

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

LD/VC CRIMINAL APPEAL NO. 552 OF 2015

Mohan Janu Jadhav
Age – 24 Years, Occupation – Labour,
Indian Inhabitant,
R/at : Khambeshwar No.2,
Post : Jadhav Wadi, Post : Wakan,
Taluka : Poladpur, Dist:- Raigad
(At present Kolhapur Central Prison) ...Appellant

Versus

The State of Maharashtra ...Respondent

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Mr. Abhishek M Singh, Advocate for the Applicant.
Mr. S. V. Gavand, APP for the Respondent – State.

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**CORAM : PRASANNA. B. VARALE AND
PRAKASH D. NAIK, JJ.**

**RESERVED ON : 29th JULY, 2020.
PRONOUNCED ON : 12th AUGUST, 2020.**

JUDGMENT: (PER PRAKASH D. NAIK, J.): -

1. The appellant is convicted for the offences punishable under Section 302 of Indian Penal Code and directed to suffer imprisonment for life. He is also convicted for the offences punishable under Sections 376(2)(g) r/w Section 511 and sentenced to suffer rigorous imprisonment for five years. He was directed to pay fine amount of Rs. 500/- on each count and in default to suffer further imprisonment for one year. The appellant was 20 years old at

the time of alleged incident and the other accused was 17 years, 2 months (Juvenile in conflict with law).

2. Summary of the prosecution case is as under: -

a) On 30th August, 2011 the informant Keshav Pandurang Kasar, who is the maternal brother of the deceased referred to as XYZ in the Judgment of the trial Court, received phone call from Mukund Mangale, who informed that XYZ did not return home. Informant made a phone call on the mobile phone of XYZ but there was no reply although the phone was ringing.

b) The informant, his brother-in-law Sunil Kasar went to the house of Shirish Sabale by motorcycle to enquire about XYZ as she was working as maid servant with him. Shri. Sabale disclosed that the deceased XYZ left his house on 30th August, 2011 at 6.15 p.m. Thereafter, informant visited house of XYZ at Ranwadi.

c) The first marriage of deceased XYZ was solemnized before 20 years. Thereafter she was divorced. She performed second marriage with Mukund Mangale and since last 8 years she was residing with him. Mukund Mangale was at home as he had sustained fracture to his leg in the motor vehicle accident.

d) The informant along with some persons from village Ranwadi went towards Hanumanwadi, near Dharnacha Mal in

search of XYZ in the night of 30th August, 2011. Search was conducted till 2.00 a.m. in the light of torch, however, XYZ could not be traced.

e) On 31st August, 2011, the informant, Sunil Kasar and Prakash Kasar again went in search of victim towards Dharnachi wadi in search of XYZ. During search they found one umbrella chappal of XYZ, saree of XYZ and polythene bag containing tiffin box, bottle of chilli, and clothes. The body of XYZ was found lying under the cashew tree in naked position. They also noticed injury on the head of the victim. Stone was lying near the spot of incident.

f) Information was given to police by informant and crime was registered vide C.R. No. 27 of 2011 under Section 302 of Indian Penal Code with Poladpur Police Station.

g) During the course of investigation statements of witnesses were recorded. Involvement of the appellant and the co-accused Kishor Shelar (Juvenile in conflict with law) was disclosed. Appellant was arrested on 31st August, 2011. On completing investigation, charge-sheet was filed for the offences under Section 376 r/w Sections 511 and 302 r/w Section 34 of Indian Penal Code.

h) As the offences were triable by the Court of Sessions, the case was committed to the Sessions Court. Charged was framed by

order dated 24th February, 2012 for the offences punishable under Section 367 and 511 r/w Section 34 of IPC. The co-accused being juvenile was not tried before the Sessions Court.

3. The prosecution examined 16 witnesses. Documentary evidence was also adduced. Statement of the accused was recorded under Section 313 of Cr.PC. vide Judgment and order dated 30th August, 2013 the appellant was convicted for the offences stated herein above by the Court of Additional Sessions Judge, Mangaon, District Raigad.

4. There is no eye witness to the incident. The entire case is based on circumstantial evidence. It is well settled that in a case which rests on circumstantial evidence, law postulates two-fold requirements: -

I) Every link in the chain of the circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt.

II) All the circumstances must be consistent pointing only towards the guilt of the accused.

5. In the light of principles enunciated in several Judicial pronouncement in respect to law relating to circumstantial evidence, we have perused and appreciated the evidence on record.

6. Mr. Abhishek Singh, Learned advocate appointed to represent the appellant submitted as follows: -

- I) The prosecution has failed to establish the guilt of the accused beyond reasonable doubt.
- II) There is no eye witness to the incident and the case rests on circumstantial evidence and it was for the prosecution to establish every link in the chain of circumstance to prove the guilt.
- III) The prosecution case is based on surmises. The accused cannot be convicted on inferences. The benefit of doubt must be given to the accused.
- IV) The extra-Judicial confession allegedly made by the appellant to PW No.6 suffers from doubt and cannot be accepted. It is a weak piece of evidence.
- V) The circumstances relied by the prosecution are not strong enough to draw the conclusion that it is the appellant accused who has committed the alleged crime.
- VI) Learned Counsel relied upon the Judgments of the Supreme Court in Criminal Appeal No. 1822 of 2011, ***Vinod @ Manoj V/s State of Hariyana***, dated 23rd October, 2019 and another

decision in Criminal Appeal No. 333 – 334 of 2017 in the case of ***Shailendra Rajdev Pasvan and Ors. V/s. State of Gujrat etc.***, dated 13th December, 2019.

7. Learned APP Shri. S.V. Gavand contended that although there is no eye witness to the incident, there are strong circumstances which establishes the guilt of the accused. The prosecution has been able to prove the chain of circumstances establishing the involvement of the appellant in the crime. The appellant and the co-accused were seen near the spot of incident on motor cycle prior to the alleged incident by PW No.4. The evidence of PW No.3 discloses that the appellant was found near Ranbajire Dam at about 8.00 p.m. He was frightened. He was found wearing petticoat. The articles found at the place of incident include the Chappal of the appellant which was purchased by him from the shop of PW. No.5. The appellant made extra-Judicial confession to PW No.6 who had noticed him wearing petticoat. The clothes of the victim were seized. The motor cycle driven by the accused was seized. The evidence of the witnesses corroborates each other. Full Pant of the accused was seized from the place of incident. Petticoat and shirt were seized from the appellant. The body of the victim was nude. There were injuries on her person. The evidence of Medical Officer would indicate that there was attempt to commit rape and

death was caused by pelting stone on the head of the victim. There were injuries on the neck of the appellant which is not explained by him. The injuries had occurred during the resistance by the victim. The appellant was identified by PW No. 4 in the Test Identification Parade. The victim was walking towards her house from Poladpur through the lonely road and the accused took advantage of the situation and tried to sexually abuse her and on resistance from the victim she was killed by stone. The C.A. reports corroborate the prosecution case. Hence, the Judgment of the trial Court appreciating the evidence and giving reasons for conviction deserves to be confirmed.

8. We have perused the oral and the documentary evidence on record. Since the case is based on circumstantial evidence it would be appropriate to scrutinize the evidence of each witness examined by the prosecution, to ascertain whether the prosecution has established link in the chain of circumstances to prove the guilt of the accused.

9. PW No.1-Keshav Pandurang Kasar is the first informant. He received phone call from husband of victim on 30th August, 2011 informing him that, the victim did not return home. PW No.1 tried to call her on her cell phone but there was no response. Thereafter, PW No.1 and others proceeded towards Hanumantwadi near Dharnacha

Mal area in search of victim Kamal Mukund Mangale. Search was conducted up to 2.00 a.m. However, the victim could not be traced. The victim is daughter of his aunt. She was residing at Ranwadi with Mukund Mangale. She was visiting Poladpur for household work in the house of Shrish Sabale (PW No.2). She used to leave her house at 9.00 a.m. and return home at about 6.00 p.m. She used to walk from Ranwadi to Poladpur. PW No.1 and others again went in search of victim on 31st August, 2011 in the area of Dharnachi Wadi. They found umbrella, chappal, saree, tiffin box of the victim. The dead body of the victim was found near the tree. Stone was lying near her body. Report was lodged with Poladpur Police Station. In the cross examination PW No.1 stated that husband of Kamal (victim) is doing labour work at Poladpur and relations between Kamal and her husband were cordial. While taking search of Kamal her husband was not with them. He was sent back by him as he was frightened. The distance between the spot of incident and the house of the accused is about 3 Km. The complaint was exhibited in evidence vide Exh.9.

10. PW. No.2-Shirish Dattatray Sabale has deposed that the victim was working in his house. She had visited his house on 30th August, 2011 and she left his house at about 5.15 p.m. PW. No.1 made enquiry with him about Kamal. On 31st August, 2011 PW No.1

visited his house in the morning and told him that Kamal did not come home. He advised him to lodge the complaint with the police station instead of making search of victim. Thereafter, he came to know that, dead body of the victim was found. In cross examination he stated that the husband of the deceased did not make enquiry with him about the whereabouts of deceased. After the incident the husband of victim had been to his brother's house for about one month. Except PW No.1 nobody made enquiry with him about Kamal.

11. PW No.3 - Ashraf Abdulla Tiwadekar is the watchman at Ranbajire Dam at Poladpur. Besides he one yashwant is also working as watchman at the dam. His duty hours at the relevant time were from 00 hours to 8.00 a.m. Due to lack of conveyance he used to leave house to attend duty by 7.00 p.m. and reach at the dam at 8.00 p.m. On 30th August, 2011 he went to the gate of dam by 8.00 p.m. He saw appellant in a frightened condition. He was wearing green colour T-Shirt and white colour petticoat. He was running towards Mahabaleshwar side. In the cross examination he deposed that, there are two ways to go to the dam. One is from Mahabaleshwar and other from northern side. His cabin is adjacent to Mahabaleshwar road which is towards western side of the dam.

12. PW No.4 - Ujjwala Santosh Mohire is resident of Village

Ranwadi. She was doing household work at Poladpur. She was knowing the victim as she was her neighbour. On 31st August, 2011 she left Poladpur for Ranwadi at about 5.00 p.m. She used to walk by the side of dam at Ranbajire to reach Ranwadi. She saw two boys on motor cycle at about 6.00 p.m. in the area known as Wadacha Kond/Mal. On the number plate of the motor cycle words "Hari Om" were painted. One of the boys was wearing red colour T-shirt and Bermuda pant and another was wearing khaki colour pant and white colour T-shirt. The boys were between the age group of 18 to 20 years. They tried to stop her. She shouted by taking name of Police Patil. Both of them fled towards Poladpur. They were under influence of liquor. She identified the appellant in the Court as one of the persons who obstructed her. When she reached home, Kamal did not reached her house. Her husband was at home. In the cross examination she deposed that her house is adjacent to house of victim. Kamal was issue-less. There is only one way to go the Ranwadi from the Dam.

13. PW. No.5 - Haresh Bhagoji Yeropalle is the shopkeeper. He has shoe market in Kapade Budruk Bajarpeth. 8 to 10 days ago the accused had been to his shop for purchasing Chappal. He purchased plastic Chappal. He identified the Chappal which was showed to him as the article purchased by the accused from his shop.

In the cross examination he stated that, occasionally he sells 10 to 15 chappals in a day. On an average 20 customers visit his shop. He used to collect cash from the customers. He does not maintain the record of sale of chappals. No entry is made about the stock of chappals. He cannot say as to how many pairs of chappals are in his shop bearing number 8. He cannot tell the stock of chappals. He does not maintain bill book. He used to maintain bills about purchases made. Police did not collect nor he gave to them the bills, the receipt about the payment of tax.

14. PW No.6 - Rohidas Mahadev Jadhav is the resident of Khandeshwarwadi, Tal. Poladpur. He knows the appellant. On 31st August, 2011 he was sleeping in the verandah of his house at about 1.00 a.m. the accused had been to his house and he was wearing white colour petticoat. He took his pant which was hanging on the rope. On questioning the accused he stated that, he and his friend had committed a murder of lady at Ranwadi and left his pant near the spot. He slapped him and made him to go. In the cross he deposed that, he cannot tell as to why it is not mentioned in his statement before the police that the accused had been to his house wearing white petticoat. His statement was recorded by the Police after 8 days of the incident. Till then he did not disclose the information to anyone. There are four rooms in his house, behind

verandah.

15. PW No.7 - Tanaji Kasar is the Panch Witness. On 31st August, 2011 he was called by the Police for Panchanama at the Police Station. The police informed him that the Panchanama was in respect to seizure of clothes of victim. The blouse of the victim was piled with mud and the same was seized. Panchanama was recorded. It was exhibited in evidence vide Exh. 29. PW No.8 - Chandrakant Dattaram Kasar has stated that, he was called by the police at Police Station on 05th September, 2011 for Panchanama in respect of motorcycle. The motorcycle was belonging to Tapankumar Mandal. He was present at the Police Station. On the number plate words “Hari Om” were written. The Panchanama was adduced in evidence as Exh.31. In the cross he stated that, his business is at village Charai Tal. Poladpur. There was talk in the village about the murder. People were eager about the arrest of the accused and they were making enquiry with the police. He was curious to know about the murder. Several motorcycles were parked in the premises of the Police Station. He did not see R.T.O. papers of the motorcycle. PW No.9 - Tapankumar Mandal has stated that, he knows father of accused No.2 who is absconding. The motorcycle bearing registration number MH-14/BQ-1257 is in the name of husband of Kishor Shelar’s sister. On 31st August, 2011 Kishor had been to Pune. He confessed before

him that he and his friend Mohan were proceeding on two-wheeler. They found one woman on the way. Mohan Jadhav caught hold of said lady and pulled her by the side of the road. Kishor also told him that he went towards the lady. Both the accused pelted stone and killed her. Kishor had been to Pune by the aforesaid motorcycle. Police arrested him and told the witness to deposit the two-wheeler at Police Station. Accordingly, he handed over the motorcycle to the Police. In the cross is stated he do not know the adjacent area near Village Poladpur. He had seen two to three motorcycles parked at Poladpur Police Station.

16. PW No.10 - Ajit Kank acted as a Panch witness for spot Panchanama. On 31-08-2011 he was called by the police for Panchanama near Dharanacha Mal. One umbrella was found. Sandal of right foot was found. Saree, one Chappal, nicker and one cotton bag were also found. The stone was found having blood stains on it. There were blood stains on the clothes. One full pant and two underwear were also found. Those articles were seized. The Panchanama is at Exh. 37. In the cross he stated that, due to rain there was moisture in the soil. At some places mud was found. From Poladpur there are two roads to go to Ranwadi. The dam is on Poladpur-Mahabaleshwar road. Near the Dam there is village named Charai, Wadacha Kond. PW No. 11 - Chandrakant Dabhekar is the

Panch witness. He was called by the police on 02nd September, 2011. The statement of the accused was recorded about production of clothes. The accused produced clothes from his residence. Those clothes were one petticoat and one T-shirt. The petticoat is white colour and the T-shirt was of green colour. Blood stains and mud was found on the clothes. They were seized. In the cross he stated that, Poladpur Police Station is in Bazar area. The accused was handcuffed. The police told him that the accused is ready to produce the clothes from his house. Police brought the accused. The accused kept mum and he was in frightened condition. The accused was handcuffed till he returned to the police station from his home. The Panchanama was marked as Exh. 39.

17. PW. No.12 - Dr. Raosaheb Goltade is the Medical Officer who performed autopsy on the dead body of the deceased. He found injuries on the dead body of the victim such as Abrasion over right breast, CLW over middle finger of right foot measuring 1 X 1 X 1 cm. CLW over right temporal region, 3 X 2 X 3 cm. CLW over forehead with avulsion of skin 3X3X1 cm. and CLW below right eye, 2 X 1 X 1 cm. The right temporal bone was found fractured. The injury on the breast is of mark of violence. He also examined accused/appellant on 31st August, 2011. On examination he noticed 3 to 4 Abrasions over neck of accused. The age of injuries was within 6 hours. These

injuries were possible with sharp objects like nail. The injuries are possible while resisting. The post-mortem report was marked as Exh.54. The cause of death mentioned in the Post-mortem report is in the severe head injury intracranial hemorrhage, fracture of temporal bone. The injury certificate of the appellant/accused was marked as Exh. 57.

18. PW No.13 - Rajesh Namdev Hadankar is the Tahsildar working at Poladpur. He received letter from police for conducting parade on 9th September, 2011. The Parade was conducted for two accused by witness Ujwalla Mohire. The parade was conducted on 10th September, 2011. PW No.4 identified the appellant. In the crossed is stated that, Tahsil office is in L shape and it from north to south and south to west. Sub jail is situated at the cross section of L Shape, Tahsil office Mahad. The identification parade memorandum was marked as Exh. 59. PW No.14 - Narayan Harpale was attached to Poladpur Police Station as Police Head Constable. Muddemal was handed over to him for taking the same to the office of Chemical Analyzer, Kalina, Mumbai. The Muddemal was handed over to the office of C.A.

19. PW No.15 - Mukund Mangale is the husband of the deceased. He was residing at Ranwadi along with deceased. She was working as maid servant. He met with accident six months prior to

this incident and hence he was at home. He waited for his wife till 8.30 p.m. She did not return home. He informed his cousin about the same. At 11.00 a.m. on the next day his cousin told him that, dead body of his wife was found on the footpath which goes to the Dam side. Thereafter, he started residing at Devrukh. In the cross he deposed that, he was residing as 'Gharjawai' at the house of his father-in-law. Kamal did not deliver any issue from him. He denied that there were any quarrels between them on that count. He also denied that, he was not at Ranwadi on the day of incident and that after lodging FIR he left Ranwadi and was absconding. He did not lodge FIR nor did he tell the incident to the police patil of the village.

20. PW. No.16- Vijay Dagadu Kadam was working as police inspector at Poladpur Police Station, during the relevant time. PW. No.1 filed a report. Investigation was handed over to him. He recorded Spot Panchanama and Inquest Panchanama at the spot of incident. The spot was located within the vicinity of Ranbajire Dam. The dead body of the victim was found with injury to her head. Other articles were found at the spot which were seized. During investigation it was revealed from the statement of Ashraf, that accused and his friend committed murder of lady on resistance for sexual intercourse. The appellant was taken into custody. Co-accused Shelar was arrested from Pune. Motorcycle was seized. Clothes were

seized from the appellant. Parade was conducted. The Muddemal was sent to Forensic Science Laboratory Kalina, Santacruz, Mumbai vide letters Exh. 75 and 76. In the cross he stated that, the marriage of the deceased took place 20 years before the incident. The deceased was issue-less. The husband of the deceased was addicted to liquor. The deceased was doing household work at Poladpur. After completion of her work she used to purchase articles and return home. On the southern side of Ranbajire Dam the road goes to Mahabaleshwar. The gate of the dam is facing Mahabaleshwar road. On the northern side of the dam there is locality. There are two ways to approach Ranwadi. One from Mahabaleshwar and another by the side of the dam. By walk one can reach Ranwadi from Poladpur by the road which is by the side of the dam. The deceased left the house of Sable at 5.30 p.m. On the day of incident the husband of the deceased Mangale was not at Ranwadi.

21. The C.A. report Exh.79 opines that, earth collected from Exh.1- Saree, Exh.2-Petticoat (Parker), Exh.3 - Full pant, Exh.4 - underwear, Exh.5-underwear, Exh.6 -Nicker, Exh.7-stone, Exh.No.8-earth, Exh.10 - Half T-shirt, Exh.14 - underwear tally with earth in Exh.9 in respect of hue and physicochemical characteristics and spectrochemical compositions. The Exh.10 and Exh.14 allegedly belongs to the appellant and the co-accused Kishor Shelar

respectively. The C.A. Report Exh.80 in respect to several articles which indicate that Exh.6 (nicker) is stained with blood. Exh.7 and 7A, stone, and hair found on the stone are stained with blood. Exh.10 half T-shirt allegedly belonging to the appellant accused is stained with blood. No blood was detected on Exh.1 (Saree), Exh.2 (Petticoat), Exh.3 (Full Pant), Exh. 4 (Underwear), Exh.5 (Underwear), Exh.8 (Earth), Exh.9 (Earth), Exh.11 (petticoat), Exh.12 (Half T-shirt), Exh.13 (Bermuda) and Exh. 14 (Underwear). No semen was detected on Exh.1 to 3, 4, 5, 6, 7, 8, 9, 11, 12, 13 & 14. No hair was found on Exh.14 (Underwear) and Exh.12 (Half T-shirt). Exh.6 (Nicker) and Exh.7(stone), Exh. 7A (hair on stone) and Exh.10 (Half T-shirt) detected human blood but the ABO grouping was inconclusive. C.A. report vide Exh.81 mentions that, scalp hair of victim, pubic hair of victim, and body hair with skin of victim were stained with blood. No semen was detected on Exh.2. The blood found on Exh.2 and 3 was human and the ABO grouping was inconclusive.

22. Thus, undisputedly in the absence of eye witness to the incident, the case of the prosecution is based on circumstantial evidence. The circumstances borne out from the record are as under:-

I) Appellant accused was seen near Ranbajire Dam in

frightened condition at about 8.00 p.m. by P.W. No.3 on 30th August, 2011.

II) P.W. No.4 while walking towards Ranwadi was obstructed by accused persons at about 6.00 p.m., while they were riding motorcycle. The appellant was identified by PW No.4 in Test Identification Parade.

III) Plastic Chappal found at the place of incident has been identified by PW No.5 by stating that the same was purchased by the appellant 8 to 10 days prior to the incident.

IV) The appellant made extra-judicial confession to PW No.6 that, he along with his friend has killed a lady.

V) Co-accused Kishor Shelar made extra-judicial confession to PW No.9 that he and Mohan Jadhav killed a lady.

VI) Recovery of clothes viz. T-shirt and Petticoat at the instance of the appellant.

VII) Recovery of Pant from the place of incident allegedly belonging to the appellant.

VIII) Injuries found on the person of the appellant allegedly occurred during the resistance by the victim.

IX) Opinion in C.A. Reports.

23. On scrutiny of the evidence of the witnesses, we find that the circumstances relied upon by the prosecution do not establish beyond reasonable doubt that the appellant is involved in commission of offences as alleged by the prosecution.

24. The First Information Report was lodged by PW No.1, who is relative of the deceased. The prosecution case proceeds on the basis that the victim was working as maid at Poladpur in the house of PW No.2. She used to work towards Poladpur in the morning and would return in the evening. On 30th August, 2011 she did not return. According to PW No.1, PW No. 15 Mukund Mangale who is the husband of the deceased informed about the same to him. We find that the conduct of PW No. 15 is suspicious and unnatural. He did not take any steps to find out whereabouts of his wife. He did not inform about the same to Police Patil. He did not accompany PW No.1 and others to search his wife in the night of 30th August, 2011 or on the next day on 31st August, 2011. He did not make any enquiry with PW No.2 - Shirish Sabale with whom his wife was working as maid. PW No.1 tried to explain inaction of PW No.15 by stating that the information was given by PW No. 15 to him. He was not with him during search as he was sent back since he was found afraid. It is also apparent that PW No. 15 did not visit police station

for lodging FIR. It is surprising that, although PW No. 15 is the husband of the deceased, the FIR was lodged by PW No.1. The enquiry about victim with PW No.2 was made by PW No.1. Search was conducted in the night of the incident by PW No.1 and others. Although PW No. 15 was aware about the route through which the victim used to go to Poladpur and return home, he did not accompany PW No.1 and others to search the victim. PW No.15 tried to cover up his inaction by stating that six months prior to incident he met with in accident and he was at home. The version is doubtful. It is evident that PW No. 15 was not at Ranwadi at the time of incident. This fact is deposed by PW No.16 in his evidence by stating that, on the day of incident the husband of the deceased Mangale was not at Ranwadi. It is also relevant to note that the victim did not return home in the evening of 30th August, 2011. PW No. 15 was silent. PW No.1 did not inform about the incident to Police Patil or Poladpur Police Station immediately after the incident and the information was provided only after the body of the deceased was traced. PW No. 2 has stated that he had advised PW No. 1 to inform the police about the missing of deceased instead of conducting search himself. It is also pertinent to note that PW No.15 in his evidence have stated that he waited for his wife till about 8.30 p.m. and since she did not turn up, he informed his cousin that she did

not return home. On the next day his cousin told him that dead body of the wife was found on the footpath which goes to the dam side. From the evidence of PW No.1 however, it can be seen that he is the maternal brother of the deceased. Thus, he is not the cousin of PW No.15. According to PW No.1 information about victim not returning home was given to him by PW No.15. As stated above according to PW No.15, he gave information to his cousin. PW No.1 is apparently not in cousin. PW No.15 has not mentioned who is his cousin to provide information and from whom he received information about finding of dead of his wife. From the evidence of PW No.1 and Spot Panchanama it appears that, the incident had occurred in the field of Nachani and the dead body was found near the cashew tree. However, PW No.15 have stated that the information was given to him on the next day by his cousin that the dead body of his wife was found on the footpath which goes towards the dam side. The most relevant aspect is that the statement of PW No.15 was recorded on 16th September, 2011 which is apparent from the record and proceeding, although the incident is of 30th August, 2011. It is further fortified from evidence of PW No.15 as stated herein above that on the date of incident PW No.15 was not in Ranwadi. The evidence of PW No.16 also discloses that PW No.15 was not having permanent job and he was addicted to liquor. Deceased was issue-less. She used

to work in different houses at Poladpur. In view of the above the evidence of PW No.1 and PW No.15 is shaky and do not inspire confidence.

25. PW No.2 has stated that the victim left the house at about 5.15 p.m. PW No.1 made enquiry with him. PW No.1 also visited his house. He advised PW No.1 to lodge complaint in the Police Station instead of making search of victim. Thereafter, he learnt that dead body of the victim was found. He also stated that, PW No.15 did not make any enquiry with him about the whereabouts of the deceased and after the incident PW No.15 had been to his brother's house for about one month.

26. The involvement of the appellant allegedly began during the interrogation of PW No.3 - Ashraf Tiwadekar. He is working as a watchman at the Dam at Ranbajire Dam. His duty hours were 00 hours to 8.00 a.m. He stated that for want of conveyance he used to leave house early and reach the place of work at 8.00 p.m. Besides him another person namely Yashwant is also working as watchman. He went to the gate on dam by 8.00 p.m and saw appellant in frightened condition with white colour petticoat and green colour T-shirt. Apparently PW No.3 reached the place of his duty much before the time of his duty. His presence at the said place is doubtful. It is not clear how we knows the appellant. He also referred to another

person working as watchman. There is no reference of presence of other watchman. What were his duty hours. Since duty of PW No.3 was to commence at midnight, whether other watchman was on duty, when PW No.3 reached the place of work? These questions remained unanswered. The prosecution case is that two persons were involved in commission of crime. The other person was not around, when this witness has allegedly seen the appellant.

27. PW No.4 - Ujwala Mohire is the neighbour of deceased. She used to go to Poladpur from Ranwadi for household work. apparently their route was common. Being ladies and considering the fact that they were walking towards Poladpur and return evening through lonely area, they were not accompanying each other. She has stated that, the victim was residing by the side of her house. According to this witness two boys obstructed her. One of the boy was wearing red colour T-shirt and bermuda pant and another was wearing khaki colour pant and white colour T-shirt. According to PW No.13, - Tahsildar, Rajesh Namdev Hadankar, PW No.4 has identified the appellant and the co-accused in the Test Identification Parade. However, on perusal of her evidence it can be seen that, nowhere she has stated that the accused were put in identification parade and that she had participated in the Test Identification Parade and identified the accused in the Parade. She has however identified the accused in

the Court. The prosecution has examined this witness to establish that on the day of incident, the appellant and the other accused who was juvenile in conflict with law were near Ranbajire Dam where the alleged incident of murder and attempt to rape had occurred, hence, the inference is being drawn that the appellant is involved in the present crime. The said witness have described the clothes of the accused. According to the prosecution the incident of murder is in continuation of the incident of obstructing PW No.4 by the accused. The first incident had occurred at about 6.00 p.m. The prosecution case proceeds on the basis that, the victim has left Poladpur at about 5.15 to 5.30 p.m. and ought to be at the place of incident after about 6.00 p.m. and thus the persons were involved in obstructing PW No.4 are also involved in the incident of murder of victim. In this scenario it is relevant to note that according to PW No.4 one of the boy was wearing red colour T-shirt and Barmuda pant and another was wearing Khakhi colour pant and white colour T-shirt. According to PW. No.3 who had seen the appellant at about 8.00 p.m., he was wearing green colour T-shirt. There is no reference of any person wearing green colour T-shirt by PW No.4. It is also not the case of the prosecution that the pant which was allegedly recovered from the place of incident belonging to the appellant was of Khakhi colour. It is also important to note that the Muddemal articles which were sent

for analysis to forensic science laboratory which was allegedly recovered from the appellant is a green colour T-shirt. Thus, the T-shirt of the appellant which was sent for chemical analysis is different than what is referred to by PW No.4.

28. The circumstance relating to the finding of plastic chappal at the scene of offence is relied upon by the prosecution on the basis of Spot Panchanama and the evidence of PW No.5. He is the owner of Shoe Mart. According to him the accused had purchased plastic chappal from him 8 to 10 days ago. He has stated that article No.4 is same chappal purchased by the accused from his shop. The witness sells Chappals and Sandals of different varieties. Majority of them are plastic Chappal. There is sale of 10 to 15 Chappal in a day. It is difficult to accept that the witness remembered which chappal was purchased by the appellant. He could not produce any evidence with regard to the sale of the said Chappal from his by producing any bill, cash receipt etc. It is also relevant to note that according to PW No.5 the Chappal was purchased 8 to 10 days ago. From the Spot Panchanama, male Chappal was recovered which has been described as old used Chappal. The evidence of this witness is suspicious and difficult to rely upon.

29. The prosecution has heavily relied upon the evidence of

extra-judicial confession allegedly made by the accused to PW No.6. The statements of this witness was recorded by the police 8 days after the incident. It is apparent that, the investigating authority tried to create evidence to corroborate the factum of wearing of Petticoat by the appellant. According to this witness he was sleeping in the verandah on 31st August, 2011. At about 1.00 am, the accused has been to his house and he was wearing white colour petticoat. According to him the accused took his pant and disclosed that he and his friend committed murder of lady at Ranwadi. He also stated that, the accused is from his village. The version of this witness is not trustworthy. It was a rainy season. He admitted that, the house of this witness consists of four rooms. In spite of that he was sleeping in the verandah. He did not disclose the incident to anyone. The witness is silent whether the accused wore the pant of witnesses which was lying on the rope.

30. The prosecution is also relying on evidence of PW No.9 Tapan Mandal to establish that the other accused Kishor Shelar had made extra-judicial confession to him about killing of women by both accused. His evidence is also relied to establish that motorcycle brought by Kishor Shelar was produced by him. The other accused was apparently juvenile in conflict with law. The Judgment of trial Court mentions that, the other accused Kishor Shelar is Juvenile in

conflict with law against whom the proceeding is going on before juvenile justice Board. The outcome of the proceedings is not known. Thus, the said accused was not before Trial Court in this proceeding. PW No.9 is silent about words 'Hari Om' being written on number plate of motorcycle. PW No.9 has stated that accused No.2 is absconding, although the investigating officer is silent in that regard. According to him he was working on Vadapav stall of father of accused No.2. The motorcycle belongs to relative of accused. The said accused went to Pune and confessed to him. The accused was arrested and PW No.9 was told to deposit motorcycle. The recovery is not at the instance of accused. It is difficult to accept that the accused would go to Pune and make confession to PW No.9. The witness have not stated as to why accused visited him and whether he stayed with him and what was the nature of relationship between them to confess about crime. In any case it is a extra-judicial confession of accused who is not tried in this proceeding. The owner of motorcycle was not examined. Appellant cannot be convicted on the basis of such extra-judicial confession.

31. The extra-judicial confession is weak piece of evidence. The extra judicial confession is questionable in the present case. The witness did not allude the information to anyone about the confession made by the appellant. In the case of *Sahadevan V/s*

State of Tamilnadu, (2012), 6 SCC 403 referring to the aspect of evidentiary value of extra judicial confession it was observed :-

“14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspired confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstance, the court would be fully justified in ruling such evidence out of consideration”.

32. In another decision of the Hon’ble Supreme Court in the Case of ***Jagroop Singh V/s State of Punjab (2012) 11, SCC 768*** the above decision is referred to it was observed as follows :-

“30. Recently, in Sahadevan V. State of T.N., after referring to the ruling in Sk. Yusuf V. state of W.B. and Pencho V. State of Haryana, a two Judge Bench has laid down that the extra-judicial confession is a weak evidence by itself it has to be State of Haryana, a two Judge Bench has laid down that the extra-judicial confession is a weak evidence by itself and it be examined by the court with greater care and caution; that it should be made voluntarily and should be truthful; that it should inspire confidence; that an extra-

judicial confession attains greater credibility and evidentiary value of it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence, that for an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities; and that such statement essentially has be proved like any other fact and in accordance with law.”

33. In the decision relied upon by the counsel for the appellant in the case of ***Shailendra Rajdev Paswan and Ors.*** (Supra) the Apex Court has considered both the aforesaid decisions. The extra-judicial confession was discarded on the ground that in the absence of credible corroboration, above actual occurrence of such confession and the incriminating facts alleged to have been disclosed in the confession, the Court cannot accept that the conviction of the accused can be sustained on the basis of such confession. It was also observed that in the case based on circumstantial evidence the Courts ought to have conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of the accused. Eachly unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused.

34. In another decision of the Supreme Court relied upon by

the Counsel for the appellant delivered in the Case of ***Vinod @ Manoj V/s. State of Haryana*** (Supra) it was observed that, there is no eye witness to the incident and the case is based on circumstantial evidence. Merely because extra-judicial confession is proved which is weak type of circumstance, the accused cannot be convicted for the offence of rape and murder. The prosecution has failed to prove other circumstances beyond reasonable doubt.

35. The prosecution relies upon recovery of motorcycle to link the appellant with the crime along with the co-accused. The motorcycle was allegedly used while the accused had obstructed PW No. 4. It has no connection with the incident of murder. The said motorcycle was seized vide Panchanama. It was allegedly belonging to the relative of accused of No.2. It was handed over to PW No.9 by accused No. 2. Firstly, the evidence of PW No.4 is under cloud of suspicion. Accused No.2 appears to be absconding. He was a juvenile in conflict with law. He was not tried with appellant. Thus, the evidence of PW. No. 8, 9 and PW No.4 in respect to the motorcycle seized during investigation cannot to be used to convict the appellant. The extra judicial confession of the co-accused who is not before this Court and basically a weak piece of evidence cannot be used against the appellant.

36. PW No.1 has apparently proceeded with investigation on

his own without informing the police and traced the body of the deceased and the articles lying at the place of incident. Panchanama was recorded thereafter by the Police and several articles were seized vide spot Panchanama at Exh.37. From the spot, umbrella, ladies sandal, plastic chappal, red saree, white parker, pant, two underwear, cloth bag, under garment of the victim, stone and other articles were recovered. The spot also indicated sign of scuffle. The spot was shown by PW No.1. The full pant allegedly recovered from the place of incident is of grey colour. It is not established beyond doubt that the pant belongs to the appellant. It is also not established that the two underwears found at the place of incident belongs to the accused persons. It is also relevant to note that according to PW No.4 the two persons who obstructed her, allegedly the appellant and the co-accused were wearing red T-shirt and barmuda and khakhi colour pant and white T-shirt. Thus, there is nothing to indicate that the appellant was wearing the grey coloured pant on the day of incident or while committing the alleged crime. The source of petticoat allegedly worn by the appellant after the incident is not disclosed. It is not the case of the prosecution that the white petticoat found on the person of the appellant and recovered from his house was belonging to the deceased. The production of green colour T-shirt by the appellant also runs counter to the evidence of PW No. 4 and the

same cannot be relied upon.

37. The stone was allegedly used in assaulting the victim while she resisted the sexual assault was recovered from the spot of the incident. The stone was found at a distance of 24 ft. away from umbrella. The articles were found in the field of Nachani. PW No.12 Dr. Doltade conducted autopsy. He has also examined the appellant. He has referred to the injuries on the right temporal region, forehead and below right eye. The injury was also found on middle finger on right foot and the abrasion on the right breast. Considering the said injury and the fact that the body of the victim is nude and on the basis of the evidence of PW No.12 who has deposed that the abrasion over the breast is one of mark of violence, it was inferred that there was attempt to rape. The witness also stated that, the final cause of death is severe head injury and due to pelting of stone head injury Nos.3 & 4 and the corresponding internal injuries are possible. It is pertinent to note that the medical officer have not stated that the injuries sustained by the victim were possible by the stone which was recovered from the spot of incident. The Spot Panchanama indicate that the size of the stone was that it can be occupied by the palm of the hand. PW No.12 has also referred to abrasions found over the neck of the appellant. According to him the age of injuries are within six hours. Those injuries are possible which sharp object, like nail.

The injuries are possible while resisting. It is relevant to note that the alleged incident had occurred on 30th August, 2011 in the evening. The dead body of the deceased was found in the afternoon of the 31st August, 2011. The appellant was examined on 31st August, 2011 at 11.00 p.m. the time passed since the death was 16 to 18 hours as indicated in the opinion given by the Medical Officer, Rural Hospital as reflected in Exh.56. It is difficult to accept that the injuries were sustained by the appellant at the time of incident. The injury certificate of the appellant Exh.57 mentions that the age of the injuries are within six hours. Thus, no adverse inference would be drawn with regards to the injuries found on the person of the appellant that the same were caused during scuffle /resistance by the victim.

38. According to PW No.13, Test Identification Parade was conducted for identification of the accused qua PW No.4- Ujjwala Mohire. She has allegedly identified the appellant. The Parade memo is exhibited in evidence as Exh.59. Although in the evidence of PW No.13 have stated that he saw the two accused persons and then selected the persons of same resemblance and conducted Test Identification Parade. However, the said fact is not reflected in the identification parade memorandum Exh.61/C. Apart from that PW No.4 have not stated that any such identification parade was

conducted and that she has identified the appellant.

39. We have perused the evidence in respect to Chemical Analyzer (C.A.) reports regarding the articles forwarded to Forensic Science Laboratory Kalina, Santacruz, Mumbai vide Exh.75 and Exh.76. On perusal of Exh.75 which is forwarding letter by the Investigating authority to laboratory it is apparent that, the articles found at the place of incident and those recovered at the instance of the accused were forwarded. Exh.10 which is half T-shirt referred to in forwarding letter Exh.75 was described as green T-shirt bearing red spots, and traces of soil along the other articles referred to there in such saree, petticoat, full pant, underwears, under garment of the victim, stone, earth, and underwear of accused No.2 and it matches. The clothes and stone matches with earth from the place of incident. The T-shirt worn by the appellant as deposed by PW No.4 before the incident was not of green colour. In any case by itself it would not be sufficient to convict the appellant. Exh.80 refers to the analysis with regards to several articles including petticoat recovered from the appellant. In various articles traces of human blood was seen but the grouping was inconclusive. Exh.11 reflected in the C.A. report vide Exh.80 refers to petticoat recovered from the appellant. The analysis indicates that, no blood was detected on the said article nor any semen was detected on the article. No blood was also detected on

full pant and the underwears recovered from the spot. The blood group in respect to scalp hair, pubic hair, body hair, was inconclusive although the blood was human. There is no adverse report with regards to the nail clipping of the victim corroborating that any tissues from the body of the accused were found.

40. Thus, although the prosecution relies upon several circumstance, we do not find that the circumstances are proved to the hilt to establish that the appellant is the person who has allegedly committed the crime. The law relating to the circumstantial evidence is laid down in several decisions of the Apex Court.

41. In our considered opinion, the following condition are required to be satisfied: -

I) The circumstances from which an inference of guilt sought to be drawn must be proved by cogent and reliable evidence.

II) The circumstances, should be of definite tendency unerringly pointing towards the guilt of the accused.

III) The circumstances taken jointly should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else and it should be it capable of explanation of any other hypothesis then that of the guilt of the accused.

42. In the case of ***Gian Mahtani Vs. State of Maharashtra***, etc. (supra), the Apex Court has observed as follows: -

“.....according to the system of jurisprudence which we follow, conviction cannot be based on suspicion nor on the conscience of the court being morally satisfied about the complicity of an accused person. He can be convicted and sentenced only if the prosecution proves its case beyond all reasonable doubt.”

43. In the case of ***Anil Shamrao Sute and Anr. Vs. State of Maharashtra*** (supra) the Supreme Court was pleased to observe that suspicion however strong, cannot take place of proof. Clear and impeccable evidence is necessary to convict the person.

44. In the case of ***Gambhir Vs. State of Maharashtra***, the Apex Court, in para 9 of the said decision, has observed as follows: -

“9. It has already been pointed out that there is no direct evidence of eye witness in this case and the case is based only on circumstantial evidence. The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests : (1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of definite tendency unerringly pointing towards the guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

45. The locus classicus of the decision of the Supreme Court is the one rendered in case of *Hanumant Govind Nargundkar and another v. State of Madhya Pradesh*, A.I.R. (1952) Supreme Court, 343, it was observed as follows:

“ In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge, where he said: -

" The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to from parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human

probability the act must have been done by the accused.”

46. In the case of *Shivaji Sahabrao Bobade and Anr. Vs. State of Maharashtra, (1973) (2) SCC 793* the Supreme Court is pleased to observe in para 19 that it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

47. In the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra* (supra), which is another landmark decision of the Apex Court on appreciation of circumstantial evidence as well as other principles of criminal jurisprudence, the Court had referred to the earlier decisions of Hanumant's case and Shivaji Bobade's case and on analysis of the said decisions, it was observed that the following conditions must be fulfilled before a case against an accused can be said to be fully established :-

- (i) The circumstances from which an conclusion of guilt is to be drawn, should be fully established;
- (ii) The facts so established, should be consistent with the hypothesis of the guilt of the accused, that is to say they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii) The circumstances should be of a conclusive nature and tendency;

- (iv) They should exclude every possible hypothesis except the one to be proved.
- (v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion that in human probability, the act must have been done by the accused.

These five golden principles constitute the panchsheel proof of a case based on circumstantial evidence.

48. The Trial Court has relied upon the circumstances as stated above. For the reasons stated above, we do not find that, the circumstances are sufficient to hold the conviction of the appellant. Learned APP had contended that there was no effective cross examination by the defence. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from weakness of the defence. The cardinal principle of criminal jurisprudence is that, a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction. Considering the discrepancies in evidence, the accused is undoubtedly entitled to the benefit of doubt.

49. In the light of the above, the conviction of the appellant cannot be sustained and the appellant deserves to be acquitted for the offences charged against him. Hence, we pass the following order: -

ORDER

- (i) Criminal Appeal No. 552 of 2015 is allowed.
- (ii) Judgment and order dated 30th August, 2013 passed by Learned Additional Sessions Judge, Mangaon, Dist. Raigad convicting the appellant for the offences punishable under Section 376(2)(g) r/w Section 511 of Indian Penal Code and Section 302 of Indian Penal Code is quashed and set aside and the appellant is acquitted of the charges framed against him.
- (iii) For the assistance rendered by learned advocate appointed for the appellant, fees of Rs. 5,000/- is quantified to be paid to him within four weeks.
- (iv) Criminal Appeal No. 552 of 2015 and Interim Application No.1 of 2019 stands disposed of accordingly.
- (v) This Judgment and order be communicated to the appellant in the jail where he has been undergoing sentence.

(PRAKASH D. NAIK, J.)**(PRASANNA B. VARALE, J.)**