

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

Confirmation Case No.2 of 2017

(Reference made by Mrs. S.K. Keole, Judge, Special Court
(POSCO Act) Ahmednagar)

In
Sessions Case No.340 of 2014

* The State of Maharashtra
Through Police Inspector
Parner Police Station,
District Ahmednagar.
(CR No.I-95/2014) .. **Complainant.**

Versus

- 1) Santosh Vishnu Lonkar,
Age 36 years.
R/o Loni-Mawala,
Taluka Parner,
District Ahmednagar.
- 2) Mangesh Dattatraya Lonkar,
Age 30 years,
R/o Loni-Mawala,
Taluka Parner,
District Ahmednagar.
- 3) Dattatraya Shankar Shinde,
Age 27 years,
R/o Ganga-Chincholi,
Taluka Ambad, Dist Jalna. .. **Respondents.**

Shri. A.B. Girase, Public Prosecutor, for the complainant.

Shri. C.V. Dharurkar, Advocate, for respondent No.1.

Shri. P.K. Phale, Advocate, for respondent Nos.2 and 3.

With

Criminal Appeal No.568 of 2017

- 1) Mangesh Dattatraya Lonkar,
Age 30 years,
R/o Loni-Mawala,
Taluka Parner,
District Ahmednagar.
- 2) Dattatraya Shankar Shinde,
Age 27 years,
R/o Ganga-Chincholi,
Taluka Ambad, Dist Jalna. .. **Appellants.**

Versus

- * The State of Maharashtra
Through Police Inspector
Parner Police Station,
District Ahmednagar.
(CR No.I-95/2014) .. **Respondent.**

Shri. Shri. P.K. Phale, Advocate, for appellants.

Shri. A.B. Girase, Public Prosecutor, for the State.

With

Criminal Appeal No.678 of 2018

- * Santosh Vishnu Lonkar,
Age 36 years,
R/o Loni-Mawala,
Taluka Parner,
District Ahmednagar. .. **Appellant.**

Versus

* The State of Maharashtra
Through Police Inspector
Parner Police Station,
District Ahmednagar.
(CR No.I-95/2014) .. **Respondent.**

Shri. C.V. Dharurkar, Advocate, for appellant.

Shri. A.B. Girase, Public Prosecutor, for the State.

**Coram: T.V. NALAWADE &
K.K. SONAWANE, JJ.**

Judgment reserved on : 07th October 2019

Judgment pronounced on : 17th October 2019

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

1) Criminal Appeal No.678/2017 is filed by accused No.1 and the other appeal is filed by accused Nos.2 and 3 from Sessions Case No.340/2014 which was pending before the learned Judge of Special Court created under the provisions of Protection of Children from Sexual Offences Act, 2012. The Confirmation Case is referred by the trial court for confirmation of death sentence. All the three accused are convicted by the trial court for offences punishable under sections 302 read with section 34 and

376-A read with section 34 of the Indian Penal Code and for each of these offences death penalty is given to all the three accused. They are also convicted and sentenced for the offence punishable under section 120-B of the Indian Penal Code and for that each of them is sentenced to suffer imprisonment for life. They are convicted for offence punishable under section 376-D read with section 34 of the Indian Penal Code and for that also each of them is sentenced to suffer imprisonment for life and to pay fine of Rs.50,000/- each. They are sentenced to suffer imprisonment for life for offence punishable under section 376(1)(2)(m) read with section 34 of the Indian Penal Code. They are convicted for offence under section 3 punishable under section 4 and under section 5 punishable under section 6 of the Protection of Children from Sexual Offences Act, 2012 but no separate sentence is given for these offences. Heard both the sides.

2) The facts leading to the institution of the appeals and the reference for confirmation can be stated as follows:-

3) The victim girl was aged about 16 years and she was studying in 10th standard in a school from village Alkuti. She was resident of a Vasti from village Hamumanwadi, Taluka Parner, District Ahmednagar. From Hanumanwadi she was required to walk upto village Loni-Mawala which is situated at a distance of about one to one & half kilometers and from there she was required to go to village Alkuti by state transport bus. At the relevant time, unit tests of the school were going on.

4) The incident took place on 22-8-2014. On that day the victim left home at 9.30 a.m. for school for attending the Unit Test. When the Unit test was over, by bus she returned to Loni-Mawala at 5.00 p.m. When she was proceeding towards Hanumanwadi on foot there was rain and so she stopped below a tree situated near the bungalow of one Dadabhau Mawale. She was seen at 5.15 p.m. below that tree by her cousin Amol (PW 2) when he was proceeding towards Padwal Mala with his friend Sagar and they were on motor cycle.

5) After crossing some distance, Amol had casual talk with accused persons as they were coming from opposite direction and they were on motor cycle. Amol had noticed that the victim had started on foot towards Hanumanwadi and behind her by keeping some distance the motor cycle of the accused persons was proceeding in the same direction in slow speed.

6) The victim girl did not reach home even when it was 6.00 p.m. Popat, father of the victim girl, and other relatives started searching for the victim girl. She was not found in the village and the search was taken in the vicinity of the village and they had gone upto Loni-Mawala also. Some persons who were taking search noticed that sandals of the victim girl were lying on the road leading to Hanumanwadi and these sandals were identified by mother of the victim. Then search of the vicinity of that spot on that basis was made thoroughly and after that they noticed the dead body of the victim lying in chari, Canal No.37. At that place chari had a small bridge over it and road was passing over the bridge. The dead body was found at 7.00 p.m. There were injuries on the dead body

and in view of the position of the dead body, everybody realised that there was rape and murder. Somebody informed to police and police also rushed to the spot. Sandip, uncle of the victim girl and real brother of Popat gave report to Parner Police Station before 10.00 p.m. on that day and the crime came to be registered for offences punishable under sections 302, 376 etc. of the Indian Penal Code and also under the provisions of the POSCO Act against unknown persons.

7) On the next day i.e. 23-8-2014 at about 9.00 a.m. Aishwarya, a resident of Loni Mavala, a girl friend of the deceased went to police with her father. She used to go to the same school from village Alkuti with the deceased by bus in the past and she used to return also with the deceased and so she had acquaintance with the deceased. On 21-8-2014 the deceased had disclosed to this girl that accused No.1 - Santosh was teasing her from about 2 to 3 days and he was obstructing her on the way proceeding towards Hanumanwadi from Loni-Mawala and he was insisting her to sit on his motor cycle. The deceased also disclosed that accused No.1 had given

threats of life and he had warned not to disclose about his conduct to anybody. The deceased had expressed that she had a feeling that if there is disclosure of the incident to her parents would stop sending her to the school as the accused No.1 was of goonda nature. She had requested Aishwarya not to disclose about the incident to anybody. Aishwarya had seen the deceased on 22-8-2014, on the day of the incident in the school. As the deceased was to face unit test they were not together when Aishwarya returned home on that day.

8) Aishwarya (PW 8) gave aforesaid information at about 9.00 a.m. of 23-8-2014 and due to that information police got clue. Then one Gani Pathan came to police station and he informed that on 22-8-2014 after 8.30 p.m. accused No.1 had admitted before him that he had committed the offence of rape and murder and accused Nos.2 and 3 were with him and they had also participated in the commission of those acts. He had not rushed to police as he was afraid of accused No.1. Then Amol gave statement to police that he had seen all the three accused together on that road at the relevant time. Thus, on 23-8-

2014 before noon time itself it became clear that the three accused were involved in the commission of the offences.

9) It was night time and so police only took photographs and kept a constable on the spot for preparation of spot panchanama on the next day. Dead body was however referred for post mortem examination on the same day. During spot panchanama articles of the deceased like school bag, sandals were taken over. Earth sample was also taken over from the spot. The clothes of the deceased were also taken over under panchanama.

10) On 23-8-2014, on the basis of the aforesaid information accused No.1 came to be arrested after 2.00 p.m. There were injuries on the person of the accused and they were noticed during arrest panchanama. He was referred for medical examination on 23-8-2014 itself and his medical examination was done. Search was made to trace accused Nos.2 and 3 but police could not trace accused Nos.2 and 3 till 26-8-2014. On 26-8-2014 they came to be arrested. On their persons also there were injuries and they were referred for medical examination.

11) During investigation, on the basis of statement given by accused No.1, weapon screwdriver and clothes of the accused and the footwear came to be recovered and they came to be seized. The clothes of the accused were found smeared with mud. There was mud on the screwdriver also. During investigation accused Nos.2 and 3 gave statements under section 27 of the Evidence Act. On the basis of those statements articles like footwear and the clothes of these accused came to be recovered on 29-8-2014. On the basis of the statement of accused No.2, Mangesh, other weapon stone came to be discovered. These articles also had mud on it. The motorcycle which was with accused Nos.1 to 3 on the relevant day came to be recovered on the basis of information given by accused No.1 and it came to be seized. The person from whom the motorcycle was purchased gave statement that before few days he had sold the motorcycle to accused No.1 and accused No.1 had sold his own motorcycle to him.

12) During investigation, the aforesaid articles, blood samples of the deceased and the accused came to be sent to C.A. office. The Chemist made comparison of

the mud found on the articles taken over from the accused and the mud which was found on the spot of offence and the mud which was found on the clothes of the deceased. The components of the mud, the density, PH value etc. matched. Blood was detected on the underwears of accused Nos.2 and 3. After completion of the investigation charge-sheet came to be filed for the aforesaid offences.

13) To the charge for the aforesaid offences all the three accused pleaded not guilty. The prosecution examined in all 32 witnesses. All the three accused took defence of total denial. The submissions made in these proceedings and before the trial court show that they did not dispute that it is a case of rape and murder but they contended that they were not involved in the offence. No defence evidence was given by the accused.

14) The trial court has believed the important witnesses like Aishwarya, Amol and Pathan. The other witnesses like panch witnesses who have given evidence on the recovery of the articles and other circumstances are also believed by the trial court. The trial court has

held that it is a heinous crime and as it was committed against innocent girl aged about 16 years, the accused do not deserve leniency and there is no possibility of their reformation. The circumstance like the age difference between the age of the accused and the deceased and the circumstance that accused No.1 was father of two daughters at the relevant time is also considered against them. It is observed by the trial court that the conduct of the accused shows that the accused did not show remorse or regret.

15) The evidence given by the prosecution consists of circumstantial evidence and evidence on extra judicial confession given by accused No.1 to witness Pathan. The evidence can be considered both ways like considering the circumstantial evidence separately from the evidence of extra judicial confession or considering both kinds of the evidence together. The confession may consist of several parts and in many cases the confession consists of the only the admission of relevant circumstances like the motive, preparation, the opportunity, the weapon used, the intention and the subsequent conduct of the accused.

The evidence of confession is exception to the hearsay rule. Similarly, under section 6 of the Evidence Act whatever was said or done by the accused shortly after the crime are relevant circumstances. The provisions of sections 7 and 8 of the Evidence Act mention more relevant facts and those relevant facts can be found in the confession also. Sometimes statement given by the accused may not amount to confession, admission of crime but it may give rise to inference that the accused might have committed the offence or it may suggest only his presence on the spot at the relevant time. Thus, there is always connection between the circumstances which can be there in confession and the circumstantial evidence collected separately by the investigating agency. Due to possibility, this Court holds that in the present matter both kinds of the evidence need to be considered together. Such approach can also help to ascertain as to whether the witness on extra judicial confession was got up witness or whether the circumstantial evidence is consistent with the evidence on extra judicial confession and the witnesses can be held to be reliable and truthful witnesses. On the other hand, at the time of consideration

of the circumstantial evidence, admission of the accused can be used as a piece of circumstance and that can help to complete the chain of circumstances. Such approach is suggested by the Hon'ble Apex Court in the cases reported as **Aghoo Negeiss v. State of Bihar (AIR 1966 SC 199)** and **Nishikant v. State (AIR 1969 SC 422)**. In the case reported as **Bharat V. State of U.P. [(1971) 3 SCC 950]** the Apex Court has laid down that confession can be acted upon if the court is satisfied that it is voluntary and true. Truth is judged on the context of the entire prosecution case. Confession must fit in the proved facts and it should not run counter to them.

16) In the present matter, the prosecution wants to use the evidence of confession against accused Nos.2 and 3 also. Provision of section 30 of the Evidence Act allows consideration of such confession against co accused but in that case the confession cannot be used as substantive piece of evidence against co-accused. So there needs to be other independent evidence against the co-accused. In that case such confession can be used to lend assurance to the other evidence available against co-accused. In the

cases reported as **Bhuboni Sahu v. The King (1949) 51 Bom.L.R. 955 (P.C.)**; **Kashmira Singh v. State of Madhya Pradesh, (AIR 1952 SC 159)**; and **Hari Charan Kurmi v. State of Bihar (AIR 1964 SC 1184)** it is laid down that confession of one accused cannot be used under section 30 of the Evidence Act as a substantive piece of evidence as it is technically not the evidence under section 3 of the Evidence Act. It is laid down that conviction cannot be based only on confession of co-accused. On this point learned counsel for the appellants placed reliance on the observations made by the Apex Court in the cases reported as **Sahadevan v. State of Tamil Nadu (AIR 2012 SC 2435)**; **AIR 2012 SC 523 (Pancho v. State of Haryana)** also on **Kusal Toppo & Another v. State of Jharkhand [(2018) 4 Crimes 532 (SC)]**. The law laid down in aforesaid previous cases is reiterated by the Apex Court in these cases.

17) The provision of section 114 and illustration (b) of the Evidence Act also shows that evidence of accused can be treated as evidence of accomplice and the court may presume that such accused is untrustworthy of

credit, unless he is corroborated in material particulars. For all these reasons, this Court is considering the entire evidence together.

18) Conviction can be based solely on circumstantial evidence if cumulative effect of all the evidence established is consistent with hypothesis of guilt (case reported as **Kusuma Ankama Rao v. State of A.P. [2008 ALL MR (Cri) 2555 (S.C.)** referred]. Thus, if the relevant circumstances are fully established and the chain of circumstances furnished is so complete that it does not leave any reason, for conclusion consistent with the innocence of the accused, conviction can be based. In view of this principle, this Court would be considering the admitted and disputed circumstances first and then this Court will discuss the evidence on extra judicial confession. While considering the aforesaid proposition, the court is expected to keep in mind that if there is reasonable ground or doubt in the circumstances the benefit will go to the accused. However, extravagant and fanciful hypothesis suggested by the accused cannot be considered by the court. Further it is not necessary that

every one of the proved facts must in itself be decisive of the complicity of the accused, it should point conclusively to the guilt. As already observed, the Court is expected to consider the total, cumulative effect, result of all circumstances and if they unerringly point to the guilt of the accused, the court can safely base the conviction. In some cases proof of only few circumstances may be sufficient but in some cases proof of many circumstances may be required to complete the chain of circumstances. Reliance can be placed on the cases reported as **State of A.P. v. I.B.S.P. Rao, (AIR 1970 SC 648)** and **Gade Laxshmi Mangraju v. State of Andhra Pradesh (AIR 2001 SC 2677)**. At the time of consideration of the evidence given on each circumstance the court is expected to keep in mind the definition of "proved" given in section 3 of the Evidence Act and it runs as under.

"Proved".-- A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

19) This Court is considering following pieces of evidence one by one.

- (1) Evidence on motive.
- (2) Evidence on circumstance of last seen.
- (3) Evidence on circumstance of injuries found on the person of the accused.
- (4) Evidence collected under section 27 of the Evidence Act.
- (5) Evidence on extra judicial confession.
- (6) Evidence on conspiracy
- (7) Evidence for ascertaining whether it is a rarest of rare case.

MOTIVE

20) Aishwarya (PW8), a friend of the deceased, has given evidence on motive. Her evidence shows that at the relevant time she was studying in 9th Standard in the school in which the deceased was studying in 10th Standard. Her evidence shows that as the deceased was boarding the bus for Alkuti at Loni-Mawala, place of Aishwarya, they became acquainted with each other. Though some evidence is given that ordinarily brother of the deceased used to be in her company, as he was also

studying in the same school, the fact remains that when 2 girls come together as friends, they have ordinarily separate talk. Further on the relevant point there is such evidence and it does not look probable that deceased had not taken care to see that others were not able to hear the conversation.

21) Aishwarya (PW8) has deposed that on 21-8-2014 at about 5.00 p.m. she and the deceased boarded the bus at Alkuti for Loni-Mavala and that day she noticed hat the deceased was scared. She has deposed that when she made inquiry with the deceased about the reason the deceased started crying and then she disclosed that accused No.1 was harassing her. Aishwarya (PW8) has deposed that deceased disclosed that from 2 to 3 days accused No.1 Santosh was obstructing her on Loni Mawala to Hanumanwadi road. He was using filthy language against her and he was asking her to sit on his motor cycle. Aishwarya (PW8) has deposed that the deceased was feeling that if the conduct of accused No.1 was disclosed to others, her parents may stop her sending to the school as accused No.1 was of goonda nature.

Aishwarya (PW8) has deposed that the deceased disclosed that accused No.1 also had given threats of life to her and had warned her not to disclose about his conduct to anybody. The evidence of Aishwarya (PW8) shows that accused No.1 was known to both the deceased and Aishwarya (PW8). A niece of accused No.1 was studying in the same school and due to that circumstance they knew the accused No.1. Further, the evidence on record shows that the vasti where accused No.1 was living is situated in the vicinity of the vasti of the deceased and relatives of the deceased also knew accused No.1. The deceased had obtained undertaking from Aishwarya (PW 8) as per version of Aishwarya (PW8) that Aishwarya (PW 8) will not disclose the incident to anybody. The evidence of Aishwarya (PW8) shows that she had advised the deceased to give a slap to accused No.1 in case he repeats such conduct.

22) The evidence of Aishwarya (PW8) shows that on 22-8-2014, the date of the incident, she was allowed to leave school at about 5.00 p.m. Her evidence shows that she was not aware as to whether the deceased had left the

school prior to her on that day. The evidence on the record shows that on that day as the light was not good, the period of unit test was pre-poned and the unit test was over at about 4.15 p.m. Evidence is also given of the teacher of the school to the effect that after the unit test, the deceased had left the school. There is evidence of Aishwarya (PW8) and the father of the deceased that the deceased was seen in the school in the noon time. In any case it is not disputed that the deceased had attended the unit test on that day.

23) Aishwarya (PW8) has deposed that on 22-8-2014, Popat, father of the deceased had come to her house to make inquiry about the deceased after 6.00 p.m. It needs to be kept in mind that at that time the dead body was not found and there was the promise of aforesaid nature given by Aishwarya (PW8) to the deceased. So, not much can be made about the circumstance that Aishwarya (PW8) did not disclose the information she had received from the deceased prior to 22-8-2014.

24) Aishwarya (PW8) has deposed that on 23-8-2014 when she learnt about the death of the victim girl, she told about the information which was given by the deceased to her to the father. She has deposed that she was then taken to police station by her father. The evidence on the record shows that her father was working in Government Department. She has deposed that she disclosed about the aforesaid information to police on 23-8-2014. Her evidence shows that she was taken to police station before 9.00 a.m. by her father. Her evidence shows that only after the information received about the death of her friend, she realised as to why the father of the deceased had come to her on the previous evening. There is evidence of Jambhale (PW29), investigating officer to the effect that at about 9.00 a.m. of 23-8-2014 Aishwarya (PW 8) had come to the police station and then her statement was recorded. The evidence of Aishwarya (PW8) and Jambhale (PW29) show that only after giving of the statement by Aishwarya (PW8), police realised that, accused No.1 was involved in the offence. Prior to that there was no clue to police and in the F.I.R. also no suspicion was expressed against anybody by the uncle of

the deceased.

25) The evidence on the record shows that when Aishwarya (PW8) gave evidence, she was aged about 17 years and she was studying in 11th standard. The evidence shows that she faced exhaustive cross-examination confidently. No material omission is brought on the record during here cross-examination by the defence. There is nothing on the record to create probability that either she or her father had any reason to falsely implicate accused No.1 in such a serious case. In the statement given under section 313 of the Cr.P.C., the accused have contended that Aishwarya (PW8) gave such evidence due to pressure of police. There was no reason for police also to concoct case of information about such disclosure made by the deceased to Aishwarya (PW8). It can be said that police would have made investigation on that line, would have contacted friends of the deceased but the evidence on the record shows that Aishwarya (PW8) on her own came to police station on 23-8-2014. She is resident of Loni-Mawala and not of Hanumanwadi. Her evidence shows that her conduct was natural. The other circumstances

like the progress made in the investigation show that there was no reason for the trial court to disbelieve this witness. The trial court has rightly believed this witness. All the other circumstances on the record are consistent with the evidence given by Aishwarya (PW8).

26) The evidence of Aishwarya (PW8) is on motive for the crime though it is only as against accused No.1. This evidence and the record show that accused No.1 Santosh was of about 36 years at the relevant time, he was married man and having two issues but he had evil eye on the deceased. The nature of evidence shows that accused No.1 was ready to go to any extent for satisfying his sexual lust. The evidence also shows that the deceased had not given positive response to the sexual advances made by accused No.1 and that must be the reason for commission of both the offences. The evidence also shows that accused No.1 knew that from Loni Mawala to Hanumanwadi the deceased used to walk everyday after the school time and he used that information for commission of the offence. It can be said that after the rape, the persons who wanted to satisfy sexual lust

deemed it fit to finish the victim girl to avoid further problems for them. Thus, the evidence of Aishwarya (PW8) can be used as motive for both the offences.

27) The evidence on motive is admissible under section 32(1) of the Evidence Act and the provision runs as under.

"32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases.-

(1) **when it relates to cause of death.--** When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons' death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

28) The wording of section 32(1) of the Evidence Act shows that if the statement of the deceased relates to the circumstances surrounding the death and there is

definite nexus between the statement of the victim and her death, such statement is admissible under section 32(1) of the Evidence Act. Thus, the evidence of Aishwarya (PW8) given on the apprehensions expressed to her by the deceased about the aforesaid possibility of ravishing her and of murder by accused No.1 is admissible under section 32(1) of the Evidence Act. This fact is satisfactorily established and this fact which is relevant under section 8 of the Evidence Act is admissible under section 32(1) of the Evidence Act.

29) Here only this Court wants to observe that the approach of both Aishwarya (PW8) and her father needs to be appreciated. It can be said that only due to the disclosure made by such girl of tender age, police got the clue and others also got the clue and came forward to give more information. It can be said that Amol (PW2) cousin of the deceased who had initially not felt suspicion against all the three accused even when he had seen them on that road at the relevant time, realised that said circumstance was relevant and there was involvement of the three accused in the crime.

LAST SEEN

30) Amol (PW2), a cousin of the deceased, has given evidence that on 22-8-2014 at 5.15 p.m. he and his friend Sagar were proceeding on his motor cycle towards Padwal Mala. He has deposed that on the way from Hanumanwadi to Padwala Mala via Loni Mawala they noticed that the deceased was standing below a tree and she was with the school bag. Amol has deposed that he asked the deceased as to whether she needs help to reach her to her home on his motor cycle. Amol has given evidence that the deceased said that she would go on own after stopping of the rain. She was below a tree as it was raining.

31) The evidence of Amol (PW2) shows that they proceeded ahead and after some distance they came across accused No.1 to 3 who were coming from the opposite direction and were proceeding towards the side where the deceased was standing. He has given evidence that he stopped his motorcycle to have talk with the accused. He has deposed that he talked with them as to why they were riding the motorcycle with such a slow

speed and upon that accused No.1 said that due to rain the road had become slippery. He has deposed that he knew that accused No.1 was using Hero Honda motor cycle in the past and on that day he noticed that he was having Bajaj motorcycle and so he asked accused No.1 as to who was owner of that motorcycle. He has deposed that accused No.1 disclosed that he had purchased the motorcycle few days back. Here only it needs to be mentioned that the prosecution has examined the witness from whom the accused No.1 had purchased this motorcycle after selling his old Hero Honda motorcycle. This motorcycle was also second hand. This circumstance is also relevant as this motor cycle is described by Amol and this motorcycle was recovered from accused No.1 on the basis of his statement given to police.

32) Amol (PW2) has deposed that after crossing some more distance he was required to stop the motor cycle as Sagar wanted to pass urine. He has deposed that when he was standing on the road he noticed that the deceased had started on foot towards Hanumanwadi and motorcycle of the accused persons was following her by

keeping some distance.

33) The prosecution has examined Sagar (PW32) and his evidence is similar to the evidence of PW2 on the circumstance that they had seen accused Nos.1 to 3 on that day at the relevant time. The evidence of these two witnesses show that from there they went to Padwal Mala and they returned from Padwal Mala to Hanumanwadi after one and half hours but by different road.

34) The evidence of Amol (PW2) shows that on the evening of 22-8-2014 when he met Sandip (PW1), the informant, he informed to Sandip that he had seen the deceased near the house of Mawale at about 5.00 p.m. to 5.15 p.m. His evidence shows that when he returned back to the home, search was started of the victim girl. His evidence shows that while supplying such information it did not come to his mind the circumstance that accused were seen in the vicinity of the deceased was that relevant.

35) The evidence of Sandeep (PW1) shows that Amol (PW2) informed him on the evening of 22-8-2014 when search was started that Amol had seen the deceased near the bungalow of Mawale. In the FIR, Sandeep (PW1) did mention about this information received from Amol. The prosecution has examined Sandeep (PW1) for proving the FIR which is at Exhibit 32. This evidence rules out the possibility of concoction.

36) The evidence of Amol (PW2) and Sandeep (PW1) together shows that there was no dispute of the family either of Amol or of Sandeep with any accused. Even when Amol had seen the accused on that day at the relevant time he did not take suspicion about their presence. The evidence on the record has established that at about 5.00 p.m. Amol and his friend Sagar were present on that road and so the evidence of both these witnesses cannot be brushed aside by presuming that it is improbable or afterthought in nature. Due to the nature of evidence given by these 2 witnesses the circumstance that the friend of Amol from Padwal Mala is not examined or the circumstance that witnesses from Loni Mawala who

had seen the deceased alighting from the bus after coming from Alkuti is not examined by prosecution cannot be given much importance and they are not lacunae in the case of the prosecution.

37) The circumstance that Amol (PW2) is cousin of the deceased, he is interested witness is also not sufficient to discard his evidence due to aforesaid circumstances. He was the only available witness at the relevant time and so it can be said that his evidence is doubtful. Learned Public Prosecutor placed reliance on the observations made by the Apex Court in the case reported as **State of U.P. v. S. Rajayapa and others [2006(2) SCC (Cri.) 353]**. The observations are as under.

"A close relative who is very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either; because of animosity or some other reasons."

38) The defence has challenged the evidence of Sagar (PW32) on the ground that police statement of Sagar was not recorded but he was examined. The

aforesaid evidence shows that name of Sagar was already given by Amol (PW2) to police. This witness was cross-examined by defence. The evidence of PW2 and PW32 is similar in nature. Even non examination of Sagar could not have made any difference and on that basis evidence of Amol could not have been discarded. Further, the evidence of Sagar came to be recorded as per order passed by the trial court under section 311 of the Cr.P.C. Thus, there is no force in the objection taken by the defence against the evidence of Sagar.

39) It was argued by the learned counsel for the accused that the conduct of the deceased as described by aforesaid two witnesses was not natural. It was submitted that if there was the offer from Amol to reach the deceased to her home on his motorcycle and if she was really afraid of the accused she would have accepted the help of Amol (PW2) in ordinary circumstances. This submission of the defence has no force. The evidence on the record shows that deceased had already walked some distance. Amol was proceeding in other directions and the accused were not in sight, they were not visible even to

the prosecution witnesses. It was her routine to walk that distance and as she must have felt confident she must have avoided to take help of Amol. The conduct of such victim girl cannot be called as unnatural. The evidence of Amol (PW2) and Sagar (PW32) is consistent with the mention in F.I.R. about their presence on the road at the relevant time and it is sufficient to infer that these two witnesses had seen the three accused on that road at the relevant time. The distance between the accused and the deceased was not much when Amol (PW 2) had lastly seen those persons proceeding towards Hanumanwadi.

40) To reinforce the evidence given on aforesaid fact there is more evidence in the form of other circumstances. The prosecution has given evidence of panch witness Deepak (PW10) to prove the spot panchanama which is at Exhibit 70. There is also evidence of investigating officer Jambhale (PW29) on the spot panchanama. Their evidence and the spot panchanama show that earth sample was collected from the spot where the dead body was found, offence was committed. Then there is evidence of discovery of the clothes and footwear

of the three accused on the basis of statements given by them under section 27 of the Evidence Act.

41) Ramdas Chede (PW12), panch witness on the statement given by accused No.1 has given evidence that on 25-8-2014 accused No.1 gave statement to police in the presence of panch witnesses and he showed willingness to produce the articles like clothes and the weapon. The memorandum of statement is proved as Exhibit 75. His evidence and the evidence of Jambhale (PW29) shows that accused No.1 took them towards the hut situated near his residential place and from there he produced articles like screwdriver, his clothes and chappal. The clothes included shirt, pant and underpant. Evidence is given on the seizure of articles under panchanama Exhibit 76. These articles are identified by the witness. Here only it needs to be mentioned that evidence of panch witness on seizure is more than satisfactory and almost with every articles there were labels bearing signatures of panchas. The articles were properly closed and sealed when they were taken over under the panchanama.

42) The prosecution has examined Rajendra Thube (PW13), a panch witness on the statement given by accused Dattatraya. Though the statement was given on 29-8-2019 that circumstance is not sufficient to discard the evidence. Accused Nos.2 and 3 came to be arrested on 26-8-2014 and prior to that, after incident, they were not available in the village. Memorandum of the statement is proved as Exhibit 79. Evidence of panch witness and investigating officer show that these accused then took the police and panchas to the place where he had concealed the articles like black T shirt, one shirt of full sleeves, one pant of black colour, one underpant and pair of sandals. Panchanama of seizure of these articles is proved at Exhibit 80.

43) The prosecution has examined panch witness Bhimaji Auti (PW14) to prove the statement given by accused No.2 on 29th August 2014. The statement given is proved at Exhibit 82. Evidence of panch witness and the investigating officer show that after giving the statement the accused took police and panchas to the place where articles were kept. Stone was thrown by the accused in a

bush situated at some distance from the place of offence and this stone was recovered on the basis of information supplied by accused No.2. He produced articles like blue colour full shirt, one black colour pant, one red colour underpant etc. These articles came to be seized under panchanama at Exhibit 83. As per the evidence of the panch witnesses and the evidence of the investigating officer, specific evidence is given by these two witnesses that all these articles like the clothes (shirt, pant and stone) were having smear of mud.

44) The evidence of the aforesaid witnesses shows that they hail from other place and they are not relatives of the family of the victim girl. Cross examination of these witnesses shows that nothing could be brought on record to create probability that they are interested witnesses in any way. The trial court has believed these witnesses.

45) There is evidence of seizure of the clothes of the deceased and that panchanama is at Exhibit 67. It appears that this evidence was not seriously disputed by the defence. The prosecution has examined two witnesses

like the photographer Rambhau Shendkar (PW5) and other panch witness Harshad Auti (PW6) to prove that the photographs were taken. These photographs were referred in the cross-examination by defence and they are given Exhibit 59. This document shows that the dead body was lying in the mud and it was virtually smeared with mud.

46) The prosecution has examined Kshirsagar (PW 26) the carrier constable. His evidence shows that the aforesaid articles were sent to C.A. office on 27-8-2014. The prosecution has examined the chemist, analyst from the C.A. office, Abhijit (PW 22). He has given evidence on the test conducted by him for matching of the mud, soil found on the aforesaid articles with the soil found on the clothes of the deceased and mud collected from the spot of offence. This part of the evidence can be used as circumstantial evidence on the incident of last seen.

47) Abhijit (PW22) has given evidence that geological make up of soil is a science and matching, comparison of the soil is possible.

48) Provision of section 45 of the Evidence Act shows that opinion of expert on 'science' is relevant. It is opinion evidence and so court may accept it if the court is convinced and the court can use it for corroboration purpose. Provision of section 293 of the Cr.P.C. provides that report of C.A. may be used as the evidence. In the present matter, the Chemist who did the tests for matching is examined as a witness.

49) Expert opinion is considered as relevant due to "necessity". This evidence can be considered from two angles. Firstly, when the fact in issue cannot be proved or disproved due to absence of direct evidence, it becomes necessary to ascertain other facts. Some of such other facts can be inferred on the basis of some rule of science. When there is a need of use of science, need of opinion evidence and when the court is incompetent to infer fact without the aid of the greater skill like that of expert in the field, the expert evidence needs to be considered. It is true that opinion evidence must be in the form of proof of some facts, reasons for the opinion of the expert. Thus, the opinion evidence can help to establish some facts

which are relevant when no direct evidence is available. Secondly, these days it has become necessary to have check of circumstantial evidence to the direct evidence. There is a saying that witness may lie but the circumstances do not. This saying has the basis of science oriented detection of crime also. Thus, in both ways the expert opinion can help the court. For these reasons, there is a need of liberal use of scientific research and discovery. So, this Court is considering the evidence of soil matching as relevant fact in the present matter.

50) The goal of soil comparison is to establish the probability that the material found on the articles of the accused was either derived from particular location or it was not derived from that location. In the present matter expert has given characterization of earth samples to establish similarity. In the present matter the question would be of absolute location, exact place where geological feature is found. In that regard it can be said that, the incident took place in chari, canal through which canal water flows and it was under a bridge. Considering the evidence on the record and the depth of the canal, in

ordinary course, there was no reason either for the deceased or the accused to enter that portion.

51) The evidence of Abhijit (PW22) shows that he took chemical test for ascertaining the chemical composition. He took the test by energy dispersive X-ray fluorescence. He took the heat test. He took P.H. test. He conducted colour test and he examined the samples with naked eye and under microscope. On the basis of the test and examination he reached to the conclusion that the soil which was collected from the spot of offence and the soil which was found on the articles like screwdriver, stone (weapons) and the clothes of the accused and the deceased was one and the same. The report is proved as Exhibit 130 and it is consistent with the evidence of Abhijit (PW22). Cross examination was made in respect of the aforesaid tests but the witness answered all the questions confidently and his evidence remained unshattered. In view of the nature of evidence given by the witness, this Court holds that his opinion is in respect of science. The evidence and the record show that on the clothes of the accused Nos.1,2 and 3 the mud found was

similar to the mud collected from the spot of offence. No earth, mud was found on Exhibits 19,22,24 and 26 and they were plastic bag, T shirt, one underpant and another plastic bag. Said underpant was of accused No.2. However, here only it needs to be mentioned that the CA report in respect of presence of blood on the clothes shows that on the underpants of accused No.2 and 3 blood was detected. Though DNA matching could not be done, the fact remains that blood was detected on the underpants of the two accused which were recovered on the basis of statements given under section 27 of the Evidence Act. At appropriate place this Court is discussing the injuries which were caused to the deceased which were mainly the bleeding injuries all over the body including the private part of the deceased.

52) In Forensic Science it is stated that “dirt on shoes can tell us more about where the wearer of the shoes was last seen”. From the aforesaid evidence even if for a moment we presume that the exact place cannot be located, due to aforesaid nature of the evidence, the court can expect the explanation from such accused persons. As

there was a matching of the earth sample taken from the spot with the mud detected on the clothes and the two articles like screwdriver and stone such explanation was necessary. No explanation at all is offered by the accused. This Court holds that the opinion given by the expert needs to be accepted and relied upon in the present matter. This opinion is corroborating the theory of "last seen" to the versions given by PW 2 and PW 32. This Court holds that the circumstance of 'last seen' at the relevant time can be inferred on the basis of aforesaid two pieces of circumstantial evidence.

53) The learned counsel for the accused submitted that the evidence of PW 2 and PW 32 is not exactly on the circumstance of 'last seen together'. He submitted that accused were not in the company of the deceased and the aforesaid evidence can only raise suspicion that they were following the deceased at the relevant time. On this point, the learned counsel for the accused placed reliance on the cases reported as **Chandu Chadrahas v. State of MP (AIR 1992 SC 2302)** and also **Arjun Marik v. State of Bihar [(1994) 2 SCR 265]**. In the first case the facts were

different and the witnesses had seen the accused on one bank of the canal and the deceased was grazing cattle near the canal. There was no evidence that they had met each other and in view of the facts and circumstances of that case it was held that the evidence was not sufficient to hold that they were "last seen together". In the second case the effect of delay caused in disclosure was considered and it was observed that only the circumstance of last seen cannot complete the chain of circumstances. It is true that only on the basis of the circumstance of last seen, in absence of other corroboration it is ordinarily difficult to base conviction. In the present matter, there is not only the evidence on circumstance that accused had opportunity, but there is evidence they had the motive and they were virtually following the deceased at the relevant time. Thus, there is other circumstantial evidence connecting the accused with the offence. As already observed, at the time of consideration of the circumstance of last seen together, the other circumstances need to be kept in mind by the court.

54) The circumstance of “last seen together” is relevant under the provision of section 7 of the Evidence Act and it offers 'opportunity' for commission of crime. In that regard the provision of section 7 illustration (a) needs to be seen and it is as under :--

"7. Facts which are the occasion, cause or effect of facts in issue.-- Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations :

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant."

55) The provision of section 106 only says that it is exception to the general rule of 'burden of proof' given in section 101 of the Evidence Act. Section 106 of the Evidence Act runs as under.

"106. Burden of proving fact especially within knowledge.-- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him."

56) When the prosecution case rests on circumstantial evidence and various links in the case are established by the prosecution and the prosecution has established the proximity with relation to time and situation, it becomes the duty of the accused to offer reasonable explanation. The explanation of the accused needs to be such that it creates the probability consisting with his innocence. If no explanation at all is offered by the accused, absence of explanation can make available adverse inference against the accused as provided in section 114 of the Evidence Act. Section 114 of the Act runs as under.

"114. Court may presume existence of certain facts.-- The Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

57) In view of the aforesaid principles of the evidence this Court holds that the circumstance that accused and the deceased were not that way "together"

cannot affect the evidential value of the evidence given by PW2 and PW32 and that evidence is sufficient to infer that the accused persons had "opportunity" to commit the offence. To establish 'proximity' of time, place and space there is evidence of PW2 and PW32 and further there is aforesaid expert evidence like matching of the soil found on the clothes and other articles produced by the accused with the soil which was present at the spot of the offence.

58) The prosecution evidence shows that the incident took place in a chari which was under the bridge. The road Loni Mawala - Hanumanwadi was passing over the bridge. The deceased was proceeding towards Hanumanwadi and the accused were also seen following the deceased and that was at about 5.00 to 5.15 p.m. PW2 and PW32 had not seen any others proceeding towards that side at the relevant time. It is brought on record that on that day there was Gangapujan and most of the persons were expected to remain at home for Gangapujan. The search was started to find the deceased at about 6.00 p.m. The father of the deceased had visited the house of Aishwarya (PW8) at about 6.15 p.m. and it can be inferred

that the incident was completed prior to 6.00 p.m. The dead body was detected at 7.00 p.m. and the medical evidence shows that the death took place within 24 hours of the post mortem examination. The medical evidence shows that the deceased was raped repeatedly. Mud was forcibly thrust into her mouth and she was gagged by using mud so that it was not possible for her to shout for help. All these circumstances are sufficient to establish the proximity in relation to time, space and place. As already observed in addition to both the circumstances there is other evidence. This Court holds that the prosecution has satisfactorily established this circumstance against all the three accused.

INJURIES ON THE PERSONS OF THE ACCUSED.

59) The accused No.1 came to be arrested on 23-8-2014 at about 14.50 p.m. as per the record evidence of panch witness Gorakh Dhere (PW30) and Jambhale (PW 29) and the arrest memorandum Exhibit 160. Evidence is given that they had noticed that there were injuries on the person of accused No.1. Evidence is given by the investigating officer that accused No.1 was referred for

medical examination immediately. Dr. Ajit Thokal (PW16) has given evidence on the injuries which were found by him on the person of accused No.1 at 3.26 p.m. of 23-8-2014. The injuries were as under.

- (1) Abrasion (single) (2.5 cm x 0.1 cm) near left eye.
- (2) Multiple abrasion marks over right shoulder region
- (3) Multiple abrasion marks over right scapular region medial aspect.
- (4) Single abrasion (6 cm x 0.2 cm) over left shoulder region laterla aspect of scapula.
- (5) Single abrasion - 0.3 cm 0.2 cm near right toe.
- (6) Single abrasion 0.4 cm x 0.2 cm near left toe.
- (7) Single abrasion over right dorsmn of hand, near little finger.
- (8) Abrasion 0.5 cm x 0.1 cm over glans penis.

Injury certificate at Exhibit 188 is consistent with the oral evidence of Dr. Thokal.

60) Evidence of Dr. Thokal (PW16) shows that the aforesaid injuries were sustained by accused No.1 within 24 hours prior to the examination of accused No.1. The witness has deposed that such injuries can be caused by sharp object like nails. He has deposed that sites of the

injuries are such that they are exposed to the victim when there is sexual assault. One injury was on glans penis. While considering such injury, the court is expected to keep in mind that the deceased was a girl aged about 16 years and she was unmarried. The injuries found on her private part also support the probability that the accused were required to use force and while using force the accused No.1 must have sustained injury to his private part at the time of sexual assault. Evidence of the doctor further shows that in case of accused No.1 segma was absent. The incident took place between 5.15 p.m. and 6.00 p.m. of 22-8-2014 and the accused No.1 was examined by Dr. Thokal at 3.26 p.m. of 23-8-2014, within 24 hours of the time of the incident. Thus, the medical evidence on the injuries found on the person of accused No.1 is a circumstance that supports the case of the prosecution that he was involved in the offence of rape. In the statement given under section 313 of the Cr.P.C. the accused has admitted that there were such injuries on his person though he has tried to say that these injuries were sustained by him due to assault made by police. The evidence on the record like Police Remand report dated

24-8-2014 shows that he did not make allegation against police of atrocity when he was first produced before the Magistrate after his arrest. It appears that in the trial court an attempt was made by the accused to contend that he had undergone operation as he had some problem in respect of penis. The doctor who must have performed such operation is not examined. Further, the evidence of Dr. Thokal shows that the injury found on the penis was abrasion and it was caused within 24 hours prior to the time of examination and it was not the effect of any surgery. It was the contention of the accused that he had undergone operation prior to 2 months of the examination and he had problem of foreskin and operation of circumcision was performed. This Court holds that the injury found on the person of the accused is relevant circumstance for the offence of rape and it can be considered in view of provision of section 7 of the Evidence Act.

61) Panch witness Satish Auti (PW31) and investigating officer Jambhale (PW29) have given evidence that accused Nos.2 and 3 came to be arrested on 26-8-

2014 and the panchanamas of arrest were prepared on that day. Panchanamas at Exhibit 167 and 168 are proved in the evidence of these witnesses. The investigating officer has given evidence that both the accused were referred for medical examination on the same day.

62) Dr. Smt. Shelke (PW19) has given evidence that she examined accused Nos.2 and 3 on 26-8-2014. According to her, she found following injuries on the person of accused No.2 Mangesh.

- (1) linear abrasion of 2 cm x 1 mm x 1 mm left shoulder posterior.
- (2) Linear abrasion of 2.5 cm x 1mm x 1 mm above medial end of left clavicle.
- (3) Linear contusion of 6 cm x 2 mm scapular region left shoulder.
- (4) Linear abrasion of shin of tibia left 6 cm above ankle
(1) 3 cm x 2 mm x 1 mm.
- (5) Linear abrasion of medial malleolus of left leg 2 cm x 1 mm x 1 mm.

63) Dr. Smt. Shelke (PW19) has given evidence that injury Nos.1,2,4 and 5 found on the person of accused No.2 can be caused by sharp object like nails and injury

No.3 can be caused by hard and blunt object. She has given evidence that the age of the injuries was within 4 to 5 days. She has also given evidence that such injuries can be sustained when resistance is offered to the accused during sexual assault. Injury certificate is at Exhibit 111 and it is consistent with the evidence of PW 19.

64) Dr. Smt. Shelke (PW19) noticed following injuries on the person of accused No.3 Dattatraya.

- (1) Linear abrasion of 6 cm x 2 mm x 2 mm on lateral side of left thigh.
- (2) Linear abrasion of 2 cm x 2 cm x 2 cm on lower back left lumbar region.

According to the doctor, these injuries can be caused due to nails when there is resistance offered by the victim during sexual assault. In this case also the doctor has given opinion that the age of the injury was 4 to 5 days. The injury certificate at Exhibit 112 is consistent with the oral evidence.

65) Accused No.2 has offered explanation in his statement under section 313 of the Cr.P.C. that he

sustained these injuries when he was working in the field. Accused No.3 has not offered any explanation. It is already observed that these accused were not available in the village from 23rd to 26th August 2014. There is such evidence from PW29. On 23-8-2014 itself the names of accused No.2 and 3 were revealed. Accused No.1 was arrested on 23-8-2014. The evidence on the record shows that these accused were also living in the same locality at the relevant time. There is no plausible explanation in respect of these circumstances also from these accused. In view of these circumstances this Court holds that the circumstance that the presence of injuries of the aforesaid nature on the persons of accused Nos.2 and 3 is relevant under section 7 of the Evidence Act and it gives further corroboration to the case of the prosecution.

EVIDENCE COLLECTED UNDER SECTION 27 OF THE EVIDENCE ACT

66) As against accused No.1 the prosecution has given evidence of the recovery of the weapon and his clothes. Panch witness Ramdas Chede (PW12) has given evidence that in his presence on 25-8-2014 accused No.1

gave statement to police that he was ready to produce these articles and memorandum which is at Exhibit 75 was prepared by police. He has deposed that after preparation of memorandum of the statement, the accused, the panch and police went towards the house of accused No.1. He has deposed that by the side of the residential place of accused No.1 there is a shed prepared by using dry leaves, stems etc. and from a portion of the shed the accused took out articles like shirt, underpant, pair of chappals and screwdriver. He has given evidence that the clothes of the accused were found to be smeared with mud. There is such mention in the seizure panchanama at Exhibit 76. As already observed, proper evidence is given on the closing and seizure of the articles by the panch witnesses. There is evidence of the investigating officer (PW29) also on this incident.

67) Dr. Balaji Falke (PW15) conducted post mortem examination on the dead body of the victim girl. He noticed following incised wounds on the dead body.

- (1) Incised wound of size 5.5cm x 0.7cm muscle deep, obliquely placed, over left frontoparietal area of scalp. It is 7.5cm from midline.

- (2) Incised wound of size 4x1 cm x muscle deep, horizontally placed over right eyebrow laterally.
- (3) Incised wound of size 3x0.5cm x muscle deep, horizontally placed over lateral part of left eyebrow.
- (4) Incised wound of size 2.4x0.5cm x muscle deep, horizontally placed over left eyebrow below injury No.3.
- (5) Incised wound of size 1.8x0.5 cm x muscle deep obliquely placed over left zygomatic region.

68) Dr. Falke (PW15) has deposed that these injuries can be caused by articles like screwdriver, the article which was recovered on the basis of statement given by accused No.1 to police.

69) The prosecution examined Madhukar Nawale (PW 18), a vendor of to prove that the screwdriver was purchased by that accused from him on 22-8-2019. He has given evidence that accused had demanded sturdy screw driver and he had sold the screwdriver for Rs.40/-. He has deposed that accused No.1 had given the consideration and a currency note of Rs.50/- denomination was given but the accused did not wait and insist for returning of remaining amount of Rs.10/-. The witness has tried to say that he knew accused No.1 and due to aforesaid

circumstance he remembers the date of the incident. There is no record like bill in respect of transaction of sale of the screwdriver. The screwdriver is not of reputed company and there is no evidence to show that it has any identification mark. Such screwdrivers are readily available in market and even on footpath. This circumstance cannot affect the case of the prosecution. Even if the evidence of Nawale (PW 18) is excluded from consideration it cannot make any difference as the other evidence with regard to use of the screwdriver in the incident can be considered and appreciated. As there is evidence of the doctor that such injuries can be caused by screwdriver and there is recovery of the weapon from the accused, the circumstance can be considered as relevant circumstance.

70) The prosecution has examined witness Bhimaji Auti (PW14) and the investigating officer (PW29) to prove that similar articles were recovered on the basis of statement given by accused No.2. Panch witness has deposed that accused No.2 gave statement to police in his presence that he was ready to produce the clothes and the

stone. Memorandum of statement prepared in is presence is proved at Exhibit 82. He has given evidence that after preparation of memorandum of statement this accused took police and panchas towards Loni Mawala and from there they went towards a small road and then towards side of chari. He has deposed that on the chari there is a small dam and from a bush situated near this place the accused took out a stone weighing of 2 to 2.5 kilograms. He has given evidence that this stone was found smeared with mud. He has given evidence that from this spot, accused No.2 took police and panchas towards his house. He has deposed that the house was in locked condition and the accused took out the key from the hole which was near the window and opened the door. He has deposed that behind gas cylinder which was present in kitchen portion the accused took out a plastic bag and in that bag there were articles like one shirt, one pant and one underpant. He has deposed that the clothes were found smeared with mud. He has deposed that these articles came to be seized under panchanama Exhibit 83. It is already observed that blood was detected on the underpant which was recovered on the basis of the

statement of accused No.2. The CA report is at Exhibit 202 and the covering letter is at Exhibit 175.

71) To Dr Falke (PW15) article stone was shown during his evidence by the prosecution. He has given evidence that such stone can cause the injuries of the type two mentioned by him. These injuries had caused fracture of skull and then there were injury to other parts of the body. According to him, such injury in ordinary course of nature is sufficient to cause death. As already observed, there is evidence of Abhijit (PW22) to the effect that the mud found on the stone matched with the mud which was taken from the spot of offence. Thus, recovery of these articles is again an incriminating circumstance. It is also already mentioned that on the clothes of these accused there was mud and this mud also matched with the mud collected from the spot of offence.

72) To prove the similar recovery as against accused No.3, prosecution has examined Thube (PW13), panch and the investigating officer Jambhale (PW29). The statement given by accused No.3 Dattatraya which led to

the discovery is at Exhibit 79. Evidence is given that this accused took police and panch towards a vasti and in that vasti there is a hut which was situated in agriculture land. From there accused No.3 produced articles like red colour pant which was kept inside of the quilt. In that bag there were articles like T shirt, one full shirt, one pant and underpant and a pair of sandal. Evidence is given that on the underpant there were red stains and there was mud on other articles. These articles came to be seized under panchanama at Exhibit 80. As in other cases, labels were pasted on the articles and they were there, when evidence was recorded in the trial court. As already observed blood was detected on the underpant of this accused (Exhibit 202).

73) There is evidence of Panch Shankar Khaire (PW 9) to prove the seizure of the articles of the deceased and the panchanama is at Exhibit 68. There is evidence of panch witness Deepak Mavale (PW10) to prove the seizure of the articles which were taken over from the spot of offence. The articles include earth samples collected from the spot of offence. This panchanama is at Exhibit 70.

74) As already observed, there is evidence of Abhijit (PW22) in respect of the aforesaid articles. There was matching of the mud found on the articles and the mud which was collected from the spot of offence and so this recovery can be considered under section 27 of the Evidence Act and it is an incriminating circumstance.

75) The prosecution has examined panch witness Pramod Gole (PW 11) to prove recovery of motorcycle of Bajaj company. This evidence at Exhibit 71 shows that the motorcycle was recovered on the basis of statement of accused No.1. This motorcycle was described by PW2 Amol. The evidence of Ashok Bayas (PW20) who sold this motorcycle to accused No.1 shows that it was sold on 9-8-2014. Receipt in that regard is produced at Exhibit 117. His evidence shows that in the past accused No.1 was having Hero Honda motorcycle but it was sold to Ashok (PW20) and Bajaj motor cycle which was also second hand was purchased by accused No.1. This evidence is also relevant as the evidence is given by Amol in respect of the motorcycle which was recently purchased by the accused No.1 and due to that Amol had talk with accused No.1 on

that day near the place of the offence.

76) The evidence of the panch witnesses show that they are from different places, they are not the stock witnesses. Their evidence remained unshaken during cross-examination. The trial court has also believed these witnesses. Thus, the evidence given by the prosecution of discovery of articles which can be called as incriminating gives further corroboration to the case of the prosecution.

Evidence on extra judicial confession

77) Pathan (PW 3) has given evidence that on 22-8-2014 at 8.30 p.m. when he was returning to home from his pan stall, on the way he met accused No.1 at Lonkar Vasti, the residential place of accused No.1 and he had a talk with accused No.1. He has deposed that he noticed that accused No.1 was in happy mood and so he asked accused No.1 about the reason of the happiness. He has deposed that accused No.1 told that his wish was fulfilled. He has deposed that accused No.1 then informed that he, accused Mangesh and accused Dattatraya had raped the victim girl and then they had killed her. Pathan (PW3) has

deposed that accused No.1 had then described the incident by informing that he had kept mud in the mouth and nose of the deceased, he had given blows of screwdriver on the head of the deceased and then blows of stone were also given on her head. Pathan (PW 3) has given evidence that due to such disclosure he became frightened and then he had advised the accused to go to police. According to him, due to the threats of life given by accused No.1 he went to his house. He has given evidence in the cross-examination that he disclosed the incident to his wife and his wife advised him to goto police and so on 27-8-2014 at 10.00 a.m. he went to police and gave the statement.

78) The evidence of Pathan (PW3) is challenged on the ground that his name was not mentioned in remand reports dated 24-8-2014 & 1-9-2014. It was also submitted that on the photo copy of his police statement supplied to the defence the initial date of recording the statement was mentioned as 23-10-2014 and subsequently it was changed to make it 23-8-2014. It was submitted that probability that statement was recorded on 23-10-2014 is

there and so he is a got up witness. To ascertain the truth this Court had given direction to collect the case diary of the investigating officer. This Court has carefully gone through the case diary. In the case diary dated 23-8-2014 there is mentioned that first inquiry was made with Aishwarya (PW8) and then it was made with Pathan (PW3) and the statement of Amol (PW2) was recorded. During cross-examination, the investigating officer Jambhale (PW 29) has admitted that name of Pathan was not mentioned in the remand reports and he has given explanation that he wanted to keep that information confidential. In ordinary course, the Magistrate before whom request is made for granting of Police custody remand or Magisterial custody remand, asks police to hand over the case diary for perusal before passing of the order. In view of such circumstances, non mention of name of Pathan in the remand report cannot make much in favour of the accused.

79) Considering the time of arrest of accused No.1 which was 2.50 p.m. of 23-8-2014 it can be said that from Aishwarya (PW8) name of accused No.1 was transpired

and then PW-3 revealed the names of all the three accused. Statement of PW-2 came to be recorded after recording the statement of Pathan. As already observed, these circumstances do not appear to be concocted and other circumstances are consistent with the evidence given by these witnesses.

80) The evidence of Pathan (PW3) shows that he knew accused No.1. PW-3 owns a Pan stall near bus stop and such persons ordinary know the youngsters as they come to the pan stall. Further, it is not disputed by the accused that Pathan knew him. In that regard the tenor of the cross-examination of this witness can be seen. Pathan met accused No.1 after 8.30 p.m. of that date. The evidence on the record shows that distance between the residential place of accused No.1 and the spot of offence is between one and one & half kilometers. As already observed, the incident took place between 5.15 p.m. and 6.00 p.m. Due to these circumstances it was very much possible that PW 3 met accused No.1 on the way back his house. It was night time. The medical evidence shows that there was one injury like abrasion near left eye and its

size was 2.5 cm x 0.5 cm. Much was argued on the basis of this circumstance but due to night time PW 3 could not have noticed such abrasion and so he did not mention the abrasion. Not much can be made out due to the circumstance that, Pathan has not made any mention about the abrasion which was found near left eye of accused No.1. The other injuries could not have been noticed due to their site.

81) The evidence of Pathan (PW3) shows that he had no reason to falsely implicate accused No.1 in such a serious case. Pathan is a resident of the same locality. After describing the incident by the accused anybody would have got frightened. Evidence is given by Aishwarya that accused No.1 was of goonda nature. These circumstances need to be kept in mind while appreciating the evidence of Pathan and not much can be made out due to the circumstance that he approached police on the next day after 10.00 a.m. and not on the day of the incident. The circumstantial evidence which is already discussed came to be collected afterwards, after 25-8-2014 and that evidence is consistent with the contents of the aforesaid extra judicial confession. The

evidence on the record shows that, due to acquaintance of Pathan with the accused and as the accused used to work with the father of Pathan in the past and the reputation of the accused in that locality, it cannot be said that, confession made by the accused was not voluntary. As there is evidence to show that the contents of the confession proved to be true this Court holds that this confession is admissible as a substantive piece of evidence as against accused No.1. In view of provision of section 30 of the Evidence Act and the aforesaid circumstances this Court holds that the confession given by the accused No.1 can be used against accused Nos.2 and 3 also but under section 30 of the Evidence Act. Thus in the present matter the evidence of confession given by accused No.1 is available for proof of the offences committed by accused Nos.1 to 3.

82) The time of post mortem examination as per the record is from 1.15 p.m. to 3.00 p.m. of 23-8-2014. Some time must have taken to form opinion and give report to police, if at all such report was collected by police on the same day. Considering this time it can be said that the

statement of Pathan (PW3) was recorded prior to conducting of the post mortem examination on the dead body. This circumstance rules out the possibility of concoction.

INFERENCE

83) The circumstances established by the prosecution if considered together, they show that they complete the chain of circumstances to point finger only against the accused persons as guilty persons. Every relevant fact is established by the prosecution and for considering the proof, both the angles mentioned in the definition of "proof" in section 3 of the Evidence Act can be used. The extra judicial confession of accused No.1 is also duly proved. It is proved to be voluntary and the circumstances established show that its contents are true. Thus the evidence on extra judicial confession if considered separately along with corroborating circumstances, that evidence is also sufficient to prove the guilt of accused No.1. The extra judicial confession can be used under section 30 of the Evidence Act against accused Nos.2 and 3 and that circumstance can be considered with other circumstances against accused

Nos.2 and 3 and that evidence also leads to only one inference that accused nos.2 and 3 were also there for committing the offence along with accused no.1.

CONSPIRACY

84) In the cases reported as **Bhagwandas v. State of Rajasthan [1974 Cri.L.J. 751 (SC)]**; and, **Mohd. Usman Mohd. Hussain v. State of Mahareashtra (AIR 1981 SC 1062)**, the Apex Court has observed that conspiracy is hatched often almost in secrecy and so it is mostly impossible to prove conspiracy by direct evidence. Thus, conspiracy needs to be inferred from the acts, the statements and the conduct of the parties to the conspiracy. If it is proved by the prosecution that accused pursued by their acts, the same object, by the same means, then the court is at liberty to infer that they have acted to effect the same object. During execution of conspiracy one accused may take one responsibility and other accused may take other responsibility but if they have completed the act or they have attained the object all of them can be held responsible for the offence of conspiracy.

85) In the present matter the prosecution has established following facts to prove the conspiracy.

- (i) Accused No.1 had motive for commission of offence to ravish the victim girl. He had given threat of life also to the deceased.
- (ii) All the accused were watching the victim girl on that day and they were together on one motor cycle.
- (iii) Accused no.1 knew that deceased used to walk between 5.00 p.m. and 5.15 p.m. after the school time to return to home.
- (iv) The accused No.1 was following the deceased girl for 2 to 3 days from prior to the date of the incident but the deceased had not given positive responsible to him.
- (v) On the day of the incident accused Nos.1 to 3 were virtually following the deceased girl on the road leading to Hanumanwadi from Loni Mawala. From the road they picked up the victim girl and forcibly took her under the bridge constructed over chari.
- (vi) Under the bridge, the girl was ravished and then she was murdered.

86) In view of the aforesaid circumstances established by the prosecution this Court holds that there was conspiracy hatched by these accused for commission of the aforesaid offences and that conspiracy is punishable under section 120-B of the Indian Penal Code.

RAREST OF RARE CASE

87) Before considering the position of law developed on death penalty, in addition to aforesaid circumstances, some more evidence need to be considered. The medical evidence is also important for ascertaining as to whether it is a fit case for giving death penalty. Evidence of Dr. Falke (PW15) and the post mortem report which is at Exhibit 92 show that as many as 21 external injuries were found on the dead body and they were as under.

- (1) Incised wound of size 5.5cm x 0.7cm x muscle deep, obliquely placed, over left fronto-parietal area of scalp. It is 7.5cm from midline.
- (2) Incised wound of size 4x1cm x muscle deep, horizontally placed over right eyebrow laterally.
- (3) Incised wound of size 3x0.5cm x muscle deep, horizontally placed over lateral part of left eyebrow.
- (4) Incised wound of size 2.5x0.5cm x muscle deep, horizontally placed over left eyebrow below injury No.3.
- (5) Incised wound of size 1.8x0.5 cm x muscle deep obliquely placed over left zygomatic region.
- (6) Abrasion of size 1x1cm present over forehead just below hairline in the midline.
- (7) Laceration of size 2x1cm x muscle deep, over left ear pinna upper side.
- (8) Multiple scratch abrasions varying from size 0.7x0.2 cm to 0.5x0.2 cm over parietal area on left side.

- (9) Two contusions of size 1.5x1cm and 1x1 cm over oral aspect of lower lip, reddish in colour.
- (10) Abrasion of size 0.2x0.1 cm over medial side of oral aspect of upper lip, reddish in colour.
- (11) Abraded contusion of size 3.5x1 cm obliquely placed over anterior aspect of neck in the midline situated below thyroid cartilage. The wound is 9 cm below symphysis menti.
- (12) Two abrasions of size 3x0.2 cm and 1x0.1cm respectively over root of neck anteriorly.
- (13) Laceration of size 1.8x0.2x muscle deep obliquely placed over left middle finger proximal phalynx dorsally.
- (14) Two abrasions of size 2x0.5cm and 0.5x0.5cm over right middle finger dorsally.
- (15) Three abrasions of size varying from 0.3x0.2cm to 0.2x0.1 cm placed over ventral aspect of right middle finger.
- (16) Contusion of size 2x1.5cm over right middle knuckle.
- (17) Multiple abrasions of size varying from 2x1cm to 0.5x0.2cm over both scapular areas of back.
- (18) Postmortem excursions of ant-bite of size 4x3cm to 0.5x0.3cm over right elbow, extensor aspect.
- (19) Contusion of size 3x2cm behind left ear.
- (20) Multiple postmortem excursions of ant-bite of sizes ranging from 0.2x0.1 cm to 0.1x0.1 cm over an area of 17x2 cm over infra-umbilical part of abdomen.
- (21) Multiple postmortem excursions of ant-bite of sizes ranging from 0.2x0.1cm to 0.1x0.1cm over an area of 28x3cm over supra-umbilical part of abdomen.

88) The evidence of the doctor shows that internal injuries No.18,20 and 21 were post mortem injuries and the other remaining injuries were ante mortem injuries. The evidence shows that there was palpable fracture of right middle finger and it was also ante mortem injury. As already observed, injuries Nos.1 to 5 were caused by sharp weapon like screwdriver. Other injuries were also caused due to assault. Mud was thrust into the mouth and so there were injuries Nos.7 and 8. Possibility of causing bite injuries and use of force during sexual assault by the accused for satisfaction of sexual lust is always there and in that case also the other injuries can be caused. Injury No.11 is said to be possible due to pressing of neck and it can be said to prevent shouting or to make her to open the mouth as accused wanted to thrust mud into the mouth the neck was pressed. Evidence is given that the mud detected in respiratory track may cause death of a person.

89) Dr. Falke (PW15) found internal injuries as follows.

- (1) Under-scalp hematoma of size 13.5 x 12 cm, over right fronto-temporo-parietal region, reddish in colour.

- (2) Under-scalp of hematoma of size 13x8 cm, over left temporal region, reddish in colour.

90) As already observed, these injuries can be caused by hitting of stone like article No.33. Injuries found on the head were also sufficient to cause the death in ordinary course of nature as they had caused skull fracture and they had caused injury to brain. The death took place due to asphyxia due to gagging by mud with head injury. The evidence does not show that such injury can be sustained by simple fall into chari. Further, the dead body was lying under the bridge.

91) The evidence of Dr. Falke (PW15) shows that there were injuries to the genital organ and they were as under.

- (a) There was evidence of oozing of blood from vaginal orifice.
- (b) Injuries to external genitals present in the form of hymental tears at 10 O'clock, 2 O' clock and 6 O'clock positions, reddish in colour.
- (c) Vaginal walls were edematous and inflamed and evidence of bleeding was present.
- (d) Labia minora also injured and swollen, reddish in colour.
- (e) Pubic hair matted with blood and mud.

- (f) No evidence of purging. Injury Nos.(a) and (c) were clearly indicating that there was recent forceful assault committed on the victim. On the basis of injury mentioned at Sr. No.(b), the possibility that three times assault was committed on the girl. These injuries are also suggesting that, prior to this assault, there was no possibility of sexual relations. While mentioning injury at Sr. No.(d), I mentioned labia minora was also injured. Injuries mentioned at Sr.No.(a) to (d) were indicating that there was mismatch of the size of penis and vaginal orifice of the victim. The possibility cannot be ruled out in the case of the injuries mentioned at Sr.Nos.(a) to (d) of causing injury like abrasions over glans of penis of assault.

Some of the injuries were noticed during preparation of inquest report also and that document is at Exhibit 57.

92) Dr. Falke (PW15) has given evidence that injuries (a) to (c) mentioned above indicated reasonable forceful sexual assault committed on the victim. He has given evidence that there was possibility of committing sexual assault many times in view of the number of tears found on the hymen. Definite evidence is given that there was no possibility that deceased was habituated to sexual intercourse. The evidence shows that if there is mismatch of the size of penis and vagina, ordinarily the person trying to have sexual act sustain injury to penis. This

gives reason for injury found on the penis of accused No.1.

93) The aforesaid evidence shows that the deceased was raped many times and after that she was murdered. This Court is quoting the circumstances which can be called as peculiar, special for the present purpose after quoting the law developed on death penalty.

94) The learned Public Prosecutor placed reliance on the decisions given by the Apex Court in the appeals preferred against the confirmation matters and which had gone from Maharashtra. They are :

(1) Criminal Appeal No.1409/2008 (Shivaji Alhat v. State of Maharashtra) decided by the Supreme Court 5-9-2008.

(2) Criminal Appeal No.2486-2487/2014 (between Vasanta Dupare v. State of Maharashtra) decided by the Supreme Court on 26-11-2014.

Reliance was also placed on the case reported as **Laxman Naik v. State of Orissa [(1994) 3 SCC 381]**. In all these cases the death sentence given to the accused was confirmed when there was rape and murder.

95) In the landmark decision reported as **Bachan Singh v. State of Punjab (AIR 1982 SC 1325)** following guidelines were given by the Apex Court.

- (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;
- (ii) Before opting for the death penalty, the circumstances of the 'offender' so require to be taken into consideration along with the circumstances of the crime;
- (iii) Life imprisonment is the rule and death sentence is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;
- (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. In order to apply these guidelines, *inter alia*, the following questions may be asked and answered:
 - (a) Is there something uncommon about the crime, which renders sentence of imprisonment for life inadequate and calls for a death sentence ?
 - (b) Are the circumstances of the crime such that there is no alternative, but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender ?"

96) In the cases reported as **Lehna v. State of Haryana [(2002) 3 SCC 76]** the Apex Court referred the cases of *Bachan Singh (AIR 1982 SC 1325)* cited supra and *Machhi Singh (AIR 1983 SC 957)* and made following observations :--

"In rarest of rare cases when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power enter to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances.

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or rewards; or cold-blooded murder or gains of a person viz-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of

persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person and the murderer is in a dominating position, or a public figure generally loved and respected by the community."

The aforesaid guidelines were reiterated in the case reported as **Sushil Murmu v. State of Jharkhand [(2004) 2 SCC 338]**.

97) In the case reported as **Brajendrasingh v. State of Madhya Pradesh (AIR 2012 SC 1552)** the Apex Court has laid down few more guidelines after referring the aforesaid cases and they are as under :

"(1) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(2) Life imprisonment is the rule and death sentence is an exception.

(3) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant circumstances.

(4) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime."

98) In the case reported as **Shankar Kishanrao Khade v. State of Maharashtra [(2013) 5 SCC 546)]** the Apex Court, has laid down some new tests, new guidelines and they are as under :

"117. In *Shivaji v. State of Maharashtra [(2008) 15 SCC 269]* this Court categorically rejected the view that death sentence cannot be awarded in a case where the evidence is circumstantial. The death sentence was upheld also because of the depraved acts of the accused in raping and murdering a 9 year old child. This Court held :

"27. The plea that in a case of circumstantial evidence death should not be awarded is without any logic. If the circumstantial evidence is found to be unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence as has been observed by this Court in various cases while awarding death sentence. The mitigating circumstances and the aggravating circumstances have to be balanced. In the balance sheet of such circumstances, the fact that the case rests on circumstantial evidence has no role to play. ...

28. The case at hand falls in the rarest of the rare category. The circumstances highlighted above establish the depraved acts of the accused, and they call for only one sentence, that is, death sentence."

99) The provisions contained in section 354(3) of the Code of Criminal Procedure and also the provision providing for sentences in such cases show that it is a matter of judicial discretion. The aforesaid guidelines,

tests need to be kept in mind by the courts while exercising jurisdiction and discretion. The factors referred in the aforesaid cases are only few indicators covering some situations but court may come across different situations where the court may not take help of those indicators. Fortunately, in the present matter the relevant facts and circumstances already quoted show that the indicators mentioned in the aforesaid cases are of help. The special reasons in the present matter are as under :-

- (i) Three accused persons planned to ravish an innocent girl of 16 years of age by intercepting her at a place where was alone.
- (ii) The accused caught her in such a situation and at such a place that there is no scope to her to escape.
- (iii) The accused did not think for a moment about pains and the situation to which the deceased was being subjected by their act.
- (iv) The accused acted in a very cruel manner and their acts like forcibly thrusting mud into her mouth to prevent her from shouting indicates that they had pre-decided not to show mercy of any kind.

(v) During the span of around 30 to 45 minutes the deceased was raped many times.

(vi) Sharp weapon was used to finish her and the weapon was such that due to a single blow, the deceased must not have died and she must have seen almost all the blows given by sharp weapon and also blunt weapon and she must have suffered the pains till her last breath. She must have been horrified due to such conduct of the accused and the horror created must have been beyond imagination.

(vii) It was pre-decided by the accused to finish her after raping her as they wanted to conceal the offence of rape.

(viii) Even when accused No.1 was a father of 2 issues, he was a married man, the other accused were also elder persons, they committed such heinous act against a girl aged about 16 years.

100) The aforesaid circumstances show that it is a perversity of extreme nature. The conduct of the accused shows that there is no possibility of their reformation and they do not deserve to live in any society. The society would not like to have such members and that is why there was agitation on 24-8-2014 by the people of the

village to see that prompt and proper action is taken in respect of the incident. This Court has no hesitation to hold that the case meets the test of rarest of rare case. Thus, it is not possible to interfere in the decision given by the trial court and the death sentence needs to be confirmed. In the result, following order :-

101) Both the appeals are dismissed.

102) The death sentence is confirmed. A copy of this decision be given to each accused free of cost through prison authority. The death sentence is not be executed for a period of 60 days from today to enable the accused to challenge decision of this Court by filing appropriate proceedings in the Supreme Court.

Sd/-
(K.K. SONAWANE, J.)

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

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