20th September, 2011, passed by the Additional Sessions Judge, Thane in Sessions Case No.239 of 2008, thereby convicting Appellant/Accused – Aslam Jamdar Ansari for the offence punishable under Section 364 of the Indian Penal Code (for short "IPC") and sentencing him to suffer rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, and in default of payment of fine, to suffer rigorous imprisonment for three months. The trial Court also convicted

the Accused for the offence punishable under Section 302 of the IPC and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.2,000/-, and in default of payment of fine, to suffer rigorous imprisonment for six months. The trial Court also convicted the Accused for the offence punishable under Section 201 of the IPC and sentenced him to suffer rigorous imprisonment for three years and to pay a fine of Rs.500/-, and in default of payment of fine, to suffer rigorous imprisonment for one month. All the sentences were directed to be run concurrently.

2. Criminal Application No.718 of 2016 is filed by the Accused for early hearing of the Appeal.

3. The prosecution case, in brief, is as under:-

A) Deceased Saynabano was the daughter of

informant Asmohammed Moharali Ansari. On 4th March, 2008 Asmohammed (hereinafter referred to as "informant") had been back to his house at 9.00 p.m. after closing his flour mill. After reaching of the house he came to know from his another daughter Madinabano that, deceased Saynabano did not return to the house. Thereafter, he took search of Saynabano but could not trace out her. Therefore, on 5th March, 2008, he lodged Missing Report No.21 of 2008 at 12.00 midnight.

B) On 8th March, 2008 Sudhakar Anant Patil came to know from one Balaram Mangalu Patil that, one dead body of girl was floating in his well at Kurhadchola Wada. Thereafter, he had been on his well and one Leelabai Balaram Patil and Smt.Kacharubai Kashinath Patil showed him the dead body of girl. Thereafter at about 10.00 a.m. said Sudhakar Patil informed the incident in Biwandi Taluka Police Station and thereafter Police had been on the spot at 5.00 p.m. and removed the dead

body out of the well. Sudhakar Patil noticed that the neck of the deceased girl was tied with Odhani. It appears that, at the relevant time she wore pink colour half sleeves Kurta, Salvar and Nicker. Accordingly, Sudhakar lodged the complaint on 8th March, 2008 vide Exhibit-17 and the offence came to be registered vide C.R. No.I-76 of 2008 under Section 364, 376(f), 302 and 201 of IPC in Bhiwandi Taluka Police Station. Further investigation was held by Crime Investigation Department, Bhiwandi. Thereafter parents of deceased girl had identified the dead body in I.G.M. Hospital, Bhiwandi.

C) According to the prosecution, there had been quarrel between Accused and father of the deceased girl prior to three years of the incident. Therefore, having grudge in his mind, the Accused had kidnapped the daughter of the informant, caused her sexual harassment and murdered her and then thrown her dead body in a

well. On 8th March, 2008, F.I.R. came to be registered. On the same day, inquest panchanama of the dead body was drawn and along with letter Exhibit-98, the dead body was sent for postmortem. The photographs of the dead body had been taken on the spot vide Exhibit-79 to Exhibit-84, and Exhibit-90 to Exhibit-93. As well as the photographs of the spot of the incident were taken vide Exhibit-88 and Exhibit-89, and photographs of the surrounding area of the spot of incident were also taken vide Exhibit-94 and Exhibit-95.

D) On 8th March, 2008 Investigating Officer drew spot panchanama (Exhibit-21), and seized the clothes of the deceased on 8th March, 2008, and 10th March, 2008 under different seizure memos (Exhibit-22 and Exhibit-48). On 12th March, 2008, the Investigating Officer arrested the Accused and drawn arrest panchanama (Exhibit-26). I.O. also conducted memorandum panchanama and panchanamas of different spots shown by the Accused on 13th March,

2008 (Exhibit-30 and Exhibit-31). On 14th March, 2008, I.O. also drawn memorandum panchanama and the seizure of the clothes of the Accused vide Exhibit-53 and Exhibit-55. On 15th March, 2008, I.O. also recorded memorandum panchanama of the Accused and seizure memos of Tawit i.e. amulet, (Exhibit-60 and Exhibit-61) worn by deceased girl. On 16th March, 2008 the I.O. shown the Tawit to the parents of the deceased in Police Station by opening the sealed packet and drawn its panchanama (Exhibit-56). On 12th March, 2008 and 19th March, 2008, the I.O. sent letters to C.A. vide Exhibit-113 and Exhibit-101 to examine the seized articles. I.O. also collected postmortem report (Exhibit-62). On 28th March, 2008, Judicial Magistrate, First Class, Bhiwandi recorded confessional statement of the Accused vide Exhibit-76. On 8th April, 2008, the Executive Magistrate, Bhiwandi held T.I. parade of the Accused in jail and forwarded his T.I. parade report (Exhibit-68). The I.O. also recorded the

statements of the concerned prosecution witnesses and after completion of investigation, the I.O. forwarded charge-sheet against the Accused.

E) As the offence punishable under Section 302 of the IPC is exclusively triable by the Court of Sessions, hence in due course of time, the case was committed to the Court of Sessions.

F) The charge (Exhibit-5) for the offence punishable under Section 364, 376(f), 302, 201 of the IPC was framed against the Accused. The contents of the charge were read over and explained to the Accused in vernacular. The Accused pleaded not guilty and claimed to be tried. The defence of the Accused is of total denial.

4. After recording the evidence and conducting full fledged trial, the trial Court convicted Accused for the offence punishable under

Sections 364, 302 and 201 of the IPC and sentenced him to suffer imprisonment as afore-stated and to pay fine, and in default of payment of fine, to suffer further imprisonment as afore-stated. Hence the present Appeal is filed by the Appellant – original Accused – Aslam Jamdar Ansari challenging his conviction and sentence.

5. Learned counsel appearing for the Appellant submitted that the Appellant has been falsely implicated in this case. Learned counsel further submits that there was no eye witness to the incident and the case of the prosecution is based upon the circumstantial evidence only. There is no direct evidence against the Appellant. He further submitted that chain of circumstances on which reliance was placed by the prosecution has not been established beyond reasonable doubt. The circumstantial evidence does not form a chain so complete that there is no escape from the conclusion that within all human probability the

crime was committed by the Appellant and none else. Learned counsel further submitted that the entire prosecution case is based upon the judicial confession of the Accused. A confession cannot be used against the Accused unless the Court is satisfied that it was free, voluntary and corroborated by the independent evidence. Learned counsel further submits that the judgment of conviction could not have been arrived at on the basis of confession made by the Accused before the Judicial Magistrate, which has been retracted and was thus of weak evidentiary value, especially when there was no corroboration thereof. The Judicial Magistrate found that the judicial confession of the Accused is based upon inducement and pressure at the instance of Police and as such the said confession cannot be relied for convicting the Accused.

6. Learned counsel further submits that the motive appears to be highly improbable and Accused

had no previous history. The T.I. parade of the Appellant was not lawful and as per Rules laid down. Various recoveries made in various installments on the pointing of the Accused are suspicious. There are so many contradictions, omissions, improvements and discrepancies in the deposition of the prosecution witnesses. The findings recorded by the trial Court are perverse as the prosecution failed to prove the case beyond reasonable doubt. Learned counsel therefore submits that the Appeal may be allowed.

7. On the other hand, learned A.P.P. appearing for the State submitted that though the case of the prosecution is based upon the circumstantial evidence, the chain of circumstances on which reliance was placed by the prosecution, has been established beyond reasonable doubt. Learned A.P.P. invites our attention to the evidence of PW-10 Shabirbaba, PW-11 Mohammad Irfan and PW-13 Usman Shaikh and

submits that deceased girl was last seen in the company of the Appellant by the aforesaid prosecution witnesses. Learned A.P.P. further invites our attention to the evidence of PW-21 Madhav Arvind Shinde, Judicial Magistrate, First Class, Bhiwandi and submits that the Appellant had made judicial confession before JMFC, Bhiwandi and same was recorded in accordance with relevant procedure. Learned A.P.P. further submits that in accordance with relevant procedure, the Judicial Magistrate had granted three days time for reflection to the Appellant and thereafter his confession statement was recorded wherein Appellant has specifically admitted that he has killed girl of the informant namely Saynabano and thrown her dead body in the well. Learned A.P.P. further submits that after considering the entire evidence on record, the Trial Court has convicted and sentenced the Appellant and the findings recorded by the Trial Court are in consonance with the evidence brought on record. He therefore

submits that the Appeal deserves to be dismissed.

8. We have heard learned counsel appearing for the Appellant and learned A.P.P. appearing for the State at length, with their able assistance perused the grounds taken in the Appeal memo, annexures thereto and also the entire evidence so as to find out the correctness of the findings recorded by the trial Court.

9. To prove its case, the prosecution has examined as many as twenty seven witnesses. Firstly we will refer to the evidence of Medical Officer (PW-18). PW-18 Dr. Babasaheb Dhanaji Sorate is the Medical Officer who has conducted postmortem on the dead body of Saynabano. The evidence of this Medical Officer shows that on examination he found strangulation around the neck of the girl completely encircling at level of thyroid level, he found all vessel at ligature level congested. The Medical Officer opined that

cause of death was shock due to cardio-respiratory failure due to asphexia due to strangulation associated with violent assault with genital organs and pelvic peritoneal hemorrhagic and the cause of death was unnatural. The evidence of PW-18 shows that the injury on the neck of the deceased was possible due to pressing of neck by hands or cloth. Thus the evidence of this Medical Officer (PW-18), shows that death of Saynabano was homicidal.

10. Now, we will discuss the evidence of PW-10, PW-11 and PW-13, the witnesses who had deposed that deceased girl Saynabano (hereinafter referred to as "deceased girl") was last seen in the company of the Appellant. The evidence of PW-10-Shabirbaba Sameer Khan shows that he runs a hotel in New Azad Nagar Bhiwandi and he used to sit in that hotel on the counter. His evidence further shows that on 4th March, 2008 he was in the hotel. One man who was known to him and was

residing nearby his house whose name he does not know, came to his hotel with a girl aged of 10 to 12 years. His evidence further shows that after taking tea and making payment the said man left his hotel. His evidence further shows that the said man purchased the gola and then went away with the girl. His evidence further shows that after one and half month, he was called in Jail for identification, 8 to 10 persons were standing there and he was asked to identify the said man to whom he identified. His evidence further shows that the said man was present in the Court whose name is Aslam Ansari.

11. The evidence of PW-11-Mohammad Irfan Khan Raju shows that he was running his business in front of Baba Hotel of selling Pani Puri, Samosa etc. His evidence further shows that on 4th March, 2008 the accused-Appellant came to him with a girl child, purchased Samosa and after making payment, accused went away. His evidence shows that the

girl was aged of 6 to 7 years. He came to know that the daughter of one Chakkiwala was missing. His evidence further shows that on 9th March, 2008 he was called by the police and asked him whether he could identify the person with whom he saw the girl. On 9th March, 2008 he was taken to Adgharwadi Jail and he was asked to identify and then he identified the person (accused) who was present in the Court on the day of recording his evidence.

12. The evidence of PW-13-USman Magdum Shaikh shows that he was running his auto rickshaw from Shanti Nagar police station to Jakat Naka. His Rickshaw Number is 1783. His evidence further shows that on 4th March, 2008 at about 4.30 p.m., he was at Shantinagar police chowki. One boy with a girl child came to him, hired his rickshaw and he dropped them at Jakat Naka. The boy was grown up and the girl child was aged of 5 to 6 years. His evidence further shows that after about 4 to 5 days the officer of crime branch showed a

photograph of a girl to him. He replied to the said Officer that, he dropped said girl at Jakat Naka. His evidence further shows that thereafter he was taken to Adharwadi where he identified the accused to whom he had taken in his rickshaw. His evidence further shows that the accused present in the Court on the day of recording of his evidence, was the same boy.

13. Thus, though the prosecution case is based upon circumstantial evidence, the prosecution has proved through the evidence of PW-10, PW-11 and PW-13 that soon before the incident, the deceased girl was seen in the company of the Appellant-accused and thereafter nobody seen her alive.

14. Now, we will refer to the evidence of other prosecution witnesses. PW-1-Asmohammed Moharali Ansari is the father of the deceased girl who is informant in this case. His evidence shows

that on 4th March, 2008 his daughter Saynabano, aged about 6 years, went missing. His evidence further shows that he tried to search his daughter, but when she was not found anywhere he filed complaint of missing of his daughter. He proved the complaint (Exhibit-8). His evidence further shows that on 8th March, 2008 he received information that one girl was found and therefore he went to Police Station, Bhiwandi. His evidence further shows that Police Officer had taken him to I.G.M. hospital where a dead body of a girl was shown to him and he identified the dead body as of his daughter Saynabano. His evidence further shows that the Salvar was found tied to the neck of his daughter. Police told him that the dead body was found in a well at village Kalwad. His evidence further shows that on 12th March, 2008, he was called at Crime branch and the Police Officers asked him, whether he had any dispute or quarrel with anybody? He told Police Officer that, three years prior to the incident, there was quarrel

between him and Aslam. His evidence further shows that, as friends of Aslam used to come to him and behaved improperly, therefore quarrel with Aslam took place. Thus, through the evidence of the informant, the prosecution has brought on record that there was previous enmity between the informant and accused and thus there was motive for commission of offence by the accused.

15. PW-2-Mustrybano Asmohammed Ansari is the mother of deceased girl. She supported the version of the informant (PW-1). Her evidence shows that her daughter Sayanabano aged about 6 years, went missing on 4th March, 2008. Her evidence further shows that they searched for their daughter, but could not trace out her and therefore the complaint was lodged in the Police Station. Her evidence further shows that on 8th March, 2008, she received message that one girl was traced out. Upon receiving such information, she went to I.G.M. hospital, and identified the dead body of

her daughter.

16. PW-3-Sudhakar Anant Patil was the Police Patil of village Kalwad, Tahsil Bhiwandi in the year 2008. His evidence shows that on 8th March, 2008 one Balaram Manglu Patil came to his house and informed that one girl was found in the well, and therefore he went to that well. One girl was found floating on the water in the well. He informed to the Police. His evidence further shows that Police had taken out that girl from the well and drawn panchanama. The Odhani was found around the neck of that girl. His evidence further shows that the girl was found dead. He proved report (Exhibit-17) lodged by him in the Police Station.

17. PW-4-Kamlakar Harishchandra Patil is a panch witness and he proved seizure panchanama (Exhibit-21 and Exhibit-22) regarding seizure of clothes of deceased girl. PW-5-Isuf Ramzan Bagwan was Police working in Bhiwandi Taluka Police

Station. His evidence shows that he received information from PW-3 Police Patil of village Kalwar that dead body of a girl child was found floating in the well in the field of Balram Patil. His evidence further shows that the PSO registered the complaint of Sudhakar Patil (Exhibit-17) and Crime No.38 of 2008 under Section 302 and 201 of IPC was registered. His evidence further shows that he recorded seizure panchanama (Exhibit-21) and sent dead body of the girl child for postmortem. His evidence further shows that he called informant and showed the dead body in the hospital, and the informant identified the dead body of his daughter.

18. PW-6-Assar Ahmad Chand Ansari is the panch to the arrest panchanama (Exhibit-26). He proved the arrest panchanama of Accused/Appellant. PW-7-Ravish Ahmad Abib Nawab is the panch to the memorandum statement (Exhibit-30) of the Appellant. His evidence shows that on 13th March,

2008 he was called in the Police Station and Police Officer asked him to hear, what the Accused wanted to say. His evidence further shows that the Accused had stated that he took the girl first in Baba Hotel, from there to the rickshaw stand near Shanti Nagar Police Chowki, then to Jakat Naka and then to Kalwargaon. The accused had shown the place where according to him he had thrown that girl. He proved memorandum statement (Exhibit-30). His evidence further shows that the Accused had shown the places where he had taken to the girl.

19. PW-8-Shaikh Sakhawat Khan is the panch to the seizure of Articles from the person of Accused. He proved seizure panchanama (Exhibit-26) regarding the seizure of Articles from the person of Accused/Appellant like two mobiles, a shirt, some bus tickets and one diary. He identified those articles when those were shown to him.

20. The evidence of PW-9-Leela Balaram Patil

shows that she owns the agricultural land in Kalwad village and there is well in the field. On 8th March, 2008 when she went to the well, she saw that the dead body of the girl child was floating in the well. Accordingly she stated the said fact to her husband, who went to Police Patil and informed same to him. PW-9-Leela further proved inquest panchanama (Exhibit-96) of the dead body of Saynabano.

21. PW-12-Javed Bashir Ahmed Shaikh is the panch to seizure panchanama (Exhibit-48) regarding seizure of clothes of deceased girl like pink colour frock, blue colour salvar and red colour nicker. He proved seizure panchanama (Exhibit-48). PW-14-Fakir Mohd. Qureshi is the panch to the memorandum statement (Exhibit-53) of the Accused and seizure panchanama (Exhibit-54) regarding the seizure of the clothes which were worn by Accused while committing the offence. He has proved memorandum statement and seizure

panchanama.

22. PW-15-Rafique Adab Memon is a panch witness who has proved the panchanama (Exhibit-56) of the Articles like Tawit i.e. amulet and black thread which were found on the person of deceased girl. PW-16- Rahul Balwant Sabale is the Police Head Constable who drawn seizure panchanama (Exhibit-22) regarding seizure of clothes of deceased girl. PW-17-Isral Ahmed Hamidali Khan is a panch to the memorandum statement (Exhibit-60) given by the Accused that he had concealed one Tawit and he was ready to show the spot. His evidence further shows that at the instance of Accused/Appellant, Police seized Tawit from the spot shown by the Accused. This witness has proved seizure panchanama (Exhibit-61) regarding seizure of said Tawit. PW-19-Avinash Jadhav was the driver on the Police Jeep. His evidence shows that he driven the Police Jeep as per the directions of the Accused from Shanti Nagar to Kalwar.

23. The prosecution has examined PW-20-Tukaram Maruti Anchewar, who held identification parade of Appellant. His evidence shows that, he had carried his office clerk and seven witnesses along with him. There were four persons who had caught the Accused. Seven persons were standing in one row in Adharwadi Jail and the identifying witnesses were standing out of that Jail at the distance of 100 Ft. No Policeman was present at that time. His evidence further shows that four persons had identified the Accused. His evidence shows that, those four persons were Mohmed Irfankhan, Shabir Smeer Khan, Usmal Maqbool Shaikh and Mohd. Jafat Abdul Hamid Shaikh. His evidence further shows that the Accused had closed the eyes and he had called those persons one by one and all of them have identified the Accused who was standing in the room. Accordingly, he proved identification panchanama (Exhibit-67) of the Accused. Thus, through the evidence of this

witness, the prosecution has proved that Test Identification Parade was conducted and in the said TI Parade the accused was identified by PW-10 Shabirbaba Sameer Khan, PW-11 Mohammed Irfan Khan and PW-13 Usman Magdum Shaikh who have seen the deceased girl in the company of accused soon before the incident.

24. The evidence of PW-21-Madhav Arvind Shinde shows that in the year 2008, he was serving as Judicial Magistrate, First Class-3 at Bhiwandi, Dist. Thane. His evidence shows that on 24th March, 2008, P.S.I. Shaikh had given him one letter requesting to record the confessional statement of the Accused Aslam Jamadhar Ansari. Accordingly, on 25th March, 2008 Accused was produced in the Court at 3.30 p.m. and he started to record confessional statement of Accused in open Court. He inquired with Accused about his name, age, residence etc. and also inquired for what purpose he was produced before the Court. His evidence further shows that,

meanwhile he confirmed that there were no Police in the Court hall or around the Court hall. Thereafter, he made to understand to the Accused that he is no more in Police custody. Then the Accused showed his readiness and willingness to confess. His evidence further shows that, thereafter he inquired with the Accused, whether there was any ill-treatment at the hands of the Police? or whether there is undue influence by the Police? However, the Accused answered both the queries in negative. His evidence further shows that, thereafter Accused was given three days time for reflection. He proved statement of the Accused (Exhibit-73) dated 25th March, 2008. His evidence further shows that, at the time of recording statement he had asked the Accused that if Accused will confess the guilt, it will be used against him. His evidence further shows that as the Accused was knowing Hindi language, therefore confession was recorded in Hindi.

25. The evidence of PW-21-Madhav Shinde further shows that on 28th March, 2008, Accused was again produced before him and he again confirmed the fact that, there were no Police either in the Court hall or surrounding the Court hall and thereafter, he started recording rest of the confession in the open Court. His evidence further shows that he put some preliminary questions to the Accused, and again asked him, whether there was undue influence or promise at the behest of the Police or any other person? The accused answered both queries in the negative. His evidence further shows that, Accused was again given understanding that if he reiterates the confession, the same will be used against him. In spite of giving clear understanding, Accused showed his readiness and willingness to confess the guilt even after three days period given to him for reflection. His evidence further shows that, Accused was firm to confess his guilt and there was no ambiguity in his mind. The evidence

of PW-21 shows that Accused has given confessional statement as under :-

"On 4th March, 2008, at about 12.30 p.m. when Accused return from his job, he took with him the deceased girl Saynabano, aged of 6 years initially at Baba Hotel and thereafter in the rickshaw to three different places and finally he took her in the field of one Balasaheb Patil at Karoli village. Accused described spot as there was one well and one water tank. There he pressed the neck of that girl with his hands and thereafter he realized that her respiration was stopped and thereafter he put his finger in the private part of that girl and thereafter he thrown her in the well. Accused told the reason behind this act that before three years, the father of that girl had beaten him, and therefore in angry mood he had taken away the deceased girl with bad thoughts. Accused told that when he had gone on the spot, he was afraid that if he will again carry the girl to the house, there may be some repercussions, and therefore he had pressed her neck. Accused also told that on 8th March, 2008 he had reported the said incident to his brother and thereafter he had gone to Nashik."

26. The evidence of PW-21-Madhav Shinde further shows that, accordingly he recorded confessional statement of Accused in Hindi language. He identified the confessional statement (Exhibit-76) and deposed that the said statement bears his signature and the signature of Accused. His evidence further shows that the said statement also bears his three certificates at the bottom of the statement as per Criminal Manual, and all those three certificates also bear his signature and seal of the Court. His evidence further shows that the confessional statement of the Accused is in his handwriting. His evidence further shows that thereafter the Accused was remanded to M.C. and the said endorsement was made at the bottom of confessional statement. Thereafter, he forwarded the confessional statement to the Court of Joint Civil Judge, Junior Division and Judicial Magistrate, First Class, Bhiwandi along with his letter.

27. PW-22-Amar Deorao Jamkar and PW-23-Deepak Prakash Kalbande are the photographers who had taken out photographs of the deceased girl and also of the well in which the dead body of deceased girl was found floating. PW-24-Mahesh Mohanrao Tarade, PW-25-Riyaz Aimuddin Shaikh and PW-27-Prakash Deochand Patil are the Investigating Officers, who have deposed about the manner in which they have carried out the investigation of the Crime. PW-26-Jitendra Ramdas Mhatre is the panch to the inquest panchanama (Exhibit-96) of the dead body of deceased girl.

28. Thus we have discussed the entire evidence brought on record by the prosecution. As observed earlier, there is no eye witness in the present case and the entire prosecution case is based upon the circumstantial evidence. However, the prosecution has brought on record sufficient circumstantial evidence against the Appellant

showing his involvement in the offence. The prosecution has brought on record through the evidence of PW-10 Shabirbaba, PW-11 Mohamad Irfan Khan and PW-13 Usman Shaikh that soon before the incident, deceased girl was lastly seen in the company of the Accused and thereafter, nobody has seen her alive. The prosecution has brought on record the evidence of panch witnesses in whose presence different seizure panchnamas were carried out. The prosecution has also brought on record the evidence of PW-20 Tukaram Maruti Anchewar showing that Test Identification Parade of the accused was conducted and in the said TI Parade the accused was identified by PW-10 Shabirbaba Sameer Khan, PW-11 Mohammed Irfan Khan and PW-13 Usman Magdum Shaikh, who have earlier seen the deceased girl in the company of accused soon before the incident.

29. We have already discussed in detail the evidence of PW-21 Madhav Arvind Shinde, Judicial

Magistrate, First Class-3 at Bhiwandi, who has recorded the confessional statement of the accused. The evidence of PW-21 Judicial Magistrate shows that before recording the confessional statement, he has taken every precaution and asked some preliminary questions to the Accused and also confirmed that there was no influence of the Police Officers in the Court hall or around the Court hall. The evidence of Judicial Magistrate further shows that, three days period was given to the Accused for reflection. The evidence of Judicial Magistrate further shows that after three days period was over, Accused was again produced before him, and he then also shown his willingness to give confessional statement and accordingly, the same was recorded. The evidence of PW-21 further shows that, Accused voluntarily and without any influence of Police made confessional statement. Thus through the evidence of PW-21, the prosecution has proved that the Appellant/Accused has given confessional statement.

30. At this stage, it would be useful to make reference to an observations made by the Supreme Court in the case of Alope Nath Dutta and others V/s State of West Bengal¹, while considering an evidentiary value of the confession given by the accused before the Judicial Magistrate. Para 87 and 104 of the Judgment reads as under :-

"87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It, however, trite that for the said purpose, the Court has to satisfy itself in regard to : (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

104. Section 164, however, makes the confession before a Magistrate admissible in evidence. The manner in which such confession is to be recorded by the Magistrate is

1 (2008) 2 SCC (Cri) 264

provided under Section 164 of the Code of Criminal Procedure. The said provision, inter alia, seeks to protect an accused from making a confession, which may include a confession before a Magistrate, still as may be under influence, threat or promise from a person in authority. It takes into its embrace the right of an accused flowing from Article 20(3) of the Constitution of India as also Article 21 thereof. Although, Section 164 provides for safeguards, the same cannot be said to be exhaustive in nature. The Magistrate putting the questions to an accused brought before him from police custody, should sometime, in our opinion, be more intrusive than what is required in law. (See Babubhai Udesinh Parmar V. State of Gujarat²)."

31. In the present case in hand, the confession of the Accused is recorded by the Judicial Magistrate and therefore the same is admissible in the evidence. So also, the prosecution has proved that the Accused has voluntarily given the confessional statement, the same is truthful and corroborated by the evidence

² (2006) 12 SCC 268

of other prosecution witnesses and therefore, the same can form the basis of conviction. As observed earlier before recording the confessional statement, the Judicial Magistrate has adhered to the provisions of Section 164 of the Code of Criminal Procedure and after taking every precaution, the same was recorded. Therefore, we are of the opinion that explicit reliance can be placed upon the said confessional statement recorded by the Judicial Magistrate (PW-21). In the said confessional statement, the accused had specifically admitted his guilt and admitted that he has abducted the deceased girl and killed her by pressing her neck and thrown her dead body in the well. As observed earlier, though in the present case there is no direct evidence and the case is based upon circumstantial evidence, the prosecution has brought on record voluminous circumstantial evidence, which clearly points out that the accused, on the ground of previous enmity with the father of deceased girl, abducted her,

killed her and thrown her dead body in the well. Thus, the prosecution has proved beyond reasonable doubt that the accused had committed an offence punishable under Section 364, 302 and 201 of the IPC.

32. We have perused the impugned Judgment of the trial Court. After considering the evidence brought on record by the prosecution, the Trial Court has held that the prosecution has duly proved beyond reasonable doubt that on 4th March, 2008 prior to 18.00 hours, at Shanti Nagar, Bhiwandi, Accused had abducted deceased Saynabano in order to murder her and accordingly, he had committed the murder of Saynabano and by pressing her neck and throwing her dead body in the well, he caused to make disappear the evidence appearing against him and thereby committed an offence under Section 364, 302 and 201 of the IPC. The Trial Court has rightly convicted and sentenced the Accused for the offences as afore-stated.

33. Therefore, upon considering the evidence in its entirety, we are of the opinion that the findings recorded by the Trial Court are in consonance with the evidence brought on record and hence we do not think it necessary to cause interference in the findings recorded by the Trial Court.

34. We do not find that there is any substance in the Appeal. Accordingly the Criminal Appeal stands dismissed.

35. We appreciate the sincere efforts taken by learned counsel Mrs.Farhana Shah in extending able assistance to this Court during the course of hearing of the Appeal so as to reach to the proper conclusion. Since Mrs.Farhana Shah, learned counsel is appointed to prosecute the cause of the appellant, her fees and expenses are quantified at Rs.10,000/- (Rs. Ten Thousand only). We direct the

High Court Legal Services Committee, Mumbai to pay the aforesaid fees and expenses to the learned appointed counsel within four weeks from receipt of copy of this Judgment.

36. In view of the dismissal of Criminal Appeal, nothing survives for consideration in Criminal Application No. 718 of 2016 and the same stands disposed of accordingly.

[A.S. GADKARI, J.]

[S.S. SHINDE, J.]